CHAPTER 3
PROVISIONS OF COMPENSATION, INSURANCE AND
INDUSTRIAL RELATIONS

3.1 COMPENSATION
3.1.1 Introduction-

Risk cover is very necessary to protect the employees. In fact it is really a humanitarian approach when an employee is insured for his life. In other words a guarantee is given to him that you will be treated a human being even after getting with an accident. This thought is revolutionary one where a low earner is given the mental satisfaction that he/she might be at bottom in terms of earning but he/she is a human being equalant to the employer. Before passing of this Act, the situation was worst because wherever accident took place, the employee’s life became miserable as he was not having any economic support hence the life used to become a ruin. His family became insecured. His marriageable sons/daughters were to pass the life at God’s grace. A sympathy was available in society for him. To pass the rest of life became a tiresome long journey. The workmen were treated as chattels or animals or a bonded labour as if they had no rights rather duties only. Duties to serve the employer till youthfulness existed in the body.

But by passing this Act, really the workmen got honour in their eyes and confidence that they are no more insecured rather secured under the Employees Compensation Act, 1923.

The Act is aimed at providing compensation to the injured employee and to his words when he died so that the family of such ill fated employee could survive in this society.

Granting of this right of compensation, one new benefit also occurred i.e. the rate of incidents came in lesser in members, because the employers started some measures of protection of employees. Such as fencing of dangerous machines, preservation of chemicals in proper containers, lighting system in the establishments, safety goods were used to keep in the establishment such fire exiting wishers. Availability of water tanks to fight fires were also used to maintain in the establishments.

Accident might have taken place with or without negligence of the employer. These will be no adverse effect on the right to compensation.
Compensation is given to meet out the actual loss suffered by the employee. The only parameter is that the accident must have taken place in course of employment. Such claim can be demanded within 2 years of the accident. Compensation would be payable at the rate existing on the date of accident. Here amount of compensation is given to meet out the actual loss suffered by the employee. Yet there is defence available to the employee of ‘added peril’ which means when employee himself while performing his duty of employment has done some extra dangerous work which resulted into accident, then the employer can take defence that the employee was not supposed to do any extra work of dangerous nature which became the reason of accident.

Such compensation may be fixed as per settlement arrived between the parties or by award of the adjudicating authority. Self inflicted injury i.e. well anticipated or foreseen by employee is his own wrong which cannot be compensated against the employer.

If there is legal representative of the employer, he is duty bound to pay compensation upto the extent of deceased’s estate (i.e. estate of deceased employer) and not more than.

Employee claiming compensation must have to prove that he suffered personal injury. Such injury was the result of the accident took place during course of his employment. Lastly that injury has resulted into disablement (total or partial) or death of the employee. Here employer is not liable only for physical injury rather for occupational diseases which must have been the direct result of his employment duty (i.e. his occupation) a list of a number of employments have been given in schedule III of the Act, also the resulted diseases have been shown against the above employments. After leaving the establishment by the employee, the employer can be liable for the disease caused due to the employment but the employee should have done his job for continuous period of 6 months. Still the employee shell have to prove that the disease caused was the consequence of his employment duty. During the course of employment is a technical term for instance injury suffered during lunch hour in also considered as during the course of his employment because the employee as much time lives in premises during employment hours, he will be presumed on duty. Even when a person this due to natural lighting, while performing his professional duty, still the employer is liable to pay compensation.
Willful disobedience on the part of the employee can be a good defence for the employer, but the employer shall have to prove the express order in the Court which was disobeyed, but such plea of defence on the part of the employer can be used in case of injury caused due to accident but not tenable in case of death occurred.

If there is an agreement between the employer and the employee that the employee will relinquish his right of claim of compensation such agreement will be treated null and void.

If the establishment is insured, the insurance co. will not be liable to pay whole of the amount. The company is liable only up to the extent of liability shown in the Act of 1923.

The claimant shall have to produce for Medical Examination when desired by the employer within 3 days of the notice of injury given by the employee to the employer.

When employees are of a contractor deputed in the establishment still if accident taken place the employee will be liable for compensation vicariously.

If settlement of compensation between employer and employee do not take place then commissioner will decide and settle all questions viz. about the injured person is really an employee, up to which extent liability is on the part of employer to pay quantum of amount and duration of payment, type and extent of disablement. Civil Court has no jurisdiction to settle the above issues.

**The Employee’s Compensation Act 1923, is really very important for**
safety of the victim employee or his dependents. Accident takes place in industry, which results either injury or death, the act provides economic safeguards by providing compensation to the victim.

**The Employees’ Compensation Act was meant for compensation to**
employees incapacitated by an injury from accident takes place during the course of employment. The purpose of the Act is to give cooperation to the injured employee or to his dependents in case of death of the employee concerned. Compensation alone is not the only benefit flowing from this Act; it has important effects in furthering work on the prevention of accidents, in giving employees greater freedom from anxiety and in rendering industry more attractive.

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It is applicable to employees of certain industries. It affords protection to an employee from loss or injury suffered in accident. It is not only necessary that the accident should have been caused by some wrongful act of the employer. Compensation is payable only when the condition provided by section 3 are fulfilled and the procedure prescribed by section 10 has been adopted in making a claim to compensation. Limitation period for filling the claim is 2 years in case of the accident or within two year since the date of death.

Where the schedule is amended it must have a prospective operation unless the schedule is made expressly retrospective. Therefore, compensation would be payable at rates applicable on the date of the accident.

Principles Governing Compensation - **Employees’ Compensation Act** does not provide solution to the employee or his dependants but to make good the actual losses suffered by him. Compensation is in the shape of insurance against accident. The rule, that in order to make the employer liable to pay the compensation, death or the injury must be the consequence of an accident.

Nature of Liability - **The employees’ compensation Act creates a new** type of liability. It is not strictly a liability arising out of tort, but is a sort of liability arising out of the relationship of the employer and employee. The employer was neglect or not while accident took place is never seen.

Doctrine of added peril - The principal of added peril means that if an employee doing his work, trade or business engages himself in some other work and which act involves extra danger, he cannot hold his master liable for the risk arising therefrom. The doctrine of added peril, therefore, comes into play only when the employee is discharging his duty.

Adjudication of Compensation - Compensation may be fixed either by settlement or by award once the compensation has been fixed, it cannot be revised on the ground of subsequent aggravation of a permanent disability. Compensation once fixed operates for ever unless the circumstances mentioned in section 6 of the Act, which provides for making subsequent change in the amount of Compensation on the ground of change in circumstances, but the scope of section 6 is limited only to half monthly payments which are prescribed by the Act for only temporary disablement.

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No review on the ground of aggravation of disability is maintainable even under section 17, 19 and 22 of this Act.

Self-inflicted Injury.-An injury caused by accident which could have been anticipated or foreseen, or is brought about intentionally or negligently by the employee himself does not make the master liable. Accident means any unintended and unexpected occurrence.

Contributory Negligence - Contributory negligence is not a ground under the Act for reducing the amount of compensation provided the accident took place while on duty. An employee in a saw mill, received injury on his finger was given treatment by the employer and re employed. Later on the injury developed into tetanus and the employee died due to negligence. It was held that compensation payable to the widow cannot be reduced on the ground of contributory negligence.

3.1.2 Definitions-

Interpretation - Section 2 (1) Repugnant means something inconsistent with or contrary to anything said before in the Act itself. If to provisions of the same statute are contrary to one another, the test of repugnancy is to see whether the two can co-exist. if both of such provisions says “do” and another in relation to the same subject-matter says “do not” they are said to be repugnant with each other.

