CHAPTER-6

AN ANALYSIS OF THE TERM ‘EMPLOYMENT INJURY’ IN
THE LIGHT OF THE HIGH COURTS AND SUPREME COURT
JUDGMENTS

6.1. Foundations of Health and Safety

The Bhopal Gas Tragedy (4 December 1984) was the turning point in the history of health and safety in India. It led to a serious review of legislative measures. As a result the Factories Act underwent a major revision in 1987 and practical implementation in the late 90s. The salient features and impact can be summarized as follows:\footnote{Available at <http://admin.indiaenvironmentportal.org.in/> accessed on 15 January 2014}:

1. Owner’s responsibilities enhanced
2. Prepare and communicate Health and Safety Policy in all covered establishments
3. Hazardous processes well defined
4. Information to workers, inspectorate, and the great public made mandatory
5. Prepare and practice Disaster Management Programmes
6. Medical examinations and records
7. Occupational health facilities on site defined
8. All hazardous plants must have an Occupational Health Centre
9. Qualification and attendance of doctors specified
10. Equipments and drugs described.
The Declaration of Philadelphia\(^2\) (paragraph III (g)) which provides that the ILO\(^3\) has the solemn obligation to further among the nations of the world, programmes which will achieve adequate protection for the life and health of workers in all occupations.

The ILO Constitution sets forth the principle that workers should be protected from sickness, disease and injury arising from their employment. Yet for millions of workers the reality is very different. Some *two million people die* every year from work-related accidents and diseases. An estimated 160 million people suffer from work-related diseases, and there are an estimated 270 million fatal and non-fatal work-related accidents per year. The suffering caused by such accidents and illnesses to workers and their families is incalculable. In economic terms, the ILO has estimated that 4\% of the world’s annual GDP\(^4\) is lost as a consequence of occupational diseases and accidents. Employers face costly early retirements, loss of skilled staff, absenteeism, and high insurance premiums due to work-related accidents and diseases. Yet many of these tragedies are preventable through the implementation of sound prevention, reporting and inspection practices. ILO standards on occupational safety and health provide essential tools for governments, employers, and workers to establish such practices and to provide for maximum safety at work. In 2003 the ILO adopted a “Global Strategy to Improve Occupational Safety and Health” which included the introduction of a preventive safety and health culture, the promotion and development of relevant instruments, and technical assistance.\(^5\)

The ILO has adopted more than 40 instruments specifically dealing with occupational safety and health, as well as over 40 Codes of Practice.\(^6\) Nearly half of ILO instruments deal directly or indirectly with occupational safety and health issues.

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\(^3\)International Labour Organization
\(^4\)Gross Domestic Product
\(^6\)ILO Codes of Practice set out practical guidelines for public authorities, employers, workers, enterprises, and specialized occupational safety and health protection bodies (such as enterprise safety committees). They are not legally binding instruments and are not intended to replace the provisions of national laws or regulations, or accepted standards. Codes of Practice provide guidance on safety and health at work in certain economic sectors (e.g. construction, opencast mines, coal mines, iron and steel industries, non-ferrous metals industries, agriculture, shipbuilding and ship repairing, forestry), on protecting workers against certain hazards (e.g. radiation, lasers, visual
6.2. Fundamental conventions of occupational safety and health

6.2.1. Occupational Safety and Health Convention, 1981 (No. 155)

The convention provides for the adoption of a Coherent National Occupational Safety and Health Policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health and to improve working conditions. This policy shall be developed by taking into consideration national conditions and practice. The convention calls for the establishment and the periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and for the publication of related annual statistics.

6.2.2. Occupational Health Services Convention, 1985 (No. 161)

This Convention provides for the establishment of enterprise-level occupational health services which are entrusted with essentially preventive functions and which are responsible for advising the employer, the workers and their representatives in the enterprise on maintaining a safe and healthy working environment.

6.2.3. Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

This Convention aims at promoting a preventative safety and health culture and progressively achieving a safe and healthy working environment. It requires ratifying States to develop, in consultation with the most representative organizations of employers and workers, a national policy, national system, and national programme on occupational safety and health. The national display units, chemicals, asbestos, airborne substances), and on certain safety and health measures (e.g. occupational safety and health management systems; ethical guidelines for workers’ health surveillance; recording and notification of occupational accidents and diseases; protection of workers’ personal data; safety, health and working conditions in the transfer of technology to developing countries) Available at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm> accessed on 21 May 2014

7 ibid
policy shall be developed in accordance with the principles of Article 4 of the Occupational Safety and Health Convention, 1981 (No. 155), and the national systems and programmes shall be developed taking into account the principles set out in relevant ILO instruments. A list of relevant instruments is contained in the Annex to the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197). National systems shall provide the infrastructure for implementing national policy and programmes on occupational safety and health, such as laws and regulations, authorities or bodies, compliance mechanisms including systems of inspection, and arrangements at the level of the undertaking. National programmes shall include time-bound measures to promote occupational safety and health, enabling a measuring of progress.


The Plan of Action is intended to serve as a basis for concerted and broad-based action to attain a significant reduction in the unacceptable human suffering and economic losses that are still caused by work-related accidents and illnesses worldwide. The Plan of Action outlines strategies focused on: mapping the current situation at the national level and the readiness to take action; promoting and supporting the development of a preventive safety and health culture; overcoming

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8Article 4 (1) Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. (2) The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.


shortcomings in the implementation of ratified Conventions; and improving OSH\textsuperscript{11} conditions in small and medium-sized enterprises and the informal economy.

\textit{It is pertinent to note that India has not yet ratified any of the above mentioned Conventions.}

\textbf{Earlier ILO Conventions and Recommendations}

The concern felt by the International Labour Organization for providing medical and health care resulted in several ILO Conventions and Recommendations. As early as in 1927 the ILO adopted Convention No. 25 concerning sickness. Insurance and Recommendation No. 29 relating to general principles on sickness insurance. Further, in 1944 the Philadelphia Convention adopted a Recommendation No. 29 which laid down norms of medical care. Again in June, 1953, the ILO adopted Recommendation No. 97 concerning the protection of health of workers in places of employment. The recommendation laid down that employment for occupations involving special risk to the health of workers should be on the condition that

(i) medical examination is carried out shortly before or after a worker enters employment, and

(ii) periodical medical examination is done after he has joined the employment.

In 1959, the ILO adopted another recommendation concerning occupational health services. The recommendation envisages that “Occupational Health Services” should be established in or near a place of employment for

(i) protecting the workers against any health hazard arising from work or conditions in which work is carried on,

(ii) contributing towards the workers’ physical and mental adjustment, and

(iii) contributing to establishment and maintenance of the highest possible degree of physical and mental well-being of workers.\textsuperscript{12}

Time and again, the Organization has expressed its concern about increased hazards from radiation processes, as a result of fast changes in industrial technology. Thus, in June, 1960, it

\textsuperscript{11}Occupational Safety and Health
\textsuperscript{12}SC Srivastava, ‘Occupational Health of Workers in India Law and Practice’ (2002) 31 BLJ 11,18-19
adopted Recommendation NO. 114 and Convention NO. 115 concerning the protection of workers against ionizing radiation. The same year witnessed the passing of the Radiation Protection Convention, 1960. This was followed by several other important conventions such as Benzene Convention, 1971. Occupational Cancer Convention, 1974. Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 and Occupational Safety and Health (Dock Work) Convention, 1979. The International Labor Organization being alive to the problems of enforcement set standards by adopting occupational safety and health Convention, 1981 providing for the enforcement of law and regulation concerning occupational health and requiring adequate and appropriate inspection machinery. Despite the existence of aforesaid ILO Conventions and Recommendations, the problems of occupational health of workers continues and commissions to cause concern.

6.4. Supreme Court’s Emphasis on Right to Health and Medical Care as a Fundamental Right

In the landmark case Consumer Education and Research Centre and others v Union of India and others, the apex court has held that the right to health and medical care to protect one’s health and vigor, while in service or post-retirement, is a fundamental right of a worker under Article 21 read with Articles 39(e), 41, 43, 48-A and all related Articles and fundamental

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13Article 12
14Articles 9 and 10
15Article 5
16Article 11
17Article 36
19(1995) 3 SCC 42
20Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law
21(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength
22Right to work, to education and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
23Living wage, etc., for workers: The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas
human rights to make the life of the workman meaningful and purposeful with dignity of person. The Court held that the compelling necessity to work in an industry exposed to health hazards due to indigence to bread-winning for him and his dependents should not be at the cost of health and vigor of the workman.

Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21. Clean surroundings lead to healthy body and healthy mind. But, unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Article 39 and Articles 41 and 42. Those Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity.

6.5. National Policy on Safety, Health and Environment at workplace

The fundamental purpose of the National Policy on Safety, Health and Environment at workplace, is not only to eliminate the incidence of work related injuries, diseases, fatalities, disaster and loss of national assets and also ensuring a high level of occupational safety, health and environment performance through proactive approaches along with enhancement of well-being of the employee and society, at large.

24Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the Country
25(f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
26Provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief
27Available at<http://labour.nic.in/upload/uploadfiles/files/Policies/SafetyHealthandEnvironmentalWorkPlace.pdf> accessed on 20 May 2014
With help of the above mentioned background now the study shall focus on analysis of the definition ‘Employment Injury’ under the Employee’s State Insurance Act, 1948 (Henceforth ‘the Act’)

6.6. Definition of the term ‘Employment Injury’ under the Act

Section 2 (8) of the Act defines ‘Employment Injury’ which means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

The following are the ingredients of an Employment Injury

- The injury must be personal to an employee.
- The injury must be caused by an accident; or occupational disease.
- The accident must arise out of and in the course of employment.
- The Employment must be insurable.


The concept of Employment implies three essential elements: (1) employer (2) employee and (3) the contract of service. The Employment is a contract of service between the employer and employee, where the employee agrees to serve the employer subject to his control and supervision. Employment is not confined to actual work or place of work. It extends to all things which the workman is entitled by the contract of employment expressly or impliedly to do.

Injury ordinarily refers to a physiological injury. The first essential condition of an employment injury is that personal injury must have been caused. The term ‘personal injury’ is somewhat wider than physical or bodily injury but does not include an injury to the belongings or belongings.

28 Chintaman Rao v State of M.P AIR 1958 SC 388
29 1955 ILR 922 (Punjab)
reputation of the person. It covers any physiological injury, for example, a man suffering nervous shock or insanity as a result of witnessing a terrible accident might be regarded as suffering from personal injury. An emotional impulse, however, does not constitute an injury unless it is accompanied by some physiological injury. Further, compensation is payable for the result of the injury and not for the injury itself. Thus, a man who suffers from shock would not get compensation unless the shock results in his being disabled.\(^{30}\)

In *Indian New Chronicle v Mrs. Lazarus*,\(^ {31}\) a workman, 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.

