# LAW COMMISSION OF INDIA

## SIXTY-SECOND REPORT

## ON

## THE WORKMEN'S COMPENSATION ACT, 1923

October, 1974

8 M of Law/74—1

CONTENTS

D.O. No. F. 2(7)/73-L.C.

P. B. Gajendragadkar

'A' Wing, 7th Floor,
Shastri Bhawan,
New Delhi-1
October 15, 1974

My Dear Minister,

I have great pleasure in forwarding herewith the 62nd Report of the Commission on the Workmen's Compensation Act, 1923. The circumstances in which the subject was undertaken for study are dealt with in the opening paragraph of the Report.

Having regard to the nature of the subject and its importance, the Commission first made a preliminary study of the subject, and framed a Questionnaire in order to elicit views. This Questionnaire was sent to the Ministries concerned, the State Governments, the High Courts, Bar Associations, and other interested persons and bodies, including associations of employers and workmen. The replies received in response to this Questionnaire were then duly considered by the Commission, and a draft Report on the subject was prepared by the Member-Secretary, Shri Bakshi, and discussed by the Commission at length. After discussion, the Report was finalised.

However, the final draft, as approved, was being typed and the typing work could not be completed before the 1st of October, 1974, when the Commission was re-constituted with the addition of Mr. B. C. Mitra. That is why, Mr. Mitra has not signed the Report.

Incidentally, I may mention that this Report is the first Report of the present Commission since its reconstitution.

With warm personal regards,

Yours Sincerely,

Sd/-

(P. B. Gajendragadkar)

Hon'ble
Shri H. R. Gokhale,
Minister of Law, Justice & Company Affairs,
Government of India,
New Delhi.

Encl. : As above.

# CHAPTER 1

## INTRODUCTION

Genesis.

1.1. Revision of the Workmen's Compensation Act has been taken up by the Law Commission on a reference from the Government. Before we took up this subject, we had, of our own, taken up the question of extension of the Act to employment in agriculture, and prepared a draft Report on that subject, which we had circulated for comments. In the meantime, at the request of the Government, the entire Act has been taken up for revision.

Importance of the Act.

1.2. It is not disputed that the Act is one of the most important legislative measures of socio-economic justice.

It is an oft-repeated slogan: "The cost of the product should bear the blood of the workman.[1]"

This objective may not have been realised fully. But it gives us, in striking language, a clue to the governing principle of the Act, and its socio-economic importance.

It is well-known that since the adoption of the Constitution, our country has been committed to justice—social, economic and political, and that has introduced radical change in outlook. This radical change is reflected in the directive principles in the Constitution to which we shall presently refer.

Directive principles in the Constitution.

1.3. Under the Constitution, it is the duty of the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.[2] It cannot be denied that legislation in favour of the economically weaker elements creates formal inequality in order to establish economic equality.[3]

In another directive principle[4], the Constitution provides that the State shall endeavour "to secure by suitable legislation..... to all workers, *agricultural* industrial or otherwise.....*conditions of work* ensuring a decent standard of life...."

Need for revision of the Act.

1.4. It is hardly necessary to emphasise the need for revision of the Act. There have been far-reaching developments in the field of social security and industrial relations in India since

1. See Prosser, Torts (2nd ed. 1956), page 333, n. 96.
2. Article 38 of the Constitution.
3. See para 1.9, *infra*.
4. Article 43 of the Constitution.

the Act was passed, and it is obviously desirable that this beneficial piece of social legislation should be reviewed in the context of those developments. The Directive Principles in the Constitution[1], to which we have briefly referred[2], also lay emphasis, in particular, on the need to protect the health and strength of workers, the need to make effective provision for public assistance in cases of unemployment, sickness and disablement, and on endeavours to secure to all workers decent conditions of work and on ensuring a decent standard of life. It is not often realised that the provision for dependants in the Workmen's Compensation Act is specially intended to avoid want and penury, and is of direct relevance with reference to these directive principles.

The concept of equality, which is one of the basic principles of the Constitution, has also provided inspiration for a revision of provisions resting on discrimination.

1.5. Apart from this, it may be noted that even before the Constitution, significant developments took place. India took a big step in 1948 towards social security for industrial employees, when the Employees' State Insurance Act was passed. Some of the provisions of that Act are of an enlightened nature, and naturally suggest the desirability of exploring the possibility of their being adopted in the Workmen's Compensation Act.