Commissioner - Section 2 (1) (b) Commissioner means an officer appointed under the Act. According to Patna High Court Commissioner is civil court subordinate to the High Court, but according to the latest decision of Madhya Pradesh High Court in Yashwant Rao v. Sampat office of commissioner is a triune and hence not a Court. Although against the Commissioner, an appeal lies to High Court. It cannot be said that the Commissioner is a Civil Court or court in the technical sense. Therefore, an order passed by him is not revisable by the High Court as per section 115 of C.P.C.” Section 30 gives right to appeal to the H.C. from the order of the commissioner for a limited purpose only.

Compensation - Section 2(1)(C) Compensation under this Act is not the same thing as damages in torts. The principal on which liability to pay compensation and damages in torts is based are different. The defense of ‘valenti non fit injuria’ though available in any proceeding in Torts is not available in any proceeding under this Act. Similarly, the defence of contributory negligence,
inevitable accident or negligence of co-worker is not available in a proceeding for compensation. Once the compensation is determined by the commissioner relying on medical certificate prepared by a qualified medical practitioner, it cannot subsequently be upset on the ground that another doctor had after one and half years found some improvement in the injured organ of the employee.

Dependant – Definition of dependent is given by Section 2 (1)(d) of the Act. Under this sub-section relation of an employee are divided into three classes. However, there is no preferential right amongst dependants to maintain claim application. The dependants are not classified in different categories in the sense that those specified in category I will exclude others. Dependants belonging to any category may claim simultaneously.

(i) The first category widow, legitimate, adopted son or daughter (Minor) irrespective of the fact they are really dependent on the employee in terms of his earnings.

(ii) In the second category of dependant are included a son and a daughter and they have a to fulfill the following conditions, namely

(a) they were really dependent on the employee;

(b) They must be infirm; and

(c) They must have attained the age of 18 year.

Question of Dependency - Dependency is a question of fact. Therefore, where a person claims compensation as a dependant of the deceased employee, he must establish that he is a dependant as per section 2 (1) (d). In all those cases the question of payment of compensation is conditioned by such claimant being wholly or in partially dependent on the employee, it is not necessary for the dependants to obtain written letters of administration or a succession certificate. Dependant does not include all the heirs of an employee but only those who, to some extent, depend upon him.

(i) Widow.- A widow who is entitled to claim compensation at the time of death of her husband is not disentitled by her subsequent
remarriage. The Act takes into consideration only those situations and facts that is in existence at the time of death of an employee. The question of chastity or unchastely is not allowed to be raised to defect any claim of the widow to compensation under the Act.

(ii) Minor legitimate son.- A ‘posthumous son’ is treated like a ‘minor legitimate son’. Probably, there is no Indian case law on this point, but the view is supported by Halsbury’s Laws of England. Son includes an adopted son also provided the adoption is valid under personal law applicable to the dependant.

Child in mother’s womb.- in project officer, Giddi ‘A’ colliery CCL, Hazaribagh v. Sanjay Prasad Chaurasia and another, here employee’s son claimed compensation after 29 year of death of the employee. It was allowed by the commissioner for employees’ compensation but the claim was contested on behalf of the employer taking 2 pleas, first that the claimant was not a dependant. To this the High Court said that a child in the womb of his mother at the moment of the employee’s death would be a dependent.

Second objection was that claim was barred by limitation and it was made 14 years after the child attained majority. The court held that no explanation was given for the delay hence claim was hopelessly barred by limitation.

(iii) Unmarried legitimate daughter.- The expression ‘unmarried daughter’ denotes widowed daughter also who get maintained by her father during his life time. A daughter undoubtedly acquires a new relationship on married she does not lose the old relationship; she remains a daughter. Once a daughter always a daughter qua relationship she is daughter before, during and ‘adopted daughter’ also. This question is not relevant after amendment of the year 1995 as adopted daughter is now included under the Hindu Adoption and Maintenance Act 1956 adoption of daughter is permissible. Therefore, an adopted unmarried daughter would be included in ‘unmarried daughter’. But a divorced daughter does not cover under unmarried daughter.

(iv) Mother.- A mother if widow is covered by section 2(1)(D), sub-clause (i), and if not a widow under sub clause (iii)(b) of the same

93 Vol. 34 P. 892.
94 (2005) I. L.L.J. 891 (Jhar.)
95 Soleman Bibi V. East India Railway. AIR 1933 Cal. 358
96 Rajban V. Rahim Bux. 1969 All LJ 15.
section under the expression ‘parent other than a widowed mother.’ In the opinion of
Madhya Pradesh High Court mother would be entitled to compensation under the
latter sub-clause even she got remarried; but with condition that she was maintained
by the victim employee. But this is no more a valid law in view of amendment of
the Act by Act VIII of 1959. Now remarriage operates as a bar to any claim to
compensation under the Act. A’ widowed step mother’ is not covered by the
expression ‘widowed mother’
(v) Father: - Father can claim compensation only when he
could prove the existing of his dependency on his son before his death. It is a question
of act that under a given circumstance parents can be said to be dependent upon the
earning of their children. In Main Colliery Co.v.Davies 98 the deceased was a minor
aged 16 years earning 8 sh. a week. He lived with his parents and gave them all his
earnings. Parents managed for the feeding, lodging and clothing of the boy and give
him a little pocket money. Father was a collier earning 25 sh. a week. It was held that
father was partially dependent upon the earning of his deceased son. It was observed
that:

‘The burden to maintain the family is upon the father.

He discharges his obligation from a general family fund. He obtains a
partial contribution to the general family fund from the wages of those
who are maintained by him. It, therefore, appears that he must be
relying or dependent for the means by which he discharges his legal
obligations, upon the funds supplied to him, or partly supplied to him
by the children who earn those funds.”

In Ponnuswamy Gounder v. Rangaswamy 99, where it was held that:

“To lay down any hard and fast rule is difficult
about what is sufficient for the maintenance of an individual person,
and to work out an excess out of earning available for the father and
mother and the other members of his family to enjoy. In cases of poor
working families particularly those living jointly the earnings come
into the common pool and it may often happen that the common pool is

97 Intiabji V. M.C. Colliery, A.I.R. 1959 M.P. 329
98 1900 A.C. 358
99 A.I. R. 1953 Mad. 766.
actually quite insufficient to maintain the members at a bare standard of existence.”

Therefore, even if the earning of a expired employees may be insufficient to meet domestic expenses the parents can still be dependent upon his earnings.

(vi) Parents.- In Ramji and Another v. Lalit Bardiya and others \(^\text{100}\), Shatrughna was driver of a tractor. Shatrughna was crushed under the tractor in an accident taken place during course of employment and died. Parents, the present appellant claimed compensation which was rejected by the commissioner on the ground that the deceased employee was never paid any salary by the employer and he having received support from his parents, the parents cannot claim as dependant. The deceased lived jointly with his parents and other members of the family who were daily wage-earners.

It was held that in Indian joint families, there is sharing of income and responsibilities. Inter-dependence and mutual co-operation alone makes living in joint families possible. Therefore parents who have not been receiving money from deceased on account of non-payment of such amount from his employer but in natural and normal course would have received such benefit from the earning of the deceased are included in the definition of dependant.

(vii) Minor brother.- A minor brother is a dependant under section 2(1)(d)(iii), sub-clause (d). It includes consanguine brother or uterine brother. A consanguine brother is one where father is the same but the mother is different. A uterine brother is one from the same mother but from a different father. Madhya Pradesh High Court treats both consanguine and uterine brother, on equal footing because both are half blood brothers; commonly known as step-brother. Rangoon High Court has expressed a contrary opinion and does not treat half blood brothers as brother. \(^\text{101}\)

The general principle on which section 127 of the Indian Succession Act, 1925, is based does not make a distinction between the brother of full blood and half blood. According to the present law, the two brothers, i.e. full blood and half blood stand on the same footing.