*Employment Injury is the personal injury to an employee caused by an accident or by an occupational disease arising out of employment of the employee in a covered factory or establishment, and arising in the course of his employment in a covered factory or establishment.*\(^ {32}\)

### 6.7. Accident

The expression “accident” has not been defined in the Act. It means any unexpected mishap, untoward event, or consequence brought about by some unanticipated or undersigned act. The basic and indispensable ingredient of the accident is the unexpectation. Although an accident means particular occurrence which happens at a particular time but it is not necessary that the workman must be able to locate it in order to succeed in his claim.

\(^{30}\)Available at <http://www.esicoimbatore.org/info/employment_injury.htm> accessed on 20 May 2014

\(^{31}\)AIR 1961 Punjab 102

\(^{32}\)ibid
6.8. Notice of accident

Under Regulation 65 of the Act every employee who sustains personal injury caused by accident arising out of and in the course of his employment in a factory or establishment shall give notice of such injury either in writing or orally, as soon as practicable after the happening of the accident.

Provided that any such notice required to be given by an employee may be given by some other person acting on his behalf.

No such notice shall be required to be given by an employee if an employment injury is caused by any Occupational Disease.

Every such notice shall be given to the employer or to a foreman or to other official under whose supervision the employee is employed at the time of the accident or any other person designated for the purpose by the employer and shall contain the appropriate particulars.

Any entry of the appropriate particulars of the accident made in a book kept for that purpose, if made as soon as practicable after the happening of the accident by the employee or by some other person acting on his behalf, is sufficient notice of the accident.

Appropriate particulars to be written are:

(a) Full name, Insurance Number, sex, age, address, occupation, department and shift of the injured person;
(b) Date and time of accident;
(c) Place where accident happened;
(d) Cause and nature of injury;
(e) Name, address and occupation of the person giving the notice, if he is other than the injured person;
(f) A statement of what exactly the injured person was doing at the time of injury;
Names, addresses and occupation of two persons who were present at the spot when accident happened; and
(h) Remarks, if any.

6.9. Occupational Diseases

The modernization and innovation in industries and rapid increase in chemical, hazardous, and polluting industries in recent years has not only resulted in unsafe working conditions but has created problems of occupational health hazards. The incidence of occupational diseases is much higher in developing countries than developed ones, although no region of the world is immune from this. In developing countries the workers most exposed to occupational risks are those employed in agriculture, chemical and primary extraction industries and heavy manufacturing. Quite apart from this poor equipment, heavy workload and even poisoning due to pesticide’s and organic dusts take their heavy toll on workers, health and safety. Further, work related hazards are changing with the introduction of new chemical substances which pose a threat to community and workers alike. Moreover, occupational risks such as temperature (excessive heat or cold), humidity of air, dampness inducing chill, low air movements and defective lighting in the work place affect the workers. Also, other factors like noise, sustained vibration, excessive uncontrolled ionizing radiation; high voltage electric current and abnormal air pressure produce damaging effects on certain organs of the body. Quite apart from this certain substances cause poisoning or disease in industry. It is, therefore, essential to take effective measures to protect the workers from such risks and dangers. The gravity of situation may be gauged from the observation made in 1992 by Justice Ramaswamy that “in three minutes somewhere in the world one worker dies and in every second that passes, at least three workers are injured”, and in India “on average every day 1,100 workers are injured and three are killed.”

The major purpose of the law of occupational health is to provide workers with safe and healthy working conditions. The basic premise for the establishment of standard is derived from the fact

that employer should have general duty to furnish employment free from recognized hazards. An employer who fails to comply with the established health standard should be made liable.

The term ‘occupational disease’ has not been defined but a perusal of sub-section (1) of Section 52A read with The Third Schedule of the Act makes it clear that it is a disease contracted by, or caused to, a person employed in one of the occupations described in the said Third Schedule.

Section 52A of the Act which is the relevant law on occupational diseases is reproduced as under:

52A (1) If an employee employed in any employment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an ‘employment injury’ arising out of and in the course of employment.

(2) (i) Where the Central Government or a State Government, as the case may be, adds any description of employment to the employments specified in Schedule III to the Workmen’s Compensation Act, 1923 (8 of 1923) by virtue of the powers vested in it under sub-section (3) of Section 3 of the said Act, the said description of employment and the occupational disease specified under that sub-section as peculiar to that description of employment shall be deemed to form part of the Third Schedule.

(ii) Without prejudice to the provisions of clause (i) the Corporation after giving, by notification in the Official Gazette, not less than three months’ notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in the Third Schedule and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those
employs respectively and thereupon the provisions of this Act shall apply, as if such
diseases had been declared by this Act to be occupational diseases peculiar to those
employs.

(3) Save as provided by sub-sections (1) and (2), no benefit shall be payable to an employee in
respect of any disease unless the disease is directly attributable to a specific injury by accident
arising out of and in the course of his employment.

(4) The provisions of Section 51-A shall not apply to the case to which Section 52-A applies.

The Third Schedule of the Act has replaced the old schedule with effect from 27.1.1985 and is
much more comprehensive than the earlier schedule (can be seen as Annexure).

If an employee employed in any employment mentioned in Part A of the above referred
Schedule contracts any disease specified therein as an occupational disease peculiar to that
employment, the contracting of the disease shall be deemed to be an employment injury arising
out of and in the course of employment unless the contrary is proved.

It would, thus, be observed that in so far as the diseases falling in Part A are concerned, the mere
fact of being employed in the employment specified therein raises a presumption as to the
contracting of the disease being an employment injury. No minimum period of employment is
required.

In so far as the occupational diseases specified in Part B of the Third Schedule are concerned, an
employee employed in any of the employments specified therein for a continuous period of not
less than six months becomes entitled to the presumption of the occupational disease amounting
to an employment injury. All that is to be seen in this case is whether the employee had been,
before the date of contracting the disease, in the specified employment for a continuous period of
not less than six months. So long as the period of service is continuous, it does not matter
whether the employee has served with the same employer or with different employers in the
same kind of employment. But, each such employer should be of a factory or establishment covered under the Act.

As per sub-section (1) of Section 52-A, to claim compensation for diseases listed in Part C of the Third Schedule, a continuous period of employment such as the Corporation may specify in respect of each employment causing the disease related thereto is necessary. The Corporation has notified the following periods of continuous employment for the diseases included in Part C of the Schedule as well as for certain other diseases added by it through a notification by virtue of powers vested in it under Sub-Section (2) (ii) of the Section.

<table>
<thead>
<tr>
<th>Disease</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silicosis</td>
<td>6 months</td>
</tr>
<tr>
<td>Coal Miner’s Pneumoconiosis</td>
<td>7 years</td>
</tr>
<tr>
<td>Asbestosis</td>
<td>3 years</td>
</tr>
<tr>
<td>Bagassosis</td>
<td>3 years</td>
</tr>
<tr>
<td>Byssinosis</td>
<td>3 years</td>
</tr>
<tr>
<td>Farmer’s lung</td>
<td>5 years</td>
</tr>
<tr>
<td>Pneumoconiosis</td>
<td>7 years</td>
</tr>
</tbody>
</table>

In all the cases mentioned in the preceding paras the presumption avails in favour of the claimant if he satisfies the conditions specified. If the Corporation contests the claim, the burden of disproving the occupational origin of the disease rests on the Corporation.

The periods specified above for occupational diseases included in Part C caused hardship to those sufferers who could not fulfill the minimum qualifying period of employment. The
Corporation, at its meeting held on 25-2-1992, resolved to add the following proviso to its Resolution passed earlier fixing the periods of employment for diseases under Part C:

“Provided that if it is proved that an employee whilst in the service of one or more employers in any employment specified in Part C of the Third Schedule to the ESI Act, 1948, has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified by the Corporation for that employment, and that the disease has arisen out of and in the course of employment, the contracting of such disease shall be deemed to be an ‘Employment Injury’ within the meaning of Section 52A of the ESI Act, 1948.”

The Third Schedule of the Act is exactly identical to Schedule-III to the Workmen’s Compensation Act, 1923, it is legislation under which compensation is payable to a workman sustaining a personal injury from accident or by contracting an occupational disease while in the employment of a factory or establishment not covered under the Act. Section 3 of the Workmen’s Compensation Act empowers the Central Government as well as a State Government to add any description of employment as well as an occupational disease peculiar to such employment, to Schedule III to the Workmen’s Compensation Act. Sub-section (2) (i) of Section 52A of the Act says that when such an addition is made by the Central or State Government, it shall also stand automatically added so as to form part of the Third Schedule to the Act. In addition, the Employees State Insurance Corporation has also been empowered by Section 52A (2) (ii) to add of its own accord any description of employment and the corresponding occupational disease in the Third Schedule to the ESI Act.

In so far as any disease other than the diseases specified in the Third Schedule is concerned, no disablement benefit is payable to an employee unless the disease is directly attributable to a specific injury by accident arising out of and in the course of employment. It would, therefore, be necessary in case of such other disease to prove that the disease constitutes an accident within the meaning of the word and not within the special meaning of Section 52A (1) that the accident arose both out of and in the course of employment and that the disease was directly attributable to a specific injury sustained in that accident.
6.10. Regulation of Occupational Health in India (Responses of Committees and Commissions)

In India various Committees and Commissions were appointed from time to time by the Government of India to inquire into the problems of health of industrial workers. In 1929 the **Royal Commission on Labor** noted that in a number of factories due to manufacturing processes a large amount of dust is deposited and that arrangements for its elimination were mostly defective. The Commission further observed:

> “Mechanical systems resulting in a constant flow of fresh air would add greatly to the comfort of the operative, and would in some cases improve his output. More important is the conservation of the workers’ health, for the prevalence of dust may result in pulmonary disease. In certain manufacturing processes, particularly connected with cotton, jute and wool, the reduction of dust to a minimum should be made obligatory. Section 10 of the old Factories Act confers ample powers on Inspectors of Factories in this respect and these should be more extensively used. More attention should also be paid to the general cleanliness of the factories. Where quantities of dust and fluff are produced, it is important that floors and walls should be regularly cleaned. Periodic white-washing of the interior walls and roofs not only removes collected dust, but helps to improve the lighting. It is difficult to associate efficiency with the grime to be found in some factories. We recommend that where the rules made by local Government do not require the cleaning of factories annually, they should be supplemented in their direction, and that in all cases such rules should be strictly enforced”. 34

In October, 1943 the Government of India appointed Health Survey and Development Committee to consider and suggest broad objectives of health and medical care in the country. The Committee observed:

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34 Govt. of India, *Report of the Royal Commission on Labour*, (1931) p. 56
“The health programme must, from the beginning, lay special emphasis on preventive work. The creation and maintenance of as healthy an environment as possible in the homes of the people as well as in all places where they congregate for work, amusement or recreation are essential, so long as environmental hygiene is neglected, so long as the faulty modes of life of the individual and of the community remain uncorrected, so long as these and other factors weakening man’s power of resistance and increasing his susceptibility to disease are allowed to operate unchecked, so long will our towns and villages continue to be factories for the supply of cases to our hospitals and dispensaries.”