Report of the National Commission on Labour.

1.6. It should be noted that the National Commission on Labour, in its Report forwarded to the Government a few years ago, made several important recommendations for amending the Act.[3]

Number of agricultural employees.

1.7. In this connection, mention should also be made of agricultural employees. According to the Report of the Census of India, 1971[4], the total number of workers in India is 180,949,809. Out of this, the number in rural areas is 148,998,809. The following are the numbers of workers employed in various activities in the rural and urban areas:—

| Activities | Rural | Urban |
|---|---|---|
| (a) Cultivators . . . . . | 76,544,432 | 1,632,275 |
| (b) Agricultural Labourers . . . . | 45,569,979 | 1,919,404 |
| (c) Live-stock, forestry, fishing, hunting and plantations, Orchards and Allied Activities . | 3,758,642 | 558,159 |

1. Articles 38, 39(e), 41 and 43 of the Constitution.

2. Para 1.3, *supra*.

3. Report of the National Commission on Labour, (1969), pages 165, *et seq*.

4. Economic characteristics of Population (Selected Tables, series 1 — India), Census Paper 3 of 1972, pages 2—4.

| Activities | Rural | Urban |
|---|---|---|
| (d) Mining and Quarrying . . . . . | 601,903 | 320,859 |
| (e) Manufacturing processing, servicing and repairs . . . . . | 8,164,840 | 8,902,679 |
| (f) Construction . . . . . | 1,096,080 | 1,119,258 |
| (g) Trade and Commerce. . . . . | 3,623,301 | 6,414,942 |
| (h) Transport, storage and Communications . | 1,210,069 | 3,191,132 |
| (i) Other Services . . . . . | 7,805,344 | 7,960,131 |

We quote these figures to show the importance of considering the question of application of the Act to persons employed in agriculture.

Need for revision.

1.8. It is, therefore, in the fitness of things that in the year which marks the semi-centenary of the Act, an opportunity has arisen to undertake a comprehensive review of the Act.

No wholesale review of the Act has taken place since the Report of the Royal Commission on Indian Labour. Important recommendations made by the National Commission on Labour[1] have not found their way to the statute book. Practical experience of the working of the Act, as revealed by judicial decisions and otherwise, has brought out certain difficulties. That apart, far-reaching developments in the industrial field have taken place, as already pointed out. Notions of social justice have also undergone radical change.

Equalisation in substance.

1.9. With reference to legislation in favour of the weaker sections, it has been stated[2] that:—

> "Justice at least is done in this way in the shape of equalisation, the breach in the idea of abstract and uniform equality serving to level the sharp points of social differences."
>
> "By social legislation in favour of workers, tenants and lodgers, as also of agriculture, the legislator is doing a work of equalisation, which is to improve the lot and prospects of the less fortunate classes. But that is exactly what constitutes the essence of the so-called social freedom. Constitutional rights can no longer remain mere landmarks between the State and the individual."

1. Report of the National Commission on Labour. See para 1.6, *supra*.

2. Fritz Cygi, 'The Rule of Law in the Contemporary Welfare State', (1962) Vol. 4, Journal of the International Commission of Jurists, No. 1, page 3, at pages 8 and 9.

Social insurance.

1.10. In fact, the idea of social security has been carried much further by the scheme of compulsory insurance introduced by the Employees State Insurance Act[1], but we are not concerned with that Act at the moment. What we should emphasise is the essential connection of the Workmen's Compensation Act with social security and social insurance.

Effect of Employees' State Insurance Act.

1.11. After the passing of the Employees' State Insurance Act[2], the area of application of the Workmen's Compensation Act has diminished, to a certain extent. But the Employees' State Insurance Act applies only to (i) factories, and (ii) notified establishments, and in the rest of the cases the Workmen's Compensation Act still holds the field.