\(^{100}\) (1995) I. L.L.J. 910 (MP).

\(^{101}\) In re Maung Kny. A.I.R. 1931 Rang. 1731.
Widowed sister. - In National Insurance Co. Ltd., Madras and Another v. Srinivasa Goods Transport, Madras, the widowed sister of a deceased employee was awarded compensation but the insurance co. opposed it was held the widowed sister who was wholly dependent on earning of deceased employee was entitled to compensation.

Even borrowing employers are duty bound for paying compensation under section 12 of the Act.
Legal representative of the liable employer is duty bound to pay but up to the extent of deceased’s estate.

A contract of service is usually necessary, whether the contract be express or implied. There is difference between a ‘contract for service’ and ‘contract of service’. It is the former and not the latter which is essential for employer-employee relationship.

(i) In contract for service, the employer demands of service the mode of work is also ordered.

(ii) A ‘contract of service’ imports an obligation on the employee to obey the order of the person served but a ‘contract for service’ dose not import an obligation to obey each and every order given by the employer.

(iii) In case of ‘contract of service’ the agreement is for personal labour of the person engaged; a ‘contract for service’ does not necessarily mean an agreement for personal labour but to get the desired work done.

Consideration of a lump-sum amount of Rs. 25 while working there k received injuries and died. It was held that the deceased was not an employee for there was not contract of service rather contract for service with the Ganesh Foundry Works.

3.1.3 Compensation for Employees

In respect of every such disease mentioned as occupational disease in schedule III, A list of a number of employments is given. To support any claim for compensation in case of occupational disease in part A no specified period of employment is necessary.

102 (2003) III L.L.J. 254 (Mad.)
Contracting of an occupational disease after discontinuance of service -
The employer will pay compensation to an employee where an employee contracts any disease as aforesaid after he has left his employment even but employee must have served for continuous period of 6 months.

Section 3(4): - The employer will be liable only to give compensation only if the disease is the result of the employment assigned. Exception to this rule are the case covered by sub-section (2), (2-A) and (3) of section 3.

Employment: - In other words, employment denotes contract of service. Employment under the present Act is not limited to actual work of place of work but extends to all things which employees are entitled as per contract of employment. To justify any claim for compensation presence of a contract of employment is necessary to establish.

Personal injury.- It is a term wider than bodily injury. In Indian news chronicle V. Mrs. Lazarus, an employee, employed as an electrician had frequently to go to a heating room from a cooling plant, was attacked by pneumonia and died after a short illness of five days. The court held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.

The question that should be considered is whether the employee was required or expected to do the thing which resulted in the accident though he might have imprudently or disobediently done the same. in other words, was the act which resulted in the injury so outside the scope of the duties with which the employee was entrusted by his employer as to say that the accident did not took place during his employment.

"Another important question", as pointed out by Francis H. Bohlen, is,

"how far a servant is entitled to go outside his appointed sphere in obedience to the orders of a superior. Of course, if such superior has the power to fix the spheres of labour for the employee, an employee, by obeying them, merely passes in to a new "

course of employment," but even if he has not, it seems that the servant is justified if

103 A.I.R. 1961 Punj. 102
he honestly believes that such superior is authorised to employ him. An injury received within reasonable limits of time and space, such as while satisfying thirst or bodily needs, taking food or drink is to be termed as injury caused during his duty.

In R.B. Moondra and Co. v. Mst. Bhanawri, the deceased was employed as to be there. The distance of the place of accident from the place of work is immaterial in such cases.

Wilful disobedience of orders or safety devices etc. - In order to disown any claim for compensation the employer has to show not only disobedience of rules and safety devices but such disobedience must be wilful and the order must be express. The burden of disproving intentional disobedience is on the employer who claims the benefit of the proviso. Mere disobedience is not sufficient because it may be due to forgetfulness or the result of the impulse of the moment. The plea of wilful disobedience on the part of employee to any order given is not available in case of death of the employee but only in case of injury not resulting in death. Where the death of an employee was result of an accident during course of employment the defence to plead that there was wilful disobedience of any order expressly given or rules framed for the safety of the employee will not be tenable.

In Arya Muni v. Union of India, an employee met an accident while working in the factory on June 5, 1954. The employee lost his right eye due to an injury caused by a spark rushing into his eye. A notice in English directing all the workers to use goggles while at work was put up on the notice board. Therefore, it was contended that the employee himself, was negligent in so far as he disobeyed the instructions by not using the goggles. Neither he ever asked for goggles nor was it supplied by the supervisor. The supervisor admitted that the goggles were in the stock but were not asked for by the employee. It was further contended that the employee understood what was in the notice. The employee stated in the evidence that he had asked for goggles but the same was not given to him. It was argued on behalf of the employer that since the appellant had stated that he knew about the goggles, it should be presumed that he knew about the instruction that had been issued and thus about the contents of the aforesaid notice. The employee was held not to be wilfully disobedient for following reasons:

105 Francis H. Bohlen 25 Harv. L. Rev. 418.
(1) There is nothing to indicate that either the appellant had sufficient knowledge of English which could enable him to understand the contents of the aforesaid notice or that such content were explained to him.

(2) The mere fact that he was aware in a general way of such notice which required the use of goggles by him did not mean that he had understood the precise contents of it and he knew that factory authorities had made a rule that the employee should use goggles while engaged in the discharge of their duties.

The supervisor did not in the course of his evidence say that he asked the appellant to use goggles and in spite of his warning he had continued to work without using goggles. If the appellant was working without goggles it was the duty if the supervisor to warn him, and it was only if such an order was flouted by the employee that the respondent could claim protection under section 3(1)(b)(ii).

Compensation under agreement.- It was held in Roshan Deen v. Preetilal,\(^{108}\) that an agreement by an employee to relinquish the compensation right in case of accident will be treated invalid. Such agreement is not permitted. In this case it was held that the order of commissioner, dismissing claim of injured employee as settled by agreement was obtained by fraud and as such the matter was directed to be heard by commissioner without further delay.

The question of compensation and negligence of employee.- Contributory negligence on the part of the employee dose not exonerate the master from his liability to pay compensation. While disobedience of rules and safety devices, etc, is a ground for exemption in case of injury other than death but mere negligence of an employee cannot be regarded as wilful disobedience to an order expressly given. In a case where a motor driver running with a high speed dashed with a tree and was thereby killed by accident the employer cannot escape from his liability simply because such an accident was caused by rash and negligent driving. The driver might have been in excessive speed but dashing of the vehicle with a tree cannot be said to have been brought with any previous design.

In Ramarao Zingraji Shende v. Indian Yarn Manufacturing Company, Ramarao was working in the respondent company. The appellant was specifically instructed to operate the machine from the northern side but he tried to operate the machine from southern side where gear exists and was injured. Besides, the safeguard was also fitted with bolt to the machine and workers were instructed not to remove the safety guard. According to management appellant has in disobedience of instructions removed the safety guard. It was also displayed on the notice board that before the machine is started, the worker should satisfy that safety guards are affixed and then start work. In spite of the above facts it was held not to be a case of wilful disobedience. It was held that no amount of negligence in doing employment job can change the employee into unemployment job. To decide whether an on the part of employee, it was an accident? Such happening must be unexpected, without design though not in a diligent manner, but the fact remains that his two fingers have been crushed, still he is entitled to the compensation.

Section 3(5) imposes a bar on the recovery by the employee of compensation twice for the same injury. It is not only a success to a claim that bar a subsequent claim to compensation but if an employee has brought even an unsuccessful claim against his employer he would be debarred from making any alternative claim in respect of the same injury.