Later, the Labor Investigation Committee set up under the Chairmanship of Shri D.D. Rege by the Government of India emphasized in its report, submitted in 1946, the responsibility of the employer to provide for medical and health facilities. The Committee stated:

“Although provision of such amenities was largely the function in municipal and local bodies, it was also the responsibility of employer partly to provide such facilities to their workers. The Committee, therefore, supported the move, then reported to be under the consideration of the Government of India, for a unified scheme of social insurance to provide medical and health care in respect of three contingencies—sickness, employment injury and child birth”

Dr. Thomas Bedford in his report on the Health of the Industrial Worker in India (1946) drew the attention of the authorities, inter alia, to the inadequacy of protection given to Indian factory workers from dangerous dusts and to the importance of keeping a careful watch on industries in which organic solvents and radioactive materials were used. In 1969 the Committee on Labor Welfare observed:

“While a universal provision of such amenities in the present day context of country’s economy cannot be realistic, it is felt that the provision of this important welfare amenity at selected places, to start with, should be explored. We,

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36 N.S. Nankiker, ‘Working Conditions in Factories referred in Government of India’ The Conference of Chief Inspectors of Factories held at New Delhi, (1968) p.16
therefore, recommend that the Government may, with the assistance and cooperation of State Governments, public sector undertakings, Central employers’ and workers’ organizations and autonomous corporations like the Employees’ State Insurance Corporation and the life Insurance Corporation should take initiative in the matter for formulating a scheme for convalescent homes and sanatoria etc. for workers”

The National Commission on Labour has laid considerable emphasis on continuous study of new problems with a view to suggesting remedies to suit the changing environment and to avoid health hazards. The Commission observed:

There are two aspects of such protection:

(i) Preventive and (ii) curative. The former consists of pre-employment and periodic medical examination; removal of health hazards to the extent possible; surveillance over certain classes of workers such as women, young persons and persons exposed to special risks; emergency treatment for accidents; training of first aid personnel; and education of workers in health and hygiene. The curative aspect will begin once a worker suffers from ill health or disease. The statutory provisions in the labour laws for safeguarding the health of workers such as restrictions on employment of women at certain hours and places; protection for young person’s; provision of first aid and ambulance services, provisions relating to cleanliness, disposal of wastes and effluents, ventilation and temperature, and dust, fumes and lighting are known already...

The Commission continued:

While the curative side can be attended to, the basic difficulty associated with the preventive aspect is the general economic condition in the country. There is a general fear among workers that a medical check-up may result in disqualification for continuing in employment if something adverse is detected. This can be overcome only in the long run. Presently, all that can be done is to move towards preventive side. In addition, the more malignant and difficult cases should be
taken up and arrangements be made for both physical and psychological treatment. This is an area where closer co-operation between authorities who are in charge of prevention and others who look after cure will be necessary.\(^{37}\)

The advent of the era of planning brought in its wake new problems as well as popular expectations. All the plans not only recognized the adequacy of the legislative framework, but also emphasized the need for effective and adequate measures for implementation of health provisions.

The health facilities for industrial workers are governed by labour legislation. A survey of statutory provisions regarding the health of industrial workers shows that the parties are dissatisfied with the industrial health legislation. Workers are critical of the existing statutory provisions. They argue that (i) health facilities provided in the stature are inadequate and unsatisfactory; (ii) the health provisions of industrial workers have not been effectively implemented. The management on the other hand, opposed the idea of providing better health facilities to workers on the two grounds: first, health facilities have caused a heavy financial burden on the industry, and second, where statutory health facilities have been provided, the same have either remained underutilized or improperly utilized by workers.\(^{38}\)

India is one of the most important developing countries in the world. According to 2001 census, about 40 million people belong to the working population. There are 300,000 registered industrial factories and more than 36500 hazardous factories employing 2046092. Approximately 10 million persons were employed in various factories. The current burden of accumulated occupational diseases in India is estimated to be at around 18 million cases.\(^{39}\)

A report by NIOH,\(^{40}\) records more than 3 million people working in various type of mines, ceramics, potteries, foundries, metal grinding, stone crushing, agate grinding, slate pencil industry etc. These workers are occupationally exposed to free silica dust and are at potential risk of developing silicosis.


\(^{38}\)Ibid

\(^{39}\)As per Director General of Factory Advisory Services & Labour Institutes [DGFASLI]

\(^{40}\)National Institute of Occupational Health Report, 2010
The major occupational diseases/morbidity of concern in India are: silicosis, musculoskeletal injuries, coal workers’ pneumoconiosis, chronic obstructive lung diseases, asbestosis, byssinosis pesticide poisoning and noise-induced hearing loss. Figures have revealed that there is an increase of about 28% male workers and 45% female workers from 1991 to 2001. The male: female working population ratio was 78:22 in 1991, but it has now changed to 68:35 in 2010. This increase in the working female population leads to certain concerns, such as adverse effects on reproductive health, exposure to toxic chemicals in the workplace.

WHO in its sixtieth World Health Assembly has expressed concerns over major gaps between and within countries in the exposure of workers and local communities to occupational hazards and in their access to occupational health services. The occupational health training is carried out in a few medical colleges for graduate and postgraduate diplomas and degrees. The Central Labour Institute under DGFASLI offers a 3-month certificate course in Industrial Health, which is statutorily approved. The following Occupational Health Institutes in India provide

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41Silicosis is the commonest and one of the most serious occupational diseases. It is irreversible fibrosis of the lungs caused by inhalation of free silica dust. It is estimated that about 3 million people working in various types of mines, ceramics, potteries, foundries, metal grinding, stone crushing, agate grinding, slate pencil industry etc., are occupationally exposed to free silica dust and are at potential risk of developing silicosis. Silica exposure also predisposes to development of pulmonary tuberculosis, which is an important public health problem in the country. Available at <http://nioh.org/projects/silicosis.html> accessed on 20 June 2014

42Musculoskeletal injuries are pain in body’s joints, ligaments, muscles, nerves, tendons, and structures that support limbs, neck and back. These are degenerative diseases and inflammatory conditions that cause pain and impair normal activities. They can affect many different parts of the body including upper and lower back, neck, shoulders and extremities (arms, legs, feet, and hands). MSDs can arise from a sudden exertion (e.g., lifting a heavy object), or they can arise from making the same motions repeatedly repetitive strain, or from repeated exposure to force, vibration, or awkward posture. Available at <http://nioh.org/projects/silicosis.html> accessed on 20 June 2014

43Pneumoconiosis is a lung disease caused by the inhalation of various types of industrial dust. The dust causes inflammation of the lungs and gradually damages the lungs over time. The damage, in turn, causes fibrosis, a condition where the lungs begin to stiffen. When this occurs, it becomes difficult for a person to breathe easily. Available at <http://nioh.org/projects/silicosis.html> accessed on 20 June 2014

44Exposure to asbestos causes asbestosis, lung cancer and mesothelioma of pleura and peritoneum. In India, the total use of asbestos is 1.25 lakh tonnes, out of which more than 1.0 lakh tonnes are being imported. Significant occupational exposure to asbestos occurs mainly in asbestos cement factories, asbestos textile industry and asbestos mining and milling. Available at <http://nioh.org/projects/silicosis.html> accessed on 20 June 2014

45Byssinosis is an occupational lung disease caused by exposure to cotton, flax and hemp dust. Maximum number of workers with byssinosis is reported in the cotton textile industry as it is one of the largest industries in the world. In India, there are about 1.07 million workers engaged in the manufacture of cotton textiles. Available at <http://nioh.org/projects/silicosis.html> accessed on 20 June 2014

46Available at <http://nioh.org/projects/silicosis.html> accessed on 20 June 2014

47World Health Organization

48Director General of Factory Advisory Services & Labour Institutes
training and carry out research in occupational health.

1. Central Labour Institute, Mumbai\textsuperscript{49}
2. National Institute of Occupational Health, Ahmadabad\textsuperscript{50}
3. Industrial Toxicology Research Centre, Lucknow\textsuperscript{51}
4. Central Mining Research Station, Dhanbad
5. Regional OHCs at Calcutta and Bangalore
6. Regional Labour Institutes at Calcutta, Madras, Faridabad and Kanpur
7. Medical Colleges and Institutes

Central Labour Institute (CLI), Mumbai, working under the Ministry of Labour has five regional labour institutes. These Institutes carry out training and research related to industrial safety and health. These institutes also test and develop personal protective equipment. Until recently, CLI was the only institute conducting statutory training/certification course. The certification is mandatory for all industrial medical officers employed in hazardous industries.\textsuperscript{52}

National Institute of Occupational Health [NIOH] is one of the prime institutes of the Indian Council of Medical Research [ICMR] and has two Regional Occupational Health Centers (ROHC) at Bangalore (1977) and Calcutta (1980) for catering to regional needs. Established in 1966 and originally designated as the Occupational Health Research Institute, it was re-designated as the National Institute of Occupational Health (NIOH), in 1970. Its major activity is research in occupational health. The Institute has published over 500 research papers in national and international journals. The other activities of the Institute include short-term training programmes for industrial medical officers, industrial hygienists, factory inspectors, workers and trade unions, etc. The Institute advises the Ministry of Health, Ministry of Labour, Ministry of Environment and Ministry of Commerce on issues related to occupational health, safety and

\textsuperscript{49} CLI
\textsuperscript{50} NIOH
\textsuperscript{51} ITRC
\textsuperscript{52} Available at <http://nioh.org/projects/silicosis.html> accessed on 20 June 2014
environment.53

6.11. Judicial Response

In Consumer Education and Research Centre v Union of India54, the Supreme Court observed, “be it the State or its undertaking or private employer to make the right to life meaningful; to prevent pollution of workplace; protection of the environment; protection of the health of the workmen or to preserve free and unpolluted water for the safety and health of the people. The authority or even private persons or industry are bound by the directions issued by this court under Articles 3255 and 14256 of the Constitution.”

The court accordingly issued the following direction to all the industries: (i) to maintain and keep maintaining the health record of every worker up to minimum period of 40 years from the beginning of the employment or 5 years after retirement or cessation of the employment whichever is later; (ii) the Membrane Filter test, should be adopted by all the factories or establishments at par with the Mines Regulations, 1961 and Rules issued under the Vienna Convention to detect asbestos and fiber; (iii) all the factories whether covered by the Employees’ State Insurance Act or Workmen’s Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker; (iv) the Union and the State Governments are directed to review the standards of permissible exposure limit value of fiber/cc in tune with the international

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53ibid
541996 (72) FLR 481
5532. Remedies for enforcement of rights conferred by this Part (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution
56142. Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself
standards reducing the permissible content as prayed in the writ petition referred to at the beginning. The review shall be continued after every 10 years and also as and when the ILO gives directions in this behalf consistent with its recommendations or any conventions; (v) the Union and the State Governments are directed to consider inclusion of such of those small scale factory or factories or industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary products; (vi) the appropriate Inspector of Factories in particular of the State of Gujarat is directed to send all the workers, examined by the concerned ESI hospital, for re-examination by the National Institute of Occupational Health (NIOH) to detect whether all or many of them are suffering from asbestos.