1.12. We would at this stage also like to quote what was stated in a recent study[3] dealing with personal injuries:—

> "The rate at which social institutions and ideas are being turned upside down is not merely dramatic—it is accelerating every year in a fashion which demands a great deal of mental energy to keep pace. It cannot be good enough, therefore, to adjust merely to the contemporary needs. Some deliberate attention should be given to the foreseeable demands of the years immediately ahead. And if there may seem to be a weight of tradition against change, at least it is worth remembering that the apparent heresies of one generation become the orthodexies of the next. The ultimate validity of any social measure will depend not upon its antecedents, but upon its current and future utility."

Desirability of amending.

1.13. There is, therefore, considerable justification for undertaking a study in depth of the Act and for considering what amendments of the law are needed.

Simplification of language.

1.14. There is another aspect which is of special importance in connection with legislation intended for the common man, like the Workmen's Compensation Act. In such legislation the expression of the law should be as simple as possible,—of course consistently with that precision which is expected of every legal writing, whether legislative or otherwise. Some of the provisions of the Act are unsatisfactory, because the degree of detail, elaboration and complexity renders them unintelligible to those for

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1. Section 53, Employees' State Insurance Act, 1948, passed as a result of the Report of Professor B. P. Adarkar, on Health Insurance for Industrial Workers (1946).

2. Employees' State Insurance Act, 1948.

3. Woodhouse Commission—Report on compensation for personal injury (New Zealand 1969), para 33, cited in note on Compensation for personal injury (1969) 20 I.C.L.Q 191, 196.

whom they are intended, and some others have become obsolescent. In general, while the Act concentrates mainly on matters of detail, in some respects it fails to deal adequately with the essential ideas.

Matter in the Concurrent List.

1.15. Before closing this Chapter, we may state that the subject-matter of the Act falls within the Concurrent List and Parliament is, therefore, competent to deal with it.[1]

1. Concurrent List, entry 24.

## CHAPTER 1A

## HISTORY AND MAIN FEATURES

Introduction

1A.1. A few observations about the history of the Act and its main features may now be appropriate. We shall, for this purpose, take a general view of the compensation law. We shall then examine the sources of this branch of the law, and its significant features. Sometimes, reference will be made to legislation in other common law jurisdictions.

History of compensation.

1A.2. Speaking historically, the concept of compensation has gone through several stages:

(1) At some remote period, well before the Twelve Tables, the infliction of an injury led to attempts to exact vengeance either by the person injured or by his kin;

(2) In course of time, custom began to impose limits upon the extent beyond which vengeance might not be so exacted.

(3) At a still later stage, the State itself, in the form of some central authority, began to regulate the exaction of revenge in the form of imposition of punishment.

(4) So, far the concept of vengeance was prominent. Ultimately, the stage is reached in which elements of revenge have disappeared, and the principle is established throughout the law that *for every injury compensation should be paid.*

But this liability for compensation is, in general, still based on fault.

(5) The next stage could be the one where compensation is payable *without fault.* The law is moving in this direction, but the movement covers only certain fields of activities for the present. The Act is concerned with one of them.

History of workmen's compensation.

1A.3. The workmen's compensation system was the result of growing dissatisfaction with the common law procedures and employees' liability laws formerly applying to cases of work injuries.[1] Under the common-law procedure, the employee who was injured on his job got little or nothing in recompense. To recover damages against his employer, he had to file a suit and prove that the injury was due to the employer's

1. U.S. Deptt. of Labour, State Workmen's Compensation Laws, Bulletin No. 161 (1968 revision) page 2.

negligence. This was a costly, difficult and long drawn-out process. And, in addition, the employer, even though he had been negligent, could avail himself of three common law defences, namely, assumption of risk (in other words, *volenti non fit injuria*), fellow servant rule, and contributory negligence.

Adjustments of the legal machinery, necessitated by industrial changes.

1A.4. When, during the last century, the industrial employer came to displace the merchant and the craftsman as the pivot of the economic system, not the least important among the adjustments that were called for was the creation of legal machinery whereby the inevitable toll of human life and limb, caused by large scale mechanical production and distribution, could be equitably allocated between employer and employee.[1] The process by which the adjustment has been, and is being, made is, in the main, a matter of legislation. The courts, guided by established doctrines of the common law, found little that was satisfactory. More significant, in developing that which they found, they were guided by economic ideals that were fast becoming little more than convenient fictions for rationalization.[2]

"All these conditions (of master and servant)" said Bentham,[3] "are a matter of contract. It belongs to the parties interested to arrange them according to their own convenience." And such was the social philosophy upon which courts erected the common-law rules governing an employer's liability for industrial accidents. Where the employer was personally at fault, recovery was easier.