The word instituted in Section 3(5) of this Act, means “setting on foot an enquiry’ and it is more than a mere filing of a claim. Where the employee has done nothing more than to file a claim and withdrew it before the proceedings actually commenced and which commencement would only be effective after giving notice to the opposite party there has been no such election as would debar the employee’s dependant from seeking any other alternative claim available to him. Thus, although alternative remedies are available to an employee he cannot have the best of both the worlds and put his employer in double jeopardy. The law protects the employer not only against double payment but also against double proceedings.

Claims Tribunal under the Motor Vehicles Act is not a ‘Court of Law’ envisaged by Section 3(5) of Employees’ Compensation Act.

109 (1993) I. LLJ 442 (Bom.)
Liability of Insurance Company – In National Insurance Company Ltd. V. Prembai Patel and Others, \(^{110}\) the Apex Court said the insurance co. will not responsible to pay the full award of compensation made in favour of claimant respondents but only such part thereof as would cover liability under the Employees’ Compensation Act, 1923.

In Mumtaj Bi Bapusab Nadaf and Others v. United Insurance Company and others \(^{111}\), the High Court had held the respondent Insurance Company not liable to pay compensation. In this case the employee died while cleaning grocery pit for storing maize unloaded from lorry. Thus there was no proximity of death of the employee with vehicle insured.

Dismissing the appeal the Supreme Court held that if no direct connection of death of the employee with vehicle insured could be found, insurance company would not be liable to pay compensation.

The purpose of medical examination is to prevent a dishonest worker having an opportunity of concealing the nature of his injury from any impartial observer and the certificate or evidence given by the employer’s doctor cannot, however be considered to be conclusive. In case the employer doubts the bona fide of the employee. He can get medically examined by medical practitioner competent to medical examination cost but he cannot demand of the worker a medical certificate.

Section 12 – Contracting – Under Section 12 a new liability is created whereby the employer, even though he may not be in the least, culpable, is made liable to pay his contractor’s employees where he employs a contractor for his trade or business. The employer is held vicariously liable. He can be, by sub-section (2), indemnified by his contractor. The principle underlying liability of the principal under this section seems to be vicarious and certain source of recompense to the injured employee than the intermediary who may be a man of straw more so.

In view of sub-section (3) the employee may recover the compensation from intermediary instead of employer, referred to as the principal in the section. It may very often happen that in a big scheme undertaken by a contractor, he has to let different sections of his work to petty contractors under his direction and control. Whenever an employee is working anywhere in the entire system, he will be an employee of the principal, but he may be working under a sub-contractor or a petty

\(^{110}\) (2005) II L.L.J. 1109 (S.C.)
\(^{111}\) (2010) IV L.L.J. 614 (SC)
contractor. But before the principal can held liable it must be shown that the contractor was entitled to expect such employee to do his work at his orders and that he was entitled to dismiss such employee.

Section 19 – Reference to Commissioner – Any Commissioner of an area concerned shall have the power to decide and settle all questions as to compensation.

The Commissioner has jurisdiction to decide the loss of earning capacity of an injured employee. The medical evidence, being only opinion, would not be decisive of the question and that the Commissioner had independently to give a finding as to amount of loss in capacity of earning. When parties consented the Commissioner refers any matter for decision of the Medical Board or some other agency. It should be held that he acted extra cursum curiae and the parties would be bound by the opinion of the reference. None of the two parties would have a right to complain if the opinion goes against him. In such a case there would be no right to appeal. Apart from the objection to the assessment of the loss of capacity of earn there is absence of other objection relating assessment of compensation by the Commissioner. A Commissioner has no power to set aside a previous order for compensation made by him under a mistake.

Section 19 refers to a liability arising by virtue of this Act.

In Madina Saheb v. Province of Madras, 112 the Government as a principal employer had to compensate an employee employed by contractor. Section 12(2) gives right to the Government to be indemnified by such contractor to the extent of any compensation paid by it. In this case, it is for the contractor to approach or apply to the Commissioner for adjudication or for the Government to claim a right to be indemnified by such contractor. It was held that:

“It was the Government that was claiming right to be indemnified and if that right was not accepted by the contractor, then the question as to the right, had to be settled by the Commissioner.....it is for the party claiming a right to initiate proceedings for the adjudication in respect of that right. Admittedly there was no reference to the Commissioner and no decision by him of either the right to or the amount of the indemnity claimed by the Government.”

112 AIR 1946 Mad. 113
As per section 19(2) of the Act far from disentitling the contractor from obtaining any relief really disentitles the defendant Government from succeeding on any pleas based upon their right to indemnity. In fact this provision leaves them without any defence whatever because they claim to withhold an amount to which the right has been declared by the Commissioner as it ought to be the case and it was disputed by the contractor. Therefore, the suit by the contractor in a civil Court was not barred by the provisions of Section 19(2).

3.2 INSURANCE

Introduction

3.2.1 –

For cordial industrial relations it is necessary that both the counterparts viz the employer and employees must be able enjoy safety and security (physical as well as economical) and welfare of both. Therefore there is an organisation popularly known as Employees State Insurance Corporation which run under the E.S.I. Act 1948. It is the organisation where both employer and employees contribute their half share each monthly fund which is the economic security provided to the employees which the help of employer. In addition to it, this organisation also provide compensations on accidents occurred in an establishment also provides insurance to the employees.

So far as the Employees State Insurance Act, 1948 is concerned, the Act provides economic protection as well as makes provision of insurance. Here industrial relation of employer and employee has been established under the feelings of mutual care and co-operation. This Act being Central is applicable on Govt. as well as private factories yet several factories have been excluded from the applicability of this Act. There will be a standing committee which will be constituted out of the members of the Corporation, also there shell be a Medical Benefit Council. The Act of E.S.I. is applicable on all employees of an establishment, factory. Under this Act, contribution system has been establish in which half contribution is paid by the employee and rest half if paid by the employer regularly.

As regards arrears of employee’s contribution, the Act is silent about to be paid, but the ESI Corporation enjoying the power of Civil Court can order for payment of interest. Few benefits have been provided under the Act. The first is sickness benefit under which the insured person shell have been examined by the duly appointed medical practicenor and will certify that he is sick. The other benefits is called maternity benefit under which periodical payment is given to a pregnant
woman but such woman be certified by the insurance medical officer. Disablement benefit is also provided by this Act accordingly periodical payment is given to the insured person but such disablement must have been caused during Course of his employment. There can be permanent partial disablement and permanent total disablement due to an accident in the factory. In case of permanent partial disablement the earning capacity of the insured person is reduced due to such accident. In permanent total disablement, the insured person becomes incapable for doing the work.

Accident during course of employment will be presumed unless if is otherwise disproved. Yet there are some exceptions when an employee is not presumed to be in employee has acted in contravention of the law or he has contravened by the law or he has contravened any order passed by the employer.

A question arise that whether a employer liable for any accident caused with a employer while travelling for the purpose of his duty under employment. The answer is in affirmative but following conditions must have been fulfilled-

(i) The vehicle in which he was travelled must be allowed by the employer expressly or impliedly

(ii) Accident must have taken place during coming or going his place of work.

(iii) **The vehicle must have been operated by either employer’s** driver or when vehicle is owned by someone else then there should have been an agreement of employer with such owner.

(iv) That vehicle was not used for public transport & service.

The employer is liable only if the-

(i) Injured employee was within premises at the time of accident.

(ii) Accident took place when the injured employee was doing rescue work.

(iii) Accident took place when the injured employee was doing needful act to save the property from damage.