The Court directed all the industries large, medium, small, mines milling units etc. to cover their workers by health insurance. The Court also directed the Government of India to evaluate TLV\textsuperscript{57} as and when necessary and to take it up to 1 or 4 ml by the methods recommended by ILO. The Court instructed all the concerned authorities i.e. Industries, State and Central Governments Research Institutes, Bureau of Indian Mines and Bureau of Indian Standards to follow ILO Convention accepted by Government of India.

The Court further directed all the factory inspectorates, particularly, the factory inspectorate of Gujarat to get all the workers examined by ESIC and other such bodies to be examined by NIOH. The cases certified by NIOH should be paid one lakh rupees compensation by the concerned industries and authorities. The workers covered under ESIC are entitled for such compensation.

**In the most recent case (2014) Occupational Health and Safety Association v Union of India\textsuperscript{58}**

the Supreme Court directed the Ministry of Labour to ensure that the suggestions made by the petitioner for the welfare of workers are properly implemented by the Centre and the State governments. The suggestions included -

1. Comprehensive medical checkup of all workers by doctors appointed in consultation with the trade unions. First medical check up to be completed within six months and to be done on yearly basis.

\textsuperscript{57}Threshold Limit Value (in chemicals)

\textsuperscript{58}2014 STPL (web) 68 SC
2. Free and comprehensive medical treatment to be provided to all workers found to be suffering from an occupational disease, ailment or accident, until cured or until death.

3. Services of the workmen not to be terminated during illness and to be treated as if on duty.

4. Compensation to be paid to workmen suffering from any occupational disease, ailment or accident in accordance with the provisions of the laws.

5. Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.

6. Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation as recommended by the National Institute of Occupational Health (NIOH) Ahmadabad, Gujarat.

7. All employees to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.

8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.

9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO’s to look into the issue of Health and Safety of Workers and make recommendations.

While delineating the scope of constitutional provisions, Justice K. Ramaswamy in his dissenting judgement in Calcutta Electricity Supply Corporation v Subhas Chandra Bose\(^9\) observed that Health is a Human Right enshrined in the Universal Declaration of Human Rights (Articles 22-28) and International Covenant on Economic Social and Cultural Rights. Further, it is a Fundamental Right of Workmen. The “maintenance of health is a most important constitutional goal”. Health does not mean “absence of disease or infirmity but a state of complete physical, mental and social well-being.”

In Consumer Education & Research v Union of India\(^6\) a three-Judge Bench of the Supreme Court held that the jurisprudence of person-hood or philosophy of the right to life envisaged in Article 21 of the Constitution enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to

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\(^{9}\) (1992) 1 SCC 441  
\(^{6}\) (1995) 3 SCC 42
sustain the dignity of person and to live a life with dignity and equality. The expression life’ assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes Right to Livelihood, better standard of living, hygienic conditions in the workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. The health of the worker is an integral facet of the Right to Life. Denial thereof denudes the workman the finer facets of life violating Article 21. Medical facilities, therefore, is a Fundamental and Human Right to protect his health. In that case health insurance, while in service or after retirement was held to be a fundamental right and even private industries were enjoined to provide health insurance to the workmen.

The aforesaid view was reiterated in *Kirloskar Brothers Ltd. v Employees’ State Insurance Corporation*. The Court observed that in expanding economic activity in a liberalized economy Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunities for health and vigor of the workman assured in relevant provisions in Part IV which are integral part of the right to equality under Article 14 and the right to life under Article 21 which are fundamental rights to the workman.

**6.12. Liability in Hazardous and Dangerous Industries**

The Supreme Court in *M.C. Mehta v. Union of India* evolved a new concept of liability to deal with problems of hazardous and inherently dangerous industries. The court held that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an *absolute and non-delegable duty* to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise engaged in such nature of activity should indemnify all those who suffer on account of the carrying on of such activity regardless of whether it is carried on carefully or not.

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61 1996 SCALE (2)1
62 AIR 1987 SC 1086
6.13. Courts Direction of Closure of Highly Polluted and Hazardous Industries

The Supreme Court in *M.C. Mehta v Union of India*[^63^], where tanneries were discharging effluents into the river Ganges prevented the tanneries etc., from discharging effluents into the river Ganga, directed establishment of primary treatment plants etc., and ordered the closure of industries not complying with the directions.

In *Rural litigation and Entitlement Kendra v State of Uttar Pradesh*[^64^], large scale pollution was caused by lime stone quarries adversely affecting the safety and health of the people living in the area on the suggestions of the Committee appointed by the Supreme Court, the Court ordered the closure of certain lime stone quarries.


As per Regulation 74 any question whether an employment injury is caused by an Occupational Disease specified in the Third Schedule to the Act shall be determined by a Special Medical Board which shall examine the disabled person and send a report in such form as may be prescribed by the Director-General in this behalf to the appropriate Regional Office stating:

(a) whether the disabled person is suffering from one or more of the diseases specified in the said Schedule ;

(b) whether the relevant disease has resulted in permanent disablement ;

[^63^]: AIR 1987 SC 965
[^64^]: AIR 1988 SC 2187
(c) whether the extent of loss of earning capacity can be assessed provisionally or finally;

(d) the assessment of the proportion of loss of earning capacity and in case of provisional assessment, the period for which such assessment shall hold good.

All assessments which are provisional may be referred to the Special Medical Board for review by the appropriate Regional Office not later than the end of the period taken into account by the provisional assessment. Any decision of the Special Medical Board may be reviewed by it at any time. The disabled person shall be informed in writing of the decision of the Special Medical Board by the appropriate Regional Office and the benefit, if any, to which the insured person shall be entitled.


If any such disease as mentioned in Part A of Schedule III develops after a workman has left the employment, compensation shall be payable to him.

The employer shall be liable to pay compensation to a workman for contracting any disease:

1. If a workman has served under any employer in any employment specified in Part B of Schedule III for a continuous period of six months.
2. If a workman has after cessation of his service contracted any disease specified in Part B of Schedule III as an occupational disease peculiar to that employment.
3. If it is proved that such disease arose out of the employment.

Part C of Schedule III. - Where a workman contracts any disease specified in Part C of Schedule III the employer shall be liable:

1. If a workman was in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment; and
(2) If he contracts any disease specified therein as an occupational disease peculiar to that employment.

If the above two conditions are fulfilled, the contracting of the disease shall be deemed to be an injury by accident within the meaning of section 3 of the Act and unless contrary is proved the accident shall be deemed to have arisen out of and in the course of employment.

According to the first provision to sub-section (2) of section 3 if it is proved:

(a) that a workman while in service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to the employment during a continuous period which is less than the period specified under sub-section (2) of section 3 for that employment, and (b) that the disease has arisen out of and in the course of employment; the contracting of such disease shall be deemed to be an injury by accident within the meaning of section 3 of the Act.

Mere vague offer to keep and continue the workman in the employment even after the injury and the resultant disablement is not sufficient to disqualify the workman’s claim under section 3 of the Act. 65

6.15. Presumption as to accident arising out of and in the course of employment

Sections 51-A, 51-B, 51-C, 51-D and 51-E of the Act, deal with certain presumptions regarding accidents which arise in the course of employment.

For the purposes of Section 51-A of the Act, an accident arising in the course of employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment. However, this presumption is rebuttable.

65Jaybharat Saw Mill v Babulal Ambalal SodhParmar (1992) II LLJ 186 (Gujarat)
Under Section 51-B OF the Act an accident shall be deemed to arise out of and in the course of employment not withstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if (a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and (b) the act is done for the purpose of and in connection with the employer’s trade or business.

Under Section 51-C, an accident while the employee was travelling in the employer’s transport either with his express or implied permission is presumed to arise out of and in the course of his employment if (i) the accident would have been deemed so to have arisen had he been not under such obligation; and (ii) at the time of the accident, the vehicle was being operated by and on behalf of the employer or some other person by whom it is provided under a contract with the employer or the vehicle was not being operated in the ordinary course of public transport service.

In *Regional Director, ESI Corporation v Lakshmi*, the employee met with an accident while returning home from the factory in a bus which was given permit with a time schedule suiting the employee’s convenience to come to and return from the factory. The bus was to operate between the factory gate and different places where the employees reside. This bus was so provided, by the joint effort of the management and the employees union. In such a case it would be deemed that it was an implied condition of the employment and the employee might travel to and from his workplace by the bus in question and that when the accident happened he was using the means of egress and the court held, accident must be deemed to have occurred in the course of his employment.

In such cases the *doctrine of notional extension* will apply in the sense that the time and places of the work of the employee will be notionally extended from the actual area of work and time.

Under Section 51-D when an insured person sustains injury by an accident on the premises of his employment it shall be deemed to arise out of and in the course of his employment if:

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66 1979 Lab IC 167 (Kerala)  
67 For more details see Chapter IX on workmen’s Compensation Act and the following case; *B.E.S.T. undertaking v Mrs. Agnes* AIR 1964 SC 193
(i) the insured person is employed on such premises for the purpose of employer’s trade or business; or
(ii) if he takes steps on actual or supposed emergency in the premises; or
(iii) if the insured person was trained to rescue or protect persons who are or are thought to be injured or imperiled; or
(iv) to avert or minimize serious damage to property.

Under Section 51-E an accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.

6.16. Arising out of and in the course of employment. (Judicial Approach)

The expression “arising out of” suggests the cause of accident and the expression “in the course of” points out to the place and circumstances under which the accident takes place and the time when it occurred. A causal connection or association between the injury by accident and employment is necessary. The onus is on the claimant to prove that accident arose out of and in the course of employment. The employment should have given rise to the circumstances of injury by accident. But a direct connection between the injury caused by an accident and the employment of the workman is not always essential. Arising out of the employment does not mean that personal injury must have resulted from the mere nature of employment and is also not limited to cases where the personal injury is preferable to the duties which the workman has to discharge. The words ‘arising out of employment’ are understood to mean that “during the course of the employment, injury has resulted from some risk incidental to the duties of the service which unless engaged in the duty owing to the master it is reasonable to believe the workman would not otherwise have suffered. There must be a causal relationship between the accident and employment. If the accident had occurred on account of a risk which is an

69 Central Glass Industries v Abdul Hussain, AIR 1948 Calcutta 12
accident of the employment; the claim for compensation must succeed unless of course the
workman has exposed himself to do an added peril by his own imprudence.” This
expression applies to employment as such, to its nature, its conditions, its obligations and its
incidents and if by reason of any of these, a workman is brought within the zone of special
danger and so injured or killed, and the Act would apply. The employee must show that he was
at the time of injury engaged in the employer’s business or in furthering that business and was
not doing something for his own benefit or accommodation. The question that should be
considered is whether the workman 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
workman was entrusted by his employer as to say that the accident did not arise out of his
employment?