1A.5. At common law, the doctrine of vicarious liability was subject to a peculiar exception whereby an employer was not vicariously liable to one servant for the negligence of another. In England, this exception was known as the doctrine of common employment. In some other jurisdictions, it was known as the fellow servant rule. It is generally traced to *Priestley* v. Fowler,[4] and was first clearly enunciated in the latter case of *Hatchinson*.[5]

The doctrine was based on a fictitious implied term in the contract of service to the effect that the servant agreed to run the risks naturally incident to his employment, and that one of these risks was that of harm due to the negligence of a fellow-servant.[6]

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1. Lester Schoene, "Workmen's Compensation — Inter-State Railways" (1933-34) 47 Harvard Law Review 389.

2. Lester Schoene, "Workmen's Compensation — Inter-State Railways" (1933-34) 47 Harvard Law Review 389.

3. Bentham, Theory of Legislation (Hildreth Tr., 2nd ed. 1871) 199, quoted in Lester Schoene, "Workmen's Compensation — Inter-State Railways" (1933-34) 47 Harvard Law Review 389.

4. *Priestley* v. *Fowler*, (1837) 3 M & W 1.

5. *Hatchinson* v. *York, New Caste etc. Rly. Co.* (1850) 5 Exch. 343.

6. Salmond, Torts (1965) page 668.

But it might be difficult for the workman to show that his injury was due to the negligence of anyone at all or even to discover what its cause might have been. So the Workmen's Compensation Act, 1897, adopted a new approach. The Act provided compensation for a workman injured in the course of his employment even though no negligence on the part of his employer or anyone else could be shown. The basis of the workmen's claim was not negligence or fault but accident.[1]

Where injury was occasioned through the negligence of a fellow servant,[2] or resulted from one of the ordinary risks of the employment,[3] it was said that the employee, having chosen to encounter those dangers in return for a stipulated compensation, could not be heard to complain.

Problem of industrial disability-First legislation in Europe.

1A.6. The purpose of workmen's compensation laws was to eliminate the hardships experienced under the common law system, by providing prompt payment of benefits—regardless of fault and with a minimum of legal formality.

Origin of compensation system in Europe—Problem of industrial disability.

1A.7. Disability or death caused by industrial employment is not a problem special to our country. On the contrary, these "grim companions" of mass production, and the problems which they raise, have been dealt with legislatively throughout Europe and America since the latter part of the nineteenth century. Germany, Austria and Norway had provided Workmen's Compensation legislation for their industries between 1884 and 1894. By 1903, most European countries had such a system in effect.

Developments in the U.S.A.

1A.8. Workmen's compensation laws in the U.S.A. had their beginning in 1908, when the Federal Government passed an Act covering certain civil employees.[4] State laws in the U.S.A. started in 1911, when Washington and Kansas both passed such laws on March 14; both laws, however, had a later effective date. The first State to put an Act into effect was Wisconsin, whose law was approved and became effective the same day—May 3, 1911. Seven other States passed laws in 1911, and from then onwards, there was rapid progress for several years.

In 1909, New York State and several other American States appointed commissions to study the problem. Pennsylvania followed suit in 1911. In 1915, article III, section XXI of the

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1. Salmond, Torts (1965) page 669.
2. See Labatt, Master and Servant (2nd ed. 1913), Vol. 4, page 1393, cited in Lester Schoene, "Workmen's Compensation" etc. (1933-34), 47 Harvard Law Review 389.
3. Labatt, Master & Servant (2nd ed. 1913), Vol. 3, page 1167, cited in Lester Schoene, "Workmen's Compensation" etc. (1933-34) 47 Harvard Law Review 389.
4. U.S. Deptt. of Labour, State Workmen's Compensation Laws, Bulletin No. 161 (1968 revision), page 1.

Constitution of Pennsylvania was amended[1] to permit such legislation. In the same year, Pennsylvania's first Workmen's Compensation Act was passed.[2]

In 1920, all but six States in the U.S.A. had such laws ,and the Federal Act for civil employees had been re-enacted in 1916.[3] It was not until 1948 that the last State passed such an Act, and, in the meantime, another Federal law had been passed—the Longahoreman's and Harber Workers' Compensation Act—which was made applicable also, by a separate Act, to the District of Columbia.