**But the employer is not liable when the employee has acted as ‘added peril performance’** means if such employee did some act extra dangerous with his own will which act was not permitted at all by the employer. That act was unreasonable even by stretch of imagination.
Dependant’s benefit is also provided under the Act. As per Sche. 52

other dependent gets benefit when the insured person dies in an accident. The dependant gets periodical payments.

If the insured person has suffered with occupational diseases due to the hazardous nature of his employment, such insured employee will also get periodical payment and regular treatment from E.S.I. Hospital. There is list of diseases mentioned in part B of Schedule III of the Act which are treated as occupational diseases. Such affected employee will also get periodical payments. If a employee has left the job still he is entitled to get compensation from the employer provided if it is proved that the diseases was caused due to the occupation. One important condition which is necessary to prove is that the affected employee must have served the job for atleast 6 months.

An insured employee taking benefits under this act in the form of compensation etc. then he will not take same benefit from workmen’s compensation Act or any other Law.

All cares pertaining to disablement are referred to medical board for final decision when the employee or the corporation is not satisfied with the opinion of medical board, an appeal can be filed before medical appeal tribunal and next to it to the Employees Insurance Court.

It is the duty of the corporation to establish hospitals, dispensaries and surgical and medical services in the help of insured person alongwith his family. Even corporation can make agreement with local hospitals (Govt. or Private) to give treatment to injured employees or to his family.

The corporation can make agreement with the Govt. to bear expenses of medical expenses accrued due to payment to injured employees. The corporation can recover double amount of share contribution from the employer if the employer had failure in depositing has share of contribution or can order the employer to deposit the difference money only. Corporation pay itself full benefit to the employee and can later on recover from the employer as an arrear of land revenue under Schedule 45 C to 45I of the Act.

3.2.2 The Employee’s State Insurance Act, 1948

This Act is a unique law providing economic protection as well as risk of future is controlled by way of insurance system in which both employer and employee contribute the amount equally on monthly basis.
It is a Central Act and is applied on factories but is not applicable on reasonable factories.

Factories here means when the factory is operated with the help of power then ten employees are sufficient to constitute factory under the Act and where power is not used then atleast 20 persons be employed to constitute the factory.

Kitchen employees of a hotel are employees of hotel hence a hotel constitutes a factory.

Disablement is of two types viz. permanent partial disablement (Sec. 15A) where nature of the disablement is of permanent type which reduces the earning capacity of the victim employee and the reduced earning capacity which is the result of permanent partial disablement must relate to the employment he was doing.

Second type is called permanent total disablement where the natures of disablement is permanent which has resulted the incapability of work by the affected employee.

As per Section 3 a corporation is to be established by the Central Govt. which will administer the Scheme of Employees State Insurance Act.

From the members of the corporation a standing committee is appointed.

A medical benefit council is also constituted which is the ultimate authority in questions relating to medical benefits (Section 10 of the Act).

System of contribution has been provided by the Act, accordingly the contribution is paid by the employee and employer periodically. Contribution paid by the employer is called employer’s contribution and other side is called employee’s contribution.

Interest on delayed contribution on the part of employer is recoverably yet the Act is silent about it but the E.S.I. Corporation being enjoying the powers of a Civil Court can grant interest also.

If there are many employers, the liability to pay contribution is of Principal employer on not the liability of immoderate employers (Section 40).

There are many benefits provided as per the Act, one of them is sickness benefit. Where the medical practitioner has certified the sickness, the employer gets benefit periodically it means the employee gets the salary during sickness.
Maternity benefit is also taken by the women while during miscarriage, pregnancy and after delivery but in all cases the certification by Medical practitioner is necessary.

Disablement is also provided by this Act. The periodical payments are given by the employer but such disablement shall have to be certified by the medical practitioner. In this type of disablement, the employee must have to be proved that he was working in the establishment during course of the employment.

**Dependant’s benefit** is also available under this Act. When the employee dies, the dependants will get the benefit regularly periodically. Hence it is humanely and welfare Act.

Medical benefit has also been provided by this Act. This benefit is available to the employee and this benefit can also be given to his family members.

When an employee gets injured or got died, while travelling, the employee is entitled to get benefit provided the vehicle was owned by the employer or the employer has given consent to travel the employee in any other vehicle. Also the employee was coming from his place of work or going from that place. If the employee has intentionally contravened the duration of the employer, the employee is not entitled to claim benefit.

The employee is also entitled to get benefit when he was meeting an emergency in the establishment and an accident have taken place the emergency here means-
- the employee acted to rescue somebody.
- protect the property of the factory.

**But if the employee has acted in ‘added peril’ then such employer is not entitled to get benefit.** Added peril means when employee himself took the wrong step which resulted in to accident.

After the death of employee, his dependents can get benefit. The dependents shall have to prove-
- that death caused during employment hours in the premises of the factory.
- that they are the only dependents of the deceased employee.

When occupational disease is reported and proved lateron, the victim employee gets the benefit. There are list of occupational diseases in the Act. The claimant shall have to prove the following conditions (Section 52A)
- the employee was doing the particular job.
- such job is covered under occupational diseases.
- He has worked at least for 6 months continuously that job.
- Such diseases is the direct result of the occupation he was doing.

The victim employee or his dependant are prohibited to take benefit from other

**Law if ‘such claimant have taken already benefit’ from this Act.**

All cases are referred to medical Board which is the conclusive authority. If any parts is dissatisfied by the report of the medical board, then the aggrieved party may go in appeal to medical appeal tribunal.

Corporation will also establish hospitals, dispensaries or other medical or surgical service centre. The corporation can get such services from any private hospitals (see Section 59 of the Act).

The E.S.I. Corporation as the consultation of the State Government can decide the medical benefit to be given to the employee or his dependents when the employee had died. The corporation can recover the twice amount of contribution from the family employer if the payment of contribution had been made by the corporation.

The act bears much importance being provider of economic protection. The industrial relations of employer and employee is very much co-operative, contributory and based on mutual care and lastly the insurance care declared under the Act.

This is a Central Act. According to Section 1(4), the Act is applicable on all factories including Govt. factories but seasonal factories are excluded.

Section 2(12) and (14-AA) did not depend upon any end product. It was held that the activity of pumping petroleum by aid or power and employing more than 10 persons was sufficient to bring it in the coverage of Factories Act, 1948.

Power – The question whether the manufacturing unit running with the aid of power is ultimately one of inference from facts. The test is not whether power is necessary for the manufacturing process but whether in fact power is used in the manufacturing process. \(^{113}\) In case of a tannery the mere use of power for pumping water which is used for the subsequent manufacturing purpose cannot be described as the use of power in the manufacturing process so as to bring the tannery within

\[^{113}\text{Mohammad Haneef & Co. V. Regional Director ESI, AIR 1969 Mad. 155.}\]
The mere existence of pump set worked by power cannot make the premises a factory. The essential postulate is that power must be used in aid of the manufacturing process in the premises.