In the course of employment refers to the period of employment and the place of work. It is
neither limited to the period of actual labour nor includes acts necessitated by the workman’s
employment. “Another important question” as pointed out by Francis H. Bohlenishow for 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 workman, a workman,
by obeying them, merely passes into a new “course of employment”, but even if he has not, it
seems that the servant is justified if he honestly believes that such superior is authorized 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 regarded as injury received in the
course of employment.

The claimant must prove that the accident has occurred due to the circumstances arising out of
employment. If the risk taken by the workman was only because of the employment, it is a valid
casual connection. If the risk taken was on the worker’s own account and not due to
employment, then the employer is not liable. Worker was doing something for the furtherance of

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70 M. Mackenzie v I.M. Issak AIR 1970 SC 1906
71 Nawab Ali v Hanuman Jute Mills AIR 1933 Calcutta 513
72 Janki Ammal v Divisional Engineer Highway, Kozhikode (1956) II LLJ 233 (SC)
73 Smt. Kodari v Palongi Atchamma 1969 Lab IC 1415 (Andhra Pradesh)
74 Francis H Bohlen 25 HarvL.Rev. 418
75 P.E. Davis and Co. v Kesto Routh AIR 1968 Calcutta 129
the employer’s business and not for his own benefit, it is a valid connection. Worker should not be doing something which is way out of scope of his employment—*Doctrine of Added Peril*.

There is no problem in detecting that the accident occurred in the course of employment when a workman is injured in the working place and in the working hour and doing his duty. The problem arises when these elements do not coincide together. But a workman if injured just near the work premises or just before joining the work or in the way to work problem arises. To address this kind of problem and giving some kind of relief to the workmen the theory of *notional extension* evolved.

“As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer’s premises so as to include an area which the workman passes in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer’s premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of *notional extension*.”

**Public Place and Doctrine of Notional Extension**

There are some situations where this doctrine does not apply. When a workman is on the public road or public place and not there for fulfilling the obligation and his work does not make necessary to be there. The proximity of the work premises and spot of accident become immaterial. The notional extension of the place of work cease when workman comes to a public road. There were some clarifications made in the following case.

In *Saurashtra Salt Manufacturing Co. v Valu Raja*\(^{76}\) Justice Jafer Imam said that:

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\(^{76}\)AIR 1958 SC 881
“It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him.”

In later cases the courts have taken more liberate stand in expanding the definition of notional extension realizing the social viewpoint and objective of the Act. Since the Act is welfare legislation, it is expected that the provisions would receive liberal interpretation so as to advance the object and purpose of the Act relevant cases are discussed below.

A great deal has been written in an attempt to define and apply the simple statutory requirement, “in the course of and arising out of employment,” which has been described as one of the most difficult problems in connection with claims for compensation. It has been acknowledged that no exact formula can be stated which will be determinative of every case, and whether a given accident is so related or incident to the business must depend upon its own particular circumstances. The question is frequently a close one. Although it is acknowledged that one should not apply a technical meaning to the words “in the course of and arising out of employment” and that it was the legislature’s intention that they be given their plain, usual, and ordinary meaning, the courts are still languishing in “a labyrinth of judicial utterances” and lost in a jungle of contradictions.

The study of the following case laws sets out lucid portrait of development of the term ‘Employment Injury’ which is significantly based upon two phrases as mentioned above, they are “in the course of employment” and “arising out of employment”. Further, it is most relevant to point out that, language of Section 2(8) of the ESI Act is identical with
Section 3 of the Workmen’s Compensation Act and Section 1 of the English Workmen’s Compensation Act of 1925, wherein courts have applied the same principles.

This was discussed by the House of Lords in the case of *St Hellen’s Colliery Ltd. v Hewlston*, in this case, the worker was not obligated to use employer’s train to work. He could use any other means to commute. So it was held that an accident arising while on the special train was not in the course of employment.

In *Lancashire and Yorkshire Railway Co. v Highley* Lord Sumner laid down the following test for determining whether an accident “arose out of the employment”. Was it part of the injured person’s employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment. If nay, it did not, because, what it was not part of the employment to hazard, to suffer, or to do cannot well be the cause of an accident arising out of the employment. To ask if the cause was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

Lord Birkenhead L.C. in *Lancaster v Blackwell Colliery Co. Ltd.* observed:

“If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that

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77 Employer’s Liability for Compensation: If personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.
78 [1924] AC 59
79 [1917] AC 352
80 1918 WC Rep 345
the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour.”

In cases of the unexplained drowning of seamen, the question has often arisen as to whether or not there was evidence to justify the inference drawn by the Arbitrator that the seaman met his death through accident arising out of and in the course of his employment.

The question was considered by the House of Lords in *Kerr or Lendrum v Ayr Steam Shipping Co. Ltd.* in which the steward of a ship, which was in harbour, was lying in his bunk, when he was told by the captain to prepare tea for the crew. He was shortly afterwards missing, and the next day his dead body, dressed in his underclothes only, was found in the sea near the ship. The bulwarks were 3 feet 5 inches above the deck. The steward was a sober man, but was subject to nausea. Murder and suicide were negatived by the Arbitrator, who drew the inference that the deceased left his bunk, went on deck, and accidentally fell overboard and was drowned. He accordingly held that the accident arose out of and in the course of his employment as steward.

The Court of Sessions reversed its decision on the ground that there was no evidence to support it.

The House of Lords (Earl Lorebum, Lord Shaw of Dunfermline and Lord Parmoor, Lord Dunedin and Lord Atkinson dissenting), however, upheld the decision of the Arbitrator on the ground that, although upon the evidence it was open to him to have taken a different view, his conclusion was such as a reasonable man could reach. “I should state my main proposition thus,” said Lord Shaw of Dunfermline, “that we in this House are not considering whether we would have come to the same conclusion upon the facts stated as that at which the learned Arbitrator has arrived. Our duty is a very different, a strikingly different one. It is to consider whether the Arbitrator appointed to be the judge of the facts, and having the advantage of hearing and seeing the witnesses, has come to a conclusion which could not have been reached by a reasonable man.” Lord Parmoor said “I wish to express no opinion either way on the reasonableness of the finding in it as long as it is possible finding for a reasonable man,”

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81 [1915] AC 217
whilst Earl Loreburn observed that “they should regard these awards in a very broad way and constantly remember that they were not the tribunal to decide.”

In the case of unexplained drowning of seamen, the English Court of Appeal has drawn some very fine distinctions in the following landmark case.

In *Bender v Owners of S.S. Zent*,\(^2\) the chief cook on board of a steamship fell overboard and was drowned while the ship was on the high seas. He was seen at 5.25 am. Looking over the side; 5.30 am was his usual time for turning out; and he was last seen at 5.35 am going aft. The weather was line at the time, it was daylight, the ship was steady, and there was no suggestion that the duties of the deceased would lead him into any danger. There was a 4 ft. rail and bulwark all-round the ship and there was no evidence to show how the deceased had fallen overboard. The County Court Judge drew the inference that his death was caused by an accident arising out of and in the course of his employment, but the Court of Appeal held that there was no evidence to warrant such inference, pointing out that, although it was conceivable that he might have been engaged on some ship’s work, it was equally conceivable that he had been larking or had committed suicide.

Bender’s case was followed in *Marshall v Owners of S.S. Wild Rose*,\(^3\) where an engineer came on board of his vessel, which was lying in a harbor basin, shortly after 10 pm, since Steam had to be got up by midnight. He went below and took off his clothes, except his trousers, shirt and socks. It was a very hot night, and he subsequently came out of his berth, saying that he was going on deck for a breath of fresh air. Next morning his dead body was found at the side of the vessel, just under the place where the men usually sat. It was held by the Court of Appeal, reversing the County Court Judge, that there was no legitimate ground for drawing the inference that the engineer died from an accident, arising out of his employment. Farwell, L.J. said:

“If an ordinary sailor is a member of the watch and is on duty during the night and disappears, the inference might fairly be drawn that he died from an accident arising out of his employment. But if, on the other hand, he was not a

\(^2\) [1909] 2 KB 41  
\(^3\) [1909] 2 KB 46
member of the watch, and was down below and came up on deck when he was not required for the purpose of any duty to be performed on deck, and disappeared without our knowing anything else, it seems to me that there is absolutely nothing from which any Court could draw the inference that he died from an accident arising out of his employment.”

But in Rice v Owner of Ship Swansea Vale\(^\text{84}\) where the deceased was a “seaman” in the strict sense of the term—that is to say, one whose duty it was to work on deck—and not as a ship cook, as in Bender’s case, nor an engineer as in Marshall’s case, a different conclusion was arrived at. In that case the chief officer of a vessel, who was on duty on deck, disappeared from the ship in broad daylight, no one, saw him fall overboard, but there was evidence that not long before he had complained of headache and giddiness. It was held, (Buckley, L.J. dissenting) that there was evidence from which the Court might infer that he fell overboard from an accident arising out of and in the course of his employment. The cases of Bender and Marshall were distinguished, as in those cases the men’s duties were below deck at the time they lost their lives they had certainly no duties which called them on the deck.

In Gatton v Limerick Steamship Co,\(^\text{85}\) a night watchman on board a vessel, whose hours of duty were from 7 pm to 7 am when he awoke the crew, was last seen on board at 6 am but on that morning he did not awake the crew. His cap was found on the deck, and his body was found in the harbour some months afterwards. The County Judge held that it was not proved that the accident arose “out of” his employment. The Court of Appeal on the ground that this was a finding of fact with evidence to support it, refused to interfere. Holmes, L.J., however, stated that the County Court Judge might have arrived at a different conclusion of fact, whilst Cherry, L.J., said that, if he had been the Arbitrator, he would have found that the deceased had met with his death by accident arising out of and in the course of his employment.

In another similar case Rourke v Mold & Co\(^\text{86}\) a seaman disappeared during his spell of duty at the wheel in the wheel house in the Centre of the flying deck and was not afterwards seen. The night was rough, the sea choppy but the vessel was steady. The flying deck was protected by a

\(^{84}\) [1912] AC 238
\(^{85}\) [1910] 2 IR 561
\(^{86}\) [1917] 2 Ire Rep 318
rail. There was no evidence as to how the man met his death and in spite of the presumption against suicide the County Court Judge was unable to draw the inference that the death was due to accident. It was held by the Court of Appeal that in the circumstances the conclusion of the County Court Judge was right.

In Simpson v L.M. & S. Railway Co,\textsuperscript{87} Lord Tomlin reviewed all the previous authorities and stated the principle as follows:

“…… from these passages to which I have referred I think this rule may be deduced for application to that class of case which may be called unexplained accident cases–namely, that where the evidence establishes that in the course of his employment the workman properly in a place to which some risk particular thereto attaches and an accident occurs capable of explanation solely by reference to that risk, it is legitimate, notwithstanding the absence of evidence as to the immediate circumstances of the accident, to attribute the accident to that risk, and to hold that the accident arose out of the employment; but the inference as to the origin of the accident may be displaced by evidence tending to show that the accident was due to some action of the workman outside the scope of the employment”.

