Chapter 1

INTRODUCTION

Industrial Revolution gave birth to the factory system. Substantial replacement of man-power by machine-power took place. Being surrounded by dangerous machinery, workers were exposed to industrial accidents and resultant injuries. With the advance of industrialisation, industrial accidents and injuries are on the increase. Despite employer's vigilance and workers' care, industrial accidents occur, because they are inherent in industrial activity.

1. Sunil Rai Choudhuri, Social Security in India and Britain (1962), p. 2. F.P. Walton said: "The manufacturing countries have become vast noisy workshops, full of whizzing wheels, of electric wires and of dangerous explosives. . . . millions of workmen pass their lives in continual danger. They have to deal at close quarters with complicated machines, to handle terrible explosives, to run the risk of coming in contact with live wires, in a word, to face a thousand perils" See F.P. Walton, "Workmen's Compensation and the Theory of Professional Risk", 11 Col.L.Rev. 36 at 39 (1911).


3. F.P. Walton, supra, n. 1 at 40.
Workers are confronted with economic insecurity, when their earning capacity is affected by such industrial accidents. In such a situation, it is the duty of the State in a welfare society to provide social security to such a worker because he contributes to the progress of society by his labour. The greater the measure of social security, the better the worker's sense of security and the more rapid the process of national development. Provision of social security to industrial worker is not a waste but a good investment, which will yield good dividends to society. Social security can be provided by society either by


5. See Constitution of India, Articles 38 and 41.

6. Social security envisages that the members of a community shall be protected by collective action against social risks, causing undue hardship and privation to individuals, whose private resources can seldom be adequate to meet them. See Report of the National Commission on Labour (1969), p.182.


8. See Muin-Ud-Din Khan, supra, n.2, p.108.

prevention of accidents or by providing compensation for loss, resulting from accidents. Preventive measures, if applied intelligently, may reduce considerably the number of accidents but cannot totally eradicate them. Accidents are inevitable in industry. The present study is confined to the provision of social security by providing compensation for industrial injuries.

What is meant by 'compensation'? 'Compensation' is derived from the Latin word 'compensare', which means 'weigh together'. It is a method of making good a 'loss', sustained by a person. For this, the 'loss' has to be weighed against the compensation to be given. John Munkman said:

"We may think of the traditional picture of justice, holding a pair of scales. Into one scale goes the harm or loss sustained; into the other goes the compensation, and the aim of the law is to make the two balance".

10. The idea, conveyed by the word 'compensation', is expressed by different terms in different laws. In common law, the term used is 'damages', in the Workmen's Compensation Act, 1923, it is 'compensation' and in the Employees' State Insurance Act, 1948, it is 'benefits'.
12. P.S. Atiyah, Accidents, Compensation and the Law (1975), p.5. Compensation is granted in certain cases not because of what has been lost but because of what the victim has never had in comparison with others in a similar situation, P.S. Atiyah, op.cit., p.480.
13. John Munkman, supra, n.11.
This balancing process makes compensation an equivalent for what has been lost. What has been lost is simply restored by this process. But this type of compensation is possible only in cases of loss of physical property.

How can personal injury like loss of a tip of a finger, sustained by an industrial workman, be compensated? It has to be remembered that compensation can be awarded not merely as an equivalent but also as a substitute or solace for what has been lost. The object here is not to replace what has been lost by some equivalent. On the other hand, it is to enable the victim to obtain a substitute or to solace him for what has happened. This type of compensation is associated with bodily injury. Personal injuries, sustained by industrial workmen, can be compensated in this way only.