What is a Factory? – when power is used in running of the established manufacturing unit without the help of power. Therefore “where various units of a Company engaged in the construction of piers at a certain place, were not within one compound and the site where the piers were being constructed was not located in a part of the compound in which the other units were located: the location of different units cannot be said to be with a geographical limit so as to constitute a premises and thus merely because the workshop was running with aid of power is cannot be said that the entire area constituted factory”. It is not necessary that the premises, should be a single building. A number of buildings when situate within one compound may constitute a factory. Therefore, unless it is possible to say that the different units are part of the same premises, the entire area cannot be regarded as a factory”. In Employees’ State Insurance Corporation v. S.M. Suiramul Naidu,\(^\text{114}\) it was contended that a “studio” is not a factory. It was held that though there were several departments functioning as separate entities or units within the studio it can still be called a factory. In another case by Usha Prints that special contractor who did ironing for Usha Prints did ironing for many others also and therefore it cannot be regarded as a department of Usha Prints. But repelling this contention of the Bombay H.C. held-

“For many reasons in a through contractors the work is done but they are directly under the supervision of the managers of the factory. Therefore unless the contrary is proved that the contractors was independent, the inference must necessarily be that the ironing department is part and parcel of the Usha Prints.”\(^\text{115}\)

On certain premises the tanning is done by manual labour. The water which is used for subsequent manufacturing process was being pumped with the aid of power from a sell situated outside tannery premises. It was held that “the mere fact that the water utilised has been pumped by electricity will not connect the pumping with the manufacturing process. There must be certain interlinking in the functioning

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\(^\text{114}\) (1960) II L.L.J. 699.

\(^\text{115}\) Usha Prints (India) V. ESIC, AIR 1964 Bom 94.
of the pump in the factory”. Thus, the manufacturing process of tannery without power, not amounts to factory.

In Gateway Auto Services v. Regional Directory, E.S.I.C., there were two departments in the establishment of the appellant, namely: (1) Service Station and (2) Petrol pump, under his direct control and supervision, the decision was that it does not amount to ‘factory’ the main activity must be connected with or must be identical part of activities running with help of power. Viewed in this light the establishment was held to be a factory.

In Bombay Anand Bhawan Restaurant and Another v. Deputy Director, E.S.I. Corporation and another, appellants were engaged in making and selling coffee, sweets and savouries with L.P.G. Gas and they employed more than 10 persons. They challenged the application of E.S.I. Act, 1948 unsuccessfully before lower judicial forums. Hence they preferred appeal before the Apex Court which ultimately dismissed.

In Christian Medical College v. Employees’ State Insurance Corporation, the college has a department called the Equipment Maintenance Department. The department maintains the equipments in the Hospital such as X-Ray, ECG, Radiation equipment etc. In effect this department repairs the equipment which is being used in the Hospital. It was decided by S.C. that if any repairing (work) took place as in the present case, with a view to use the equipment in the other limb, namely the Hospital, such a department was clearly covered by the term ‘factory’ in the Act of E.S.I. therefore the Act is operative over the department.

The place of work of the immediate employer is limited to the premises of the factory. If the work is to be executed somewhere else, the employer of such person shall not be an ‘immediate employer’ under the Act. The distribution or transport of an article after it is manufactured is not a manufacturing process and cannot be said to be connected in any sense with manufacturing process.

In Employees State Insurance Corporation v. Tiecicon Private Limited it was held that the company which is providing air-cooling facilities to the

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116 Mohammad Haneef and Co. V. The Regional Director, ESIC, AIR 1969 Mad 155; see also Messrs Sevamy and Co. V. ESIC, (1972) 2 MLJ 232.
118 (2009) IV L.L.J. 413 (SC)
119 (2001) I. L.L.J. 18 (SC)
120 (1996) I. L.L.J. 504 (Bom).
tenants in the building on payment of charges and by engaging more than 10 persons is an establishment or is a factory for the purpose of the Act. The air is adapted or treated with a mechanical process with the aid of power for being used in the form of giving cool air to customers on payment of charges. This accounts to manufacturing process.

In G.L. Hotels Ltd. Etc. V. T.C. Sarin & another, it was held that lodging and boarding are both essential components of the services rendered by the hotel. Hence it is admitted that the kitchen is an integral part of the hotel. Therefore the Act applies to hotel and other activities carried on in hotel. Kitchen of a hotel is not a separate activity rather part of it.

Any person who has the right of regulating and controlling the factory or who is in the predominant position and exercises general superintendence over it, is an occupier. He may be the owner, a lessee, or a licensee, but he must have a right to occupy the property and dictate how it is to be managed. The manager of a factory is not a Managing Agent and cannot be called as occupier of the factory. Individual, a firm or other association of individuals can be occupier of the Factory.

(15-A) Permanent Partial Disablement – The definition given in the Act has the following ingredients:

(1) partial disablement must be of a permanent nature:
(2) the disablement must reduce the earning capacity of an employee:
(3) reduction of earning capacity must be in such employment.

What is permanent partial disablement is a question of fact. The test to determine permanent partial disablement has been discussed in detail in the Act of Workmen’s Compensation.

If an injury to a workman caused by an accident did not reduce his capacity to work but stamped him with such a marked physical deficiency as would dissuade the likely employers from employing him, he would be deemed incapacitated for work in the sense that his earning capacity would clearly be altogether destroyed.

(15-B) Permanent total disablement – The definition contains the following ingredients:

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121 (1994) II L.L.J. 883 (SC)
(1) the disablement resulting from injury must be permanent; and

(2) the disablement must be of such a nature as renders the workman incapable for work.

(3) every injury in Part I of Schedule II.

The disablement is said to be permanent and total if it results in such permanent loss of earning capacity of the employee as makes him incapable for his work. The use of preposition for makes it sufficient clear that the ‘incapacity for work’ as referred thereto is not merely physical incapacity to work but incapacity to secure employment. Therefore, whatever may be the physical power of the employee to do a duty in any sphere of activity if there is no earning power remaining in the workman so as to persuade an employer to offer him any employment, the incapacity is complete.

In Royal Talkies Hyderabad v. ESI Corporation, the Cinema Manager had entered into an arrangement with another to maintain a canteen and a cycle-stand, and that other employed on his own workers. It was held that manager is here employer.

3.2.3 Corporation, Standing Committee and Medical Benefit Council

E.S.I. Corporation will be established by Central Govt. as per Sec. 3 of the Act.

The standing committee will be formed from the members of the corporation as per Sec. 8.

Medical benefit council will also be constituted.

3.2.4 Contributions

Section 38 – All employees to be insured – An employee to be insured two conditions are provided: namely (1) insured person should an employee of the factory or establishment (ii) contributions must be either paid or payable to him under the Act.

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123 AIR 1978 SC 1478.
Section 39 – Contribution – The employer partly pays and the employee also partly pays. Employer is contribution is known as employer’s contribution and other is called employees contribution.

In Goetze (India) Ltd. v. Employees’ State Insurance Corporation, it was held that the payment of interest on delayed payment of contribution is statutory and therefore it cannot be waived. There is no question of settlement or compromise in matter of payment of interest.

It was pointed out by the Supreme Court in Hyderabad Asbestos v. Employees’ Insurance Court, that the contribution under Section 39 is not confined only to employees actually working in factories but it extends to all employees as per Section 2(9).

In Employees’ S.I.C. v. Amalgamations Repco Ltd. Madras, it was held that contribution is leviable under Section 39 by which the management is liable to contribute on its own accord and such payment is not made conditional on any demand by the Employees’ State Insurance Corporation. Where incentive bonus and night shift allowance is payable in pursuance to an agreed scheme the contribution is leviable from the date of enforcement of the production incentive bonus scheme and the night shift allowance.

It was held in the Reid-Co-Operative Timber Works Ltd. V. yet the Act is silent about on the arrears of employees’ contribution as per the Act, but the E.S.I. Corporation being a Civil Court can award interest on such contribution.

Section 40 – Principal Employer to pay contribution in the first instance – Section 40 of the Act makes employers responsible to pay the contribution—

(i) If the employee is not an exempted employee; and
(ii) If the employee is directly employed by him.