\textit{Mackinnon Mackenzie and Co. Pvt. Ltd v Ibrahim Mohammed Issak},\textsuperscript{88} in this landmark judgment the Supreme Court has discussed “in the course of employment” and “arising out of employment” in detail. In the case ‘S’ who was employed as a deck-hand on a ship was found missing on board. The respondent filed an application under s. 3 of the Workmen’s Compensation Act claiming compensation for the death of ‘S’ which according to him occurred on account of a personal injury caused by an accident arising out of and in the course of employment. The Additional Commissioner held that there was no evidence to show that the seaman was dead (body was never found) and there was in any event no evidence to justify the inference that the death of the seaman was caused by an accident which arose out of employment. The High Court reversed the judgment of the Additional Commissioner. In appeal the Supreme Court, held: The Additional Commissioner did not commit any error of law in reaching his findings and the High Court was not justified in reversing them.

\textsuperscript{87} [1931] AC 351
\textsuperscript{88} AIR 1970 SC 1906
In the course of his judgment the Additional Commissioner had observed as follows:

“Now in the present case what is the evidence before me? It is argued on behalf of applicant that I must presume that the man fell down accidentally. From which place did he fall down? How did he fall down? At what time he fell down? Why was he at the time at the place from which he fell down? All these questions, it is impossible to answer. Am I to decide them in favour of the applicant simply because his ‘missing’ occurs in the course of his employment? In my opinion there is absolutely no material before me to come to a conclusion and connect the man’s disappearance with an accident. There are too many missing links. Evidence does not show that it was a stormy night. I had visited the ship, seen the position of the Bridge and deck and there was a bulwark more than 31/2 feet. The man was not on duty. Nobody saw him at the so-called place of accident. In these circumstances I am unable to draw any presumption or conclusion that the man is dead or that his death was due to an accident arising out of his employment. Such a conclusion, presumption or inference would be only speculative and unwarranted by any principle of judicial assessment of evidence or permissible presumptions.”

Supreme Court held, to come within the Act the injury by accident must arise both out of and in the course of employment. The words “in the course of the employment” mean “in the course of the work which the workman is employed to do and which is incidental to it.” The words “arising out of employment” are understood to mean that “during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered.” In other words there must be a causal relationship between the accident and the employment. The expression “arising out of employment” is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors the workman is brought within the scene of special danger the injury would be one which arises ‘out of employment’. To put it differently if the accident had occurred on account of a risk which is an
incident of the employment, the claim for compensation must succeed, unless of course the
workman has exposed himself to an added peril by his own imprudent act.\textsuperscript{89}

Further court said in the case of death caused by accident the burden of proof rests upon the
workman to prove that the accident arose out of employment as well as in the course of
employment. But this does not mean that a workman who comes to court for relief must
necessarily prove it by direct evidence. Although the onus of proving that the injury by accident
arose both out of and in the course of employment rests upon the applicant these essentials may
be inferred when the facts proved justify the inference. On the one hand the Commissioner must
not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved
facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to
the degree of proof which is sufficient to justify an inference being drawn, but the evidence must
be such as would induce a reasonable man to draw it.\textsuperscript{90}

In the case of \textit{Varadarajulu v Masaya Boyan}\textsuperscript{91} court held that the worker had no other means to
go to the work place other than to use the employer’s lorry. So, accident happening while in lorry
is in the due course of employment.

In \textit{Rajappa v Employees’ State Insurance Corporation}\textsuperscript{92}, an employee of the KIMCO was
attacked by some persons and his left hand was cut off while he was on his way to home after
finishing the work in the factory. The corporation met all the expenses when he was under
treatment. It was held that where employment is not a contributing factor to create any incident
or accident or to accelerate causes of death or personal injury of employee, a claim cannot be
made for compensation under the Act. The condition precedent to a liability under Act is causal
connection or association extension has to apply to the factual situation pertaining to the
particular case. In the present case there is no relationship between the assault causing injury to
the employee and the employment.

\textsuperscript{89} ibid
\textsuperscript{90} ibid
\textsuperscript{91} AIR 1954 Madras 1113
\textsuperscript{92}(1992)II LLJ 714 (Karnataka)
In *Maherunisha Ahemad Khan Pathan and other v Employees State Insurance Corporation*, a workman while returning home was assaulted by a mob during communal riots and died. It was held that the place of accident need not necessarily be located within the limits of the factory premises so long as the accident falls within a zone which can be notionally deemed to be the zone of the factory for the propose of the Act by recourse to the theory of notional extension. Therefore court held death was employment injury within the meaning of Section 2(8) of Act.

In *Sathybhama v ESI Corpn*, a woman employee while returning home was hit by a scooter on public road in front of the factory gate. It was held that theory of notional extension cannot be reduced to a mathematical formula of distance and time. Decision would depend on the facts and circumstances of each case. In the present case considering both the point of time as that of distance the theory of notional extension shall apply and the injury sustained is an employment injury.

In *Sheela v ESI Corporation*, an employee of M/s. Electronic Product of India, Chandigarh left his house at about 8.30 a.m. to join his duties at 9 am. He died at bus-stand while waiting for the local bus. It was held that the employee died while he was going to his place of work. The theory of notional extension will apply and the death occurred in the course of employment.

In *Indian Rare Earths Ltd. v Subaida Beedi*, a workman of the appellant was involved in an accident while travelling by his cycle to the work spot. The employer has provided for bus subsidy to its workmen but the concerned workman was not residing on any of the bus routes and hence he used to go by bicycle. While on way to the work spot a car dashed against him on public road and he died. It was held that although travelling by bus was an implied condition of service but in view of the fact that the concerned workman was not on any of the bus route, the exigencies of the employment and circumstances obliged him and the company allowed him to ride a bicycle to the work place. In other words it was an implied condition of his employment that he may travel to his work place from his residence and back home by a bicycle. Therefore,
the workman was in the course of his employment from the moment he began to ride the bicycle for reaching his work place.

*It was further held that an injury sustained by an employee by an accident arising in the course of his employment is, in all cases without exception, one arising out of his employment though perhaps it cannot be said that all injuries caused by accidents arising out of employment are injuries caused by accident arising in the course of employment.*

In *Regional Director ESI Corporation v L, Rang Rao*, an employee of M/s. Mysore Breweries Ltd., working as Refrigerator operator was run over and killed on the spot by an unidentified motor vehicle when he was on his way to factory to join his duty. His father claimed benefits under the Act by moving ESI Court. The injury was held to be an employment injury. It was held that if it is proved that the injury to the employee was caused by an accident arising out of and in the course of employment then it is immaterial whether it occurred inside the factory or outside or whether it occurred during office hours or after. However, the place or time of accident should not be totally unrelated to the employment. There should be a nexus or causal connection between the accident and employment.

In *Employees State Insurance Corporation, Calcutta v Abdul Salam and others*, the respondent No. 1 was an employee of the petitioner came to resume his duty after a gap of about 4 years but he was not allowed to join duty in spite of producing medical certificate and at that point of time the respondent No. 1 being a paralytic patient had an accidental fall resulting in injury for which he claimed benefit as permissible under the Employee’s State Insurance Schemes. The claim was opposed by the petitioner. It was held that at that relevant time respondent No. 1 was not in employment and hence the injury was not out of and in the course of employment. Therefore, no benefits could legally be claimed under the Employee’s State Insurance Act, 1948.

In *Employees State Insurance Corporation v Sasi*, while the respondent was returning to his house after the night shift, he was assaulted by some persons near the bus stop adjacent to the factory. The investigation revealed that he was assaulted on account of personal vengeance. He

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97 ibid
98 (1982) I LLJ 29 (Karnataka)
99 (2003) I LLJ 765 (Calcutta)
100 (2002) Lab IC 2097 (Kerala)
sustained injury on his left hand and claimed benefits admissible for employment injury as defined under Section 2 (8) of the Employees State Insurance Act. The appellant denied the injury to be an employment injury in as it was the result of an assault by a stranger outside the premises of the factory and had not arisen out of employment. Allowing the appeal the High Court held that the injury sustained by the employee was due to an assault to him by strangers outside the premises of the factory and while he was on his way to his house. This could not be said to have its origin in his employment in the factory and as such was not employment injury under Section 2(8) of the Employees State Insurance Act, 1948 and no benefits were payable under the Act.

In *Regional Director, E.S.I.C. Ahmedabad v Batulbibi and another*¹⁰¹, the workman of a textile mill while on duty had gone to canteen during the short recess to take tea, where he died of cardiac infraction. His widow and son claimed compensation. It was held that the death arose out of and in the cases of employment because the recess period is not so long as to disrupt the continuity of the employment. If the recess was indeed short, the liberty of an employee to go away does not in reality mean anything, since he could not have gone so far as to snatch the continuity of his employment.

*The State of Rajasthan v Ram Prasad and another*,¹⁰² the workman died due to natural lighting while working at the site. It was held by the Supreme Court that a workman may succeed in his claim for compensation it is no doubt true that the accident must have causal connection with the employment and arise out of it but if the workman is injured as a result of natural force of lighting though it is in itself has no connection with employment of deceased Smt. Gita, the employer can still be held liable if the claimant shows that the employment exposed the deceased to such injury. In the present case the deceased was working on the site and would not have been exposed to such hazard of lighting had she not been working so? Therefore the appellant was held liable to pay compensation.

¹⁰¹(1988) II LLJ 29 (Gujarat)
¹⁰²(2001) I LLJ 177 (SC)
In *R BMoodra and Co.* vs *Mst. Bhanwari*,\(^{103}\) the deceased was employed as a driver on the appellant’s truck used for the purpose of carrying petrol in a tank. On the previous day he had reported to his employer that the tank was leaking and so water was put in it for detecting the place from where it leaked. The next morning the deceased was asked by the appellant to enter the tank to see from where it leaked. Accordingly, he entered the tank which had no petrol in it and for the purpose of detecting the leakage he lighted a match stick. The tank caught a fire and the deceased received burn injuries and later on succumbed to death. In this case it was contended that the workman has himself added to his peril by negligently and carelessly lighting a match stick inside the petrol tank. It was held that the accident arose out of employment and the act of lighting match stick even if rash or negligent would not debar his widow from claiming compensation. If the act leading to the accident was one within the sphere of employment or incidental to it or in the interest of the employer, then the accident would fail. In this case the deceased did something in furtherance of his employer’s work when the accident occurred although he was careless or negligent inasmuch as he lighted the match stick instead of using to detect the leakage. But because the tank was empty and was partly filled with water on the previous night he could not have little reason to foresee the risk involved.

In *Trustees Port of Bombay v Yamunabai*,\(^ {104}\) a bomb placed in the premises workshop by some unknown person exploded and caused injury to a workman. It was held that the workman was not responsible for placing of the bomb, and the injury due to its explosion was caused at the time and place at which he was employed, therefore the injury was the result of an accident arising out of his employment. The rule is that if a particular accident would not have happened to a workman had he not been employed to work in the particular place and condition, it would be accident arising out of the employment.