For injuries, sustained by workmen in the course of industrial employment, compensation can be given either in the form of money or service. Compensation in money is known as damages. This is the primitive but the usual

15. P.S. Atiyah, op.cit., p.482.
16. Id., p.483.
17. 'Damages' is simply a sum of money, given as compensation for loss or harm of any kind. See John Munkman, supra, n.11, p.1.
form of compensation. The modern concept of compensation is not confined to the provision of damages alone. Since industrial injuries affect the worker physically, compensation in service in the form of medical aid has assumed significance. It helps recover as far as possible the worker's physical capacity. Medical aid is beneficial not only to the worker but also to the employer or the insurer, whose expenses will be less, if the physical capacity of the worker is restored at the earliest. Even the community is benefited, because its burden is lightened by the restoration of the worker's physical capacity.\(^\text{18}\) The recent development in the provision of medical aid is the new idea of "rehabilitation". It aims at the maximum restoration of the injured workman's working capacity, thus enabling him to compete again in the labour market.\(^\text{19}\) It consists of two stages. The first stage is complete medical care and the second one consists of provision of training facilities for finding new employment.\(^\text{20}\)

After the First World War, there was considerable industrial progress in this country. There was an

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\(^{18}\) Manohar R. Idgunji, Social Insurance and India (1943), p.32.

\(^{19}\) Id., pp.32-33.

\(^{20}\) This is especially important for those, who, by virtue of their disablement, must change their occupation. See Manohar R. Idgunji, \textit{op.cit.}, p.33.
unprecedented increase in the number of industrial workers. Problems of labour, including security against industrial injuries, gained attention of government. The influence of the International Labour Organisation\(^1\) made government accelerate steps for ensuring security to industrial workers.\(^2\) This led to the enactment of the Workmen's Compensation Act, 1923, which is based upon the concept of employer's liability.\(^3\) As the entire liability for compensation was cast upon the employer, he began to evade the grip of liability.\(^4\) This led to the enactment of the

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\(^1\) The International Labour Organisation was set up in 1919 as an international forum to bring governments, employers and trade unions of member countries together for united action for ensuring social justice to the working class. Its secretariat is in Geneva, Switzerland. It has 154 member countries. See N.Vaidyanathan, ILO Standards (1992), p.1. Through its conventions and recommendations on social security, the ILO has laid down international standards for security against industrial injuries. A convention, if it is ratified by a member country, becomes binding on it. A recommendation is advisory in nature and supplements a convention. N.Vaidyanathan, op.cit., p.3. For a list of ILO conventions and recommendations on social security, see N.Vaidyanathan, op.cit., pp.145-146.

\(^2\) The ILO, in one of its meetings, drew the attention of the participants to the fact that India was the only country without any social security measure. This made the government enact the Workmen's Compensation Act immediately. M.R. Mallick, supra, n.4, p.7.

\(^3\) See infra, Chapter 2.

\(^4\) Ibid.
Employees' State Insurance Act, 1948. It introduced the scheme of sharing of liability by the State, the employer and the workmen. Such a scheme helps prevent the evasion of liability by the employer. A claimant under the Employees' State Insurance Act need only prove that the accident has arisen in the course of employment. On such proof, in the absence of evidence to the contrary, the accident is deemed to have arisen out of employment. The quantum of compensation under the Employees' State Insurance Act, 1948 is also substantially higher than the one under the Workmen's Compensation Act, 1923. The Employees' State Insurance Act, 1948 has, in fact, found out solutions for most of the defects of the Workmen's Compensation Act, 1923. The scope and coverage of these two Acts being different, there are two sets of workmen, one enjoying better and surer social security against industrial injuries than the other. Though the Employees' State Insurance Act, 1948 has improved

25. Employees' State Insurance Act, 1948, Sections 26(2) and 39. See infra, Chapter 2.

26. Id., Section 51-A; see also infra, Chapter 4.

27. See infra, Chapters 5 and 6.

28. See Employees' State Insurance Act, 1948, Sections 1(4) and (5) and 2(9); Workmen's Compensation Act, 1923, Section 2(1)(n), read with Schedule II. See also infra, Chapter 3.
upon the Workmen's Compensation Act, 1923, the administration of medical benefit by the State Government has been subject to scathing criticism. Provision of security against industrial injuries has become a multi-dimensional problem. A review of the working of the compensatory system under these two enactments, in theory and practice, is, therefore, warranted.