An order directing the employer to contribute towards insurance benefits on the basis of the wages paid does not amount to deprivation of property as contemplated under Article 31 of the Constitution. In Birla Cotton Spinning and

\[\text{References:}\]

125 Ibid.
126 (1983) II L.L.J. 193 (Madras)
127 AIR 1970 Mad 439.
Weaving Mills v. Sumer Chand,\(^{128}\) the legality of the deduction from the wages of the authorised leave without pay was challenged and was held to be illegal. The determination of the above question was dependent on the interpretation of the word ‘period’ mentioned in Section 40(2) Proviso. In the above case it was said that the period must be taken to be a week.\(^ {129}\) Therefore, in view of Section 42(4) no contribution is payable in respect of any week in which no services are rendered by an employee and no wages are paid to him.

### 3.2.5 Benefits

Section 46 – Benefits – Sector 46 provides these benefits-

1. Sickness benefit – This benefit is available to an insured person provided his sickness has been certified by a duly appointed medical practitioner. When standing order permits sick leave, the employer cannot require the employee to seek sickness benefit provided under this sub-section.

   In Management of Dioccsan Press v. Labour Court Madras,\(^ {130}\) it was held that it was not possible to accept the contention that since the employee has received sickness benefit under the Act, he is not entitled to receive the wages for the period during which he was on sick leave. But the employer is entitled to deduct the benefit received by the employee from the leave salary payable to him.

2. Maternity Benefit – this benefit in the form of periodical payment available to an insured woman.

   The grounds of eligibility of an insured woman to such payments must be certified by an Insurance Medical Officer as provided by the regulations.

3. Disablement benefit – person insured shall be entitled to periodical payments if:

   (i) Disablement is there;

   (ii) Disablement caused during employment duty.

   In Krishan Kutty Nair v. P.B.V. Regional Director, E.S.I.,\(^ {131}\) a covered employee under the Employees’ State Insurance scheme, suffered an accident during his employment on June 15, 1990. The claimant suffered injury after he had ceased to be an employee.

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\(^{128}\) AIR 1963 Punj 360.

\(^{129}\) Birla Cotton Spinning And Weaving Mills. V. Sumerchand, AIR 1963 Punj 360.

\(^{130}\) (1982) I L.L.J. 451 (Mad)

\(^{131}\) 2008 II L.L.J. 997 (SC).
Dismissing the appeal it was held that Section 46 (c) of Employees’ State Insurance Act, 1948 specifically provides for two cumulative conditions for its applicability: (i) first the claimant must be an insured person; and (ii) second that such an injury must be sustained when he was an employee. Hence, when the injury had been sustained by the employee when he ceased to be an employee, he would not be entitled to the benefit of disablement through his contribution period and his status as insured person continues.

4. Dependants benefit.

5. Medical benefit – the benefit given to the injured employee and to the family members also.

Section 52-A – Occupational Disease – The expression ‘occupational disease’ has nowhere been defined in the Act. But a list of these diseases along with the employments peculiar to them has been mentioned in 3rd schedule of the Act. Any employee who contracts any such occupational disease while working in specified field shall be deemed the affected employees. The third schedule is divided into three parts. For occupational disease mentioned in Part A no period of employment is necessary; but in case of disease available in Part B, the insured person must have served in the employment peculiar to that disease for a period of not less than 6 months. Occupational disease is also known as employment injury.

The Central Government, State Government and the Corporation are empowered under sub-section (2) to add to the third schedule any occupational disease and the employment relating thereto. But the corporation before adding any employment or an occupational disease in relation to such employment in the IIId Schedule will send notice in official Gazette.

The claimant employee shall have to prove that such disease is the direct result of a peculiar employment.

Section 53 – This section enacts a kind of prohibition against the insured person or his dependants from receiving or recovering any compensation or damages under: any other laws such as Workmen’s Compensation Act, or from any law allowing compensation.

It may be noted that the insured person under the Act has no option to elect the kind of remedy. The bar created under this section operates irrespective of the fact that the insured person has received benefit under the Act or not.
Section 54-A – References to Medical Board etc. – All questions relating to disablement shall be sent to the Medical Board for finalisation.

Provided that a person in respect of whom contribution ceases to be payable under this Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations.

SUM UP

Indian workman is self-possessed of social evils like disease, unemployment, ignorance, squalor and illiteracy which endanger the safety of his life. He finds himself unable to fight against these contingencies due to his low earnings, high prices, high birth and death rates etc. The worries for maintaining himself and his dependants ultimately affects the efficiency of the worker to a great extent.

Social suffering such as poverty, unemployment and disease are the sound grounds for advocating the provisions of social security measures in India. With the development of the ideas of welfare state, it has been considered to be most essential for the industrial workers, through appropriate organizations against certain risks on contingencies to its members to which they are exposed. These risks are essentially contingencies against which the individual cannot afford by his small means and by his ability. It is the duty of the state to promote social security which may provide the citizens with benefits designed to prevent or cure disease, to support him when he is not able to earn and to restore him to gainful activity.

The provision of social security measures may prove to be of great help to the workers in emergencies. At present the welfare and social security activities are being brought more and more under legislations rather then being left to the good sense of the employers. The Government has made certain facilities obligatory on the part of the employers to be provided to workers under legislation.

Therefore, several security measures have been introduced, such as compensation in case of industrial accidents and injury, protection against illness, maternity benefits to women workers, provident funds, old age pensions and gratuity and health insurance etc.

The underlying idea behind social security measure is that a citizen who has contributed or is likely to contribute to his country’s welfare, should be given protection against certain hazards, over which he has no control.

The aim of all social security measures is three fold: compensation, restoration and prevention. Compensation goes the income security and is
based upon the idea that during spells of risks, the individual and his family should not be subjected to a double calamity involving destruction and the invalid, reemployment, and rehabilitation and is in some way and extension of the earlier concepts of the function of social security. Prevention is designed to avoid the loss of productive capacity due to sickness, unemployment, invalidity and to render the available resource which are used up by the avoidable disease and idleness and thus increase the material, intellectual and moral well being of the community.

Social security is considered in all advanced countries of the world as an indispensable chapter of all national programmes to strike at the root of poverty, unemployment and disease. Its connotation being gradually extended and amplified.

For a country like India, social security has a two fold importance; it constitutes an important step toward the goal of a Welfare State, by improving living and working conditions and affording people protection against the hazards of future. The social security measures also affect the industrial development through making workers efficient and reducing waste arising from industrial disputes, because with these measures a worker feels social and economic security and therefore, puts his heart and soul in increasing production. In the words of Dr. Giri “Social security is not a burden by a wise investment which yields good dividends in the long run”.

It need be stressed that social security is an instrument of social economic justice as it words for horizontal and vertical redistribution of incomes in the society. It is dynamic concept the contents of which change with social and economic system captaining in a given country at a given time.

Social security is the security that security furnishes through appropriate organizations against certain risks to which its members are perennially exposed. These risks are essentially unforeseen contingencies against which the individuals of small means and meager resources cannot effectively provide. These risks are sickness, maternity, accident, unemployment, old age and death. It is of great significance and paramount importance to study the different methods by which
communities have attempted to alleviate the sufferings caused by the great ‘giants’ of want, ignorance, squalor, idleness and disease.

Ancient Indian society has developed its own independent social security system in the shape of (a) the self-sufficient village community, (b) the caste system, (c) craft guilds, (d) the joint family, and (e) the organization of charity. The self-sufficiency of the village has been broken down by the impact of modern trade and transport, so that it now no longer provides security, of income and employment. The inequalities and injustices of the ‘caste system’ also no longer conform to the liberal needs of modern age.

The joint family organization also no more provides safety and security to the individuals in times of distress, and similarly the idea of charity is out of date as such as help is always regarded as degrading, vague, insulting and unsure. Most of these institutions either disintegrated or lost their significance gradually after the advent of industrialization in the 19th century. This necessitated the development of social security in the modern sense.