Likewise where the workman, in some factory injured due to crashing down within the factory premises of some aircraft, it will be an injury resulting from an accident arising out of employment for the workman are not responsible for the air crash and they are exposed to that danger by reason of their presence on the place of accident because of their employment.

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\(^{103}\)AIR 1970 Rajasthan 111  
\(^{104}\)AIR 1952 Bombay 382
In *Oriental Insurance Company Ltd. v Sorumai Gagoi and others.*\(^{105}\) Respondents were parents of a driver employed by the third respondent, who was owner of the vehicle in question. From a certain day in 1996, for more than 7 years, nothing was heard of the driver. His parents made a claim for compensation and the Commissioner for Compensation awarded a sum of Rs.2.29 lakhs. The High Court confirmed it. Hence the Insurance Company preferred an appeal to the Supreme Court. Allowing the appeal the Supreme Court observed that there was nothing on record to show that death had occurred to the driver in an accident arising out of employment. If some miscreants had taken away the driver along with the vehicle or had murdered him, it did not give rise to a presumption that death had occurred in accident arising out of employment.

Further, the rights of the parties were required to be determined on the date of the incident (from which date nothing was heard or known of the driver). It was held that the presumption under Section 108 of the Evidence Act could not be invoked in support of the claim.

A workman who was employed to repair clocks at various stations was stabbed in a railway compartment while he was in transit. It was held that the death of the workman in question was due to an accident arising out of and in the course of his employment.

In the course of employment means during the currency of employment.\(^{106}\) In order to succeed in his claim a workman has to prove that he was at the time of injury engaged in the employer’s business or in furthering that business and was not doing something for his own benefit or accommodation.\(^{107}\) He must show that he was doing something in discharge of a duty to his employer directly or indirectly imposed upon him by his contract of service.\(^{108}\) The distinction between “arising out of “, and “arising in the course of “employment as pointed out by Bombay High Court is that the latter suggests the point time, i.e., the injury must be caused during currency of employment and the former conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of accident.\(^{109}\)

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\(^{105}\) (2008) II LLJ 863 (SC)
\(^{106}\) *Trustees, Port of Bombay v Yamunabai.* AIR 1952 Bombay 382
\(^{107}\) *JankiAmmal v Civil Enng. Highways, Kozhikode.* (1956) II LLJ 233
\(^{108}\) *Tobacco Manufacturers (India) Ltd. v Mrs.Marin Stewart.* AIR 1950 Calcutta 164
\(^{109}\) *Trustees, Port of Bombay v Yamunabai.* AIR 1952 Bombay 382
In Smt. Koduri v Polongi Atchamma,\textsuperscript{110} a person was the employee in the lorry belonging to his employer carrying quarry material from the quarry site to the work spot of the P.W.D. His duties were to load the material on the lorry and go along with the same for unloading the material at the work spot. While the lorry was moving he attempted to hit a rabbit passing on the road and in the attempt he fell down from the lorry and died. His wife claimed compensation for the loss of his life of her husband. It was held that she was not entitled to compensation for “it is not enough that injury should have been sustained by the workman during the period of his employment, it should have been in the course of the employment. The act which resulted in the accident must have some connection with the work for which the workman is employed. The workman must have been doing something which is part of his service though it need not be his actual work: it should be work naturally connected with the class of work and the injury must result from it. Applying this principle by no stretch of imagination can it be said that hitting a wild rabbit which ran across the truck was part of service of the workman for which he was employed. The mere fact that the workman was during the particular period, travelling in the employer’s truck with the quarry material from the quarry site to the work spot is not.”

In National Iron and Steel Co. Ltd. v Manoorama,\textsuperscript{111} a boy employed by the appellant in a tea shop and it was part of his duty to take tea from the shop which was situated outside the factory gate to various persons working in the factory. One day when the boy was coming out of the factory after serving the tea to the workers he passed through a violent mob of factory workers who were leaving the factory. This mob attacked the police and the police had to fire upon the mob in self-defense. Unfortunately, the boy was severely wounded by a bullet injury and died the following day in the hospital. The mother of the boy claimed compensation. It was held that the accident arose in the course of employment and death occurred because of the risk to which he was exposed by the nature of his employment.

In Public Works Department v Kaunsa Gokul\textsuperscript{112} a gang Jamadar while going to collect salary of the labourers from the office of the Public Works Department was murdered in the way at a place on which he sat down to take his meals near a well. He was found dead at a considerable

\textsuperscript{110}(1969) Lab IC 1415 (Andhra Pradesh)
\textsuperscript{111}AIR 1953 Calcutta 143
\textsuperscript{112}(1967) I LLJ 344 (Madhya Pradesh)
distance from the place where other members of his gang were actually working on the road. Applying the principle laid down in *Trustees of the Port of Bombay* case the court held that the death of Gokul was an accident arising out of his employment. In this case the accident arose because of the nature of employment that exposed him to some particular danger.

The employer’s duty to his servants is to take reasonable care for their safety. Safety means the safety of the premises and the plant and to the method and conduct of the work. Their duty is to take reasonable steps to avoid exposing the servant to a reasonable risk of injury.\textsuperscript{113} (The farm labourer contracted leptosporosis from handling materials on which rats had urinated. The court held that defendant was not liable. It was not known at the time that leptosporosis could be transmitted in this way. Whilst it was foreseeable he may contract the disease by a rat bite the way he contracted the disease was not foreseeable).

Thus, where under the rules of the Company nobody was allowed to graze cattle inside the mill premises but the wife of a worker of the Company attempted to graze her cattle inside the premises. The watchman asked her not to graze inside the premises. This infuriated her husband who assaulted the watchman, resulting in his disablement. It was held that the injury of the watchman arose out of employment and in the course of enforcing the rules; therefore, he is entitled to get compensation.\textsuperscript{114}

*In Chairman Madras port trust, Madras v kamala*\textsuperscript{115} it was held that fetching food is part of employee’s duty. Therefore, accident to an employee while fetching food is in the course of employment.

*In JyothiAdemma v Plant Engineer, Nellore,*\textsuperscript{116} the deceased workman was suffering from heart disease. His job was only to switch on or off in the thermal station where he was employed. The Supreme Court observed that there was no scope for any stress or strain in his duties. His death to heart attack was, therefore, rightly held as not caused by accident arising out of and in the course of his employment. Therefore, the judgment of the High Court holding the appellant not

\textsuperscript{113}Tremain v Pike, [1969] 3 All ER 1303
\textsuperscript{114}Management of Sri Sabari Mills Ltd. v M. Kulanndai (1984) I LLJ 254 (Madras)
\textsuperscript{115}AIR 1970 Madras 386
\textsuperscript{116}(2006) III LLJ 324 (SC)
entitled to compensation for death of her husband was affirmed by the Supreme Court though the amount already paid to the appellant was directed not to be recovered from her.

In *Imperial Tobacco Co.(India) Ltd. v SalonaBibi*,\(^{117}\) a workman was suffering from high fever was recommended two days leave by the doctor. When he returned on the third day the doctor found him suffering from malaria and Broncho pneumonia. He was again granted three day’s leave. After expiry of the leave when he came in a rickshaw to report to the doctor, his condition was so serious that he had to be taken upstairs to the dispensary in a stretcher. The doctor found him in almost dying condition and therefore, hastened to administer injection but he died after a few minutes. It held that, “as the stress and strain of the journey was responsible for causing or precipitating the workman’s death, there was an accident arising out of and in the course of employment.”

In *KamlaBai v. Divisional Superintendent Central Railway, Nagpur*,\(^{118}\) deceased, the appellant’s husband was a goods train driver. While on duty he collapsed and died. He took rest at intermediate stations. He died while talking to the guard at wayside station who gave red signal to stop the train. It was held that the death of the driver was an accident in the sense that it was unexpected without there being any design on the part of the workman. But in order to see whether there is unequivocal evidence that the workman died because of particular strain during the course of his duties. The fact that the workman died a natural death because of a disease from which he was suffering and that he died on a account of normal wear and tear of his employment are not sufficient to entitle the claimant to the compensation. It must also be proved that the deceased not only died because of some contributing cause on account of his employment or duties which he was performing. In the present case it was held that there was no evidence to show any causal connection between death of the workman and his employment and his death was not due to any particular strain which he had on account of his employment.

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\(^{117}\)AIR 1956 Calcutta 458

\(^{118}\)(1971) I LLJ 603 (Bombay)
In *DevshiBhanjiKhona v Mary Burno*\(^{119}\), it was held that where the death of a workman takes place due to heart attack while carrying a load, the death shall be deemed to have arisen out of and in the course of employment. There is causal connection between the death and employment.

In *ShakuntalaChandrakantShreshti v PrabhakarMarutiGarveli and Another*,\(^{120}\) the appellant was the mother of a workman (cleaner in motor vehicle). The workman died of cardiac arrest while travelling in the vehicle. The Commissioner for Workmen’s Compensation granted compensation. On appeal, the High Court held that conclusion that workman died as a result of accident during course of employment was not sustainable. Hence this appeal was filed before the Supreme Court.

The Supreme Court dismissing the appeal held that there must be causal connection between injury and accident occurring in course of employment and the onus was on the applicant to show strain resulted from work.

It was further observed that unless evidence was brought on record that death of workman by way of cardiac arrest had occurred because of stress or strain (which was held not proved in this case) the Commissioner would not have the jurisdiction to grant damages.

*The Divisional Manager, United India Insurance Co. Ltd. v ShanmugaMudaliarT.and others,*\(^{121}\) a person was employed as a diver of the bus belonging to Shanmuga Mudaliar T. He died of heart failure at a bus stop where he stepped out to have refreshments. His widow claimed compensation which was awarded by the Commissioner for workman’s Compensation against the insured employer and not the insurance company. In appeal filed by the employer, the learned Single Judge of the High Court held that the Insurance Company and employer both are jointly and severally liable to pay compensation. And therefore, two appeals were filed, one by the Insurance Company and the other by the employer. It was held by the Division Bench of the High Court that the connection between accident and employment might be established if the strain had contributed to or accelerated the accident. If probabilities were in favour of the applicant, then the Commissioner for Workman’s Compensation was justified in inferring that

\(^{119}\)(1985) II LLJ 70 (Kerala)
\(^{120}\)(2007) I LLJ 474 (SC)
\(^{121}\)(2003) I LLJ 776 (Madras)
the accident arose out of and in the course of the employment. In this case there could be no dispute that the driver in the course of his employment, since there was no occasion for him to be at Tiruvannamalai bus stand (where he died) unless he had been driving the bus. The death was capable of being attributed to the strain ordinarily inherent in the discharge of his duty.

In *M/s. J.D. and Co. Mills. v E.S.I. Corporation,*\textsuperscript{122} the mechanic and fitter employed to disconnect the crushing machine from the rest of the moving machinery was absent from the premises. The crushing machine was running without any business. A workman who was an unskilled worker and whose duty was to feed the oil mill by pouring groundnut seeds into crushing machine, kicked of the moving pulley to stop the running of the crushing machine. His leg got caught between the pulley and the belt. He was pulled up to a height of about six feet from where he fell down and died instantaneously. The accident was held to have arisen out of and in the course of employment because the employer was guilty of negligence in not complying with safety rules and whatever the deceased workman did was in the interest of the employer and in order to prevent the machine from getting thereby resulting in loss to the employer.