The concept of India as a Welfare State is envisaged in the Constitution of India, “The State shall within the limits of its economic capacity and development,” says the Constitution “make effective provision for securing the right to work, to education, and to public assistance in case of unemployment, old age, sickness and disablement and other cases of unserved want.” Before this goal is reached, it is necessary, in the first instance, to ameliorate the conditions of millions of workers in the country. Social security as a means of such amelioration has now become a recognized fact by reason of passing of the Employees’ State Insurance Act in 1948, followed by the Employees Provident Fund Act, 1952. Even before these Acts were passed some measure of social insurance existed in the country.

SOCIAL SECURITY LEGISLATION

1. THE WORKMEN’S COMPENSATION ACT, 1923

The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of
the workmen themselves, rendered it advisable that they should be protected as far as possible from hardship arising from accidents.

After a detail examination of the question by Govt. of India, a committee was convened in June, 1922. On the recommendation of committee, The Workmen’s Compensation Bill having been passed by the Legislature received its assent on the 5th March 1923. It came in to force on 1st day of July, 1924 as THE WORKMEN’S COMPENSATION ACT, 1923 (8 OF 1923).

It is well-settled that the Act is piece of social security and welfare legislation, its dominant purpose is to protect the workman and, therefore, the provisions of the Act should not be interpreted too narrowly so as to debar the workman from compensation which the parliament thought they ought to have. The intention of the legislature was to make the employer an insurer of the workman responsible against the loss caused by the injuries or death, which ought to have happened, while the workman was engaged in his work.

Administration: Administered by the State Government which appoint Commissioners for workmen’s compensation as required by the Act.

Coverage: The Act excludes workers covered by the ESI Act, 1948, and casual labours.

Source of Funds: All compensation, under the Act is payable by the employer. Benefits: Cash compensation, generally lump sum, in cases of injury caused by accident arising out of, and in the course of, employment compensation is also payable for certain specified occupational diseases.

2. THE EMPLOYEES’ STATE INSURANCE ACT, 1948

The introduction of a scheme of Health Insurance for industrial workers has been under the consideration of the Government of India for a long time. The necessity for such a scheme has become more urgent in view of the conditions brought about by war. The scheme envisaged in one of compulsory state insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories other than seasonal factories.

A scheme of this nature has to be planned on an all-India basis and administered uniformly throughout the country. With this object, the administration of
the scheme is proposed to be entrusted to a corporation constituted by central legislation.

The functions of the Corporation will be performed by a Central Board constituted of representatives of Central and Provincial Government, and of employers, workers and the medical profession. The Board will also include certain members elected by the Central legislative assembly. A standing committee of the Board will act as the Executive of the Board, and a Medical Benefit Council will also be set up to advice on matters relating to the administration of medical benefit.

The insurance fund will be mainly derived from contributions from employers and workmen. The contributions payable in respect of each workmen will be entitled to recover the workman’s share from the wages of workman concerned. Workmen who’s earning do not exceed 10 annas a day will be totally exempt from payment of any share of the contribution on account of such workmen being met by employer. Provision has been made for the preparation of proper budgets and the audit of accounts.

The insured workmen will be entitled to the following benefits:

(a) **Sickness Cash Benefit:** - A workman, if certified sick and incapable of working will receive for a period not exceeding 8 weeks in any continuous 12 monthly period a cash allowance equal approximately to half average daily wages during pervious six months. He will also be entitled to receive medical care and treatment at such hospitals, dispensaries or other institutions to which the factory in which he is employed may be allotted.

(b) **Maternity benefit:** - Women workers will be entitled to receive a maternity benefit.

(c) **Disablement and dependant’s Benefit:** - A work disabled by employment injury will receive for the period of disablement is temporary or full and permanent, as the case may be a monthly pension equivalent to half his average wages during the previous twelve months, subject to a maximum and minimum. Where disablement is partial, the pension will be proportionately reduced. In case of death resulting from employment injury the pension will be payable to the widow or
widow’s minor son and minor unmarried daughters or in case there are no widow and legitimate will also be entitled to medical care treatment.

Medical care and treatment to insured workman will be provide by Provincial Government at such hospitals, dispensaries and other institutions as may be prescribed for the purpose. The cost of the medical benefit will be shared between the provincial Government and the Corporation in such proportions as may be agreed upon between them, in case the average incidence of sickness cash benefit in any province is in excess of the all India average, Provincial Governments will also bear such share of the cost of the excess incidence as may be agreed upon between it and the Corporation.

3. THE PAYMENT OF GRATUITY ACT, 1972

The proposal for Central legislation on gratuity was discussed in the Labour Minister’s Conference held at New Delhi on 24th and 25th August, 1971 and also in the Indian Labour Conference at its session held on the 22 & 23rd October 1971. There was general agreement at the Labour Minister Conference & the Indian Labour Conference that Central legislation on payment of gratuity might be undertaken as early as possible. It is accordingly proposed to undertake such legislation.

The bill provides for gratuity to employees drawing wages up to Rs. 270 per month in factories, plantations, shops, establishments and mines, in the event of superannuation, retirement, resignation and death or total disablement due to accident or disease, the quantum of gratuity payable will be 15 days’ wages based on the rate of wages last drawn by the employees concerned for every completed year of service or part thereof in excess of six months subject to a maximum of 15 months’ wages. The term “wages” will mean “basic wages plus dearness allowance”.

The payment of Gratuity Bill having been passed by both the Houses of Parliament received the assent of the President on 21.08.1972. it came into force on 16.09.1972 as the payment of Gratuity Act, 1972 (39 of 1972).

4. THE EMPLOYEES PROVIDENT FUND ACT, 1952
Administration: the E.P.F. Scheme framed under the Act, is administered by a tripartite Central Board of Trustees, consisting of representatives of employers and employees and persons nominated by the Central and State Government.

Coverage: Applies to all factories and other establishments, falling under any notified industry, and employing 20 or more workers.

Benefits: A member of the Fund is eligible to receive his own share and the full amount of employer’s contribution after retirement or upon completion of 15 years of membership. For shorter periods of membership, the proportion of employer’s contribution payable to the worker varies according to the length of the period. Grant of advances from the amount to the credit of a member is permitted for specified purposes.

Qualifying Conditions: A worker should have completed 6 months’ continuous service, or should have worked actually for 120 days during a period of 6 months, before he can become a member of the Fund.

5. THE MATERNITY BENEFIT ACT, 1961

Administration: Administered by Factory Inspectorates of State Government in respect of Factories, by the Coal Mines Welfare Commissioner in respect of Coal Mines, and by the Director General, Mines Safety in respect of other mines.

Coverage: Applies to women employed in the factories, mines and other establishments as may be specified. Excludes those covered by the E.S.I. Act, 1948.

Source of Funds: All the benefits are payable by the employer.

Benefits: Leave for 6 weeks before and 6 Weeks after delivery, during which period the woman worker gets payment of Maternity Benefit @ the average daily wage for the period of actual absence, i.e. to say the period immediately preceding the day of delivery, the actual day of her delivery and any period immediately following that day. She also gets a medical bonus of Rs. 250, if the employer does not provide for free pre-natal confinement and post-natal medical care.

In case of miscarriage or medical termination of pregnancy, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, as the case may be, her medical termination or pregnancy.
In case of tubectory operation a women shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of her tubectory operation.

A woman suffering from illness arising out of pregnancy, delivery, premature birth of child miscarriage, medical termination of pregnancy or tubectory operation shall, on production of such proof as may be prescribed, be entitled, in addition to the period of absence allowed to her under section 6, or, as the case may be, under section 9, to leave with wages at the rate of maternity benefit for a maximum period of one month.