In *Mackinnon Mackenzie and Co. Ltd. v Miss Velma William,*\textsuperscript{123} the deceased was a seaman, an employee of the shipping company in Calcutta. One day when the ship was on its voyage he tried to commit suicide by jumping over board but was prevented by his co-workers and was back to his room. Queried by the master of the ship that he was worried because he did not receive any letter from his home. He also promised never to attempt to commit suicide in future. The surgeon who examined him certified that he was mentally deranged and should, therefore, be kept under constant supervision using force if necessary. After being kept in the hospital for a few days he was one day allowed on medical advice to go on the deck under escort. In the next morning while walking up and down on the deck the seaman suddenly seized both the guards, threw them sideways with such force that they fell down on the deck and then jumped overboard. On a claim for compensation made by his sister it was held that:

\textsuperscript{122}AIR 1963 Andhra Pradesh 210
\textsuperscript{123}AIR 1964 Calcutta 94
“The accident in the case was not due to any personal injury carried to the workman by any accident out of and in the course of his employment. So as to make the employer liable for it. Merely, because the seaman was in service, his continuity of service did not bring him within that expression. In cases of suicide resulting from insanity or mental derangement the onus lies upon the applicant to show that the death is due to accident and that insanity is the direct result of injury”.

Similarly in *Sir Jayaram Motor Service v Pitchammal*,\(^\text{124}\) a night watchman of the appellant company had died 90 minutes after return from work. The question was whether death, that occurred one and a half hour after the employee had ceased to work. Can still be said to be in the course of employment? It was held that if death was the result of stress and strain which the employee suffered earlier during the period of work, a connection is established between the employment and his death. Thus, in this case death was held to be in the course of employment.

In *Superintendent Engineer ParambilulamAliar Project, Pollachi v Andammal*,\(^\text{125}\) the deceased was employed in Irrigation department to regulate the flow of water in the canal. He was assaulted by some people who were inimical towards him in connection with his employment in the release of water for the purpose of irrigation. The death was held to have arisen out of and in the course of employment. By reason of his being in the particular place, he had to face the indignant agriculturists who had unauthorisedly diverted the water from the canal and about whom he had made a complaint and by reason to that he had to face a peril and the accident resulting in his death was caused by reason of that peril.

In *Riley v William Holland and Sons Ltd.*,\(^\text{126}\) the applicant was employed at the respondent’s mill. He was discharged on Wednesday. By the usage of the mill, the wages were made up to Wednesday and were payable at the mill on Friday. The applicant went to the mill on Friday for her wages which were paid to her. Ongoing down the stairs of the mill she slipped and was injured. The accident was held to have arisen out of and in the course of her employment.

\(^\text{124}\)(1982) II LLJ 149 (Madras)
\(^\text{125}\)(1983) II LLJ 326 (Madras)
\(^\text{126}\)(1911) I KB 1029
It was held in *Zubeda Bano and others v Maharashtra S.R.T. Corpn, and others*\(^{127}\) that the liability of the employer under the Act is conceptually quite different from the liability under tort. The Act should be construed in a broad and liberal manner. Therefore, the death of a bus driver of a State Road Transport Corporation who sustained heart attack and collapsed while changing destination name board is death out of and in the course of employment.

In *Director (T and M) D.N.K. Project v Smt. Buchitalloi*,\(^{128}\) a factory worker having a heart disease, while coming out of the factory, profusely sweated and died after four hours of work inside the factory premises. It was held that the stress and strain of four hours of work in the factory must be taken to be an accelerating factor to death and therefore, the employer is liable to pay compensation.

In *Raj Dulari v Superintendent Engineer P.S.E.B. and another*,\(^{129}\) an employee under the Punjab State Electricity Board was engaged in fixing electric wire on poles. While he was beyond his duty hours. But under the direction of a lineman, to complete the job he was fixing electric wire on poles. A bus came at a high speed and dragged the electric wires hanging on the road as a result the pole on which he was working was broken from the middle and he fell down and died instantaneously. It was held that the accident occurred in the course of employment. If a workman continues to work beyond his duty hours on a job directly by his superior, he continues to be on duty.

In *Salamabegum v District Branch manager Maharashtra State Co-operative Land Development Bank, Beed and another*,\(^{130}\) a jeep driver of Bank took the officers of the bank to a village in connection with recovery proceedings conducted by the bank. He rested the jeep in the rest house and went to the market where he was assaulted by some unknown persons in the crowd and was found dead. It was held that the expression “accident arising out of and in the course of employment” rather denotes a point of time than a factual connection with the employment and the accident. The risk incurred by the driver from going to the market was incidental to his employment of taking the jeep to the village. Thus the accident having taken place without the

\(^{127}\) (1991) I LLJ 66 (Bombay)
\(^{128}\) (1989) I LLJ 259 (Orissa)
\(^{129}\) (1989) II LLJ 132 (Punjab and Haryana)
\(^{130}\) (1990) I LLJ 112 (Bombay)
fault of the driver and while he was on duty in the village must be taken to be arising out of and in the course of employment.

In *General Manager, South Eastern Railway and others v Abdul Wahid*, the respondent who was a railway workman was struck down while on way from his residence to work place by an electric loco engine at a railway level crossing. He was awarded compensation and an appeal was preferred against that order. Allowing the appeal the High Court held that the accident cannot be said to have occurred in the course of employment as the level crossing was away from the workman’s place of work.

In *State of Rajasthan v Smt. Kanta*, a driver in the Irrigation Survey Sub-division was on election duty all the 24 hours and he was found dead. It was held that he died in the course of employment. It was further held that unless it is established by cogent evidence from the employer that the employee has not died in the discharge of his duty it will be presumed that the employee did not die in the discharge of his duty it will be presumed that the employee died in the course of employment.

In *New India Assurance Co. Ltd., v R. Shridhara and another*, an manufacturer had taken a Group Insurance covering for four employees of the establishment to the amount of Rs. 25,000/- each in respect of any miscellaneous injury suffered by the employees in the manufacturing unit. It was held that the Insurance Company was liable to pay under the policy. The fact that the Insurance Company has different types of policies including the one under the provisions of Workmen’s Compensation Act, will not absolve the Insurance Company from paying under the Miscellaneous Group Insurance Scheme. There is no dual liability of the Insurance Company to the insured as well as the workman.

In *Senior Divisional Personnel Officer, S. Rly Trichy v Smt. Kanagambal*, the respondent, employed as a points-man in Railway, was assaulted by unknown person while on duty resulting in his death. The death was held to be arising in the course of and out of employment and the workman was entitled to compensation.

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131(2002) III LLJ 615 (Jharkhand)
132(1989) II LLJ 135 (Rajasthan)
133(1992) I LLJ 558 (Karnataka)
134(1995) II LLJ 231 (Madras)
If the accident has occurred on account of the risk which is an incident of employment, it has to be held that the accident has arisen out of the employment. Since in driving a motor vehicle risk of accident is present a driver who sustains injuries in accident would be entitled to compensation.\(^{135}\)

In *New India Insurance Co. Ltd. v G. Krishna Rao and others*,\(^{136}\) the workman was residing in a hut provided by the employer. The hut caught fire and the workman was burnt alive in the night. It was held that the fire in this case has no nexus with employment. The accommodation provided by the employer by itself cannot form basis for a claim for compensation. The employer is not liable as accident did not occur in the course of employment.

In *Divnl. Personal Officer, Western Railway, Jaipur and another v Ashiya Begum*,\(^{137}\) Vazir Ahmad, husband of the respondent Ashiya Begum was employed as a senior cook in running room in Railway. He suffered an accident on account of excessive gas inhaled while cooking food and died after a week. According to Railway Doctor the death of the workman was due to hyper tension. The Commissioner for Workman’s Compensation held that working on the cooking stove may not be the immediate cause of death but a situation could arise where hard cooking on cooking stove could lead to strain and accelerate the death. In his view the workman died in the course of employment and therefore awarded compensation. In appeal the High Court held that it is not necessary that there should be a direct connection between the cause of death and the nature of duties. Even a causal connection between the two would be sufficient to claim compensation. It is not for the courts to look into minute details but they should see whether no board analysis of the material before the court, it can be said that the accident which resulted in injury was in the course of or out of employment. If it is accepted that the deceased was suffering from high blood-pressure from last one year, his duties as cook added strain and this strain had caused relationship with the cause of his death. It cannot be accepted that a Doctor would be able to analyze each step in order to show how the deceased developed the disease and succumbed to the same. Suddenly becoming unconscious as a result of strain is an unexpected event which can be said to be an accident leading to an injury in the course of and out of employment due to

\(^{135}\) *Oriental Insurance Co. Ltd. v Nanguli Singh and another*, (1995) I LLJ 298 (Orissa)

\(^{136}\) (1995) II LLJ 1041 (Oriissa)

\(^{137}\) (1994) II LLJ 795 (Rajasthan)
working conditions. Strenuous duties and working condition accelerated the death of the deceased and his dependants are, therefore entitled to compensation.

In *Reena Padhi and others v Owners and Parties and another*, Rabindranath Padhi, the husband of appellant was employed as Chief Engineer in a ship of G.E. Shipping Company. While on duty in ship in Japan, he met with an accident and died. His wife and two children filed a suit in admiralty jurisdiction of the High Court which refused to entertain the suit. Hence an appeal was made in the Supreme Court. The Supreme Court in view of special facts and circumstances of the case ordered rupees five lakhs to be paid to the appellant as compensation. But it was pointed out that this case will not be treated as a precedent for future.

The term “arising out of” has been subjected to judicial interpretation from the very beginning and in most of the times it has been seen that court has tried to give wide meaning to it. This phrase has been most of the time coupled with the “arising out of employment”. Even though the meanings of these two phrases are different, then also there is an inseparable connection between them. Previously it was thought that arising “in the course” is a big circle and “out of” is a small circle within it. But the new notion is that these two phrases are different circle which intersect somewhere. These two criteria need to fulfill to get compensation. These two phrases are conjunctive under this act. If these terms have been disjunctive a large area could have been covered and more number of workers could have been benefited and fulfill more efficiently the objective of the act as it would have been sufficient to prove only one condition. The judiciary has come up with the concept of notional extension which essentially widen the scope of the terms and cover the areas which is not conventionally considered under this terms. This doctrine appeared to be very helpful for workmen to get facility given under this Act.

It is submitted that the definition and application of the term “in the course of and arising out of employment” is an area in which no single formula should be applied, but one in which a number of rules or limitations are to be used. These rules are to be liberally applied since the purpose of the Act is to, whenever possible, compensate and reimburse the accidentally injured employee and it is just that his employer, industry, and eventually the public who benefit from his labours should bear this burden.

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138(1994) II LLJ 1045 (SC)