As has been stated by an American writer[4]—

> "Since the compulsory retirement of the horse in favour of steam power, industrial accidents have persistently nibbled away at the stability of our modern economy. These misfortunes impose upon us twin obligations. The first is to the injured workman. In justice we should alleviate the hardship of the labourer whose body is broken or destroyed in producing for our common well-being. The second obligation is to the stability of our economy. For the common good we must cushion the financial impact of such misfortunes on our industries."

Movement in India.

1A.9. Similar considerations weighed with the Indian Legislature in enacting the Workmen's Compensation Act in 1923. As pointed out by Dr. Panandikar,[5] compensation schemes were not unknown in India. But the worker was always at the mercy of the employer. He could not claim compensation as a matter of right. The compensation was paid only when the employer, out of his kind gesture, granted it. Dr. Hasan[6] tells us: "As far back as 1884, workers in Bombay made a demand for compensation in a petition to the Government of India, but nothing came out of it."

It appears that in 1920, the workers actually agitated, and a number of strikes were organised in the country on this issue.

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1. Act of June 2, 1915, P.L. 736, as amended, PA. STAT, ANN, tit. 771-1056 (Purdon 1952).
2. See John M. Melaughtin, "Double Standards in Workmen's Compensation (1957) 30 Temple L.Q. 294.
3. U.S. Deptt. of Labour, State Workmen's Compensation Laws, Bulletin No. 161, (1968 revision), page 1.
4. John Melaughtin, "Double Standards in Workmen's Compensation in Pennaylvanin , (1957) 30 Temple L.C. 294.
5. Panandikars Industrial Labour in India, cited by Vivek Ranjan Bhattacharya, Social Security Measures in India (1970), page 76.
6. N. Hasan, Social Security System of India (1972), page 65.
7. Rai Choudhary, Social Security in India and Britain, page 34, cited by Vivek Ranjan Bhattacharya, Social Security Measures in India (1970), page 76.

Bi of 1922

1A.9A. In July 1921, the Government of India addressed the local Governments on the desirability of introducing legislation for the payment of workmen's compensation.[1] This was done after a detailed examination of the question by the Government of India. The provisional views of the Government of India were published for general information. The advisability of legislation had been accepted by the great majority of local Governments and of employers' and workers' associations, and the Government of India believed that public opinion generally was in favour of legislation.[2]

In June, 1922, a committee was convened to consider the question. This committee was composed, for the most part, of members of the Imperial legislature. After considering the numerous replies and opinions received by the Government of India, the Committee was unanimously in favour of legislation, and drew up detailed recommendations regarding the lines which, in its opinion, such legislation should follow. The Bill presented in 1922 followed these recommendations[3] closely. A number of supplementary provisions were added where necessary, but practically no variations of importance were made.

Amendments since 1923.

1A.10. The Act has, since its enactment, been extensively amended. Some of the amendments were necessitated by International Labour Organisation Conventions,—*e.g.* the amendment of 1925. An extensive revision of the Act followed on the Report of the Royal Commission on Labour (1931),—the amendment of 1933. Constitutional changes made by the Government of India Act, 1935 necessitated amendment of the Act in 1937. Several amendments were made in 1939, 1942 and 1946, their principal object being to widen the scope of the Act in one respect or another.

The amendment Act 7 of 1959 enlarged the scope of the Schedules I and II. For example, the number of occupational diseases was increased from 12 to 15, and the number of injuries entitling the workman to partial disablement benefits was increased from 14 to 54. The Act also attempted to make the procedure speedy. For example, the Amendment Act reduced the 'waiting period' from 7 days to 3 days. It also removed the difference between adults and minors in respect of payment of certain benefits.

Amendment Act of 1959.

1A.11. History of the Amendment Act of 1959 is interesting. After independence, it was felt that the machinery established for the assessment and payment of compensation was slow-moving, and that the final settlement took a lot of time. In order to

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1. N. Hasan, Social Security System of India (1972), page 66.

2. Statement of Objects and Reasons annexed to the Bill of 1922 dated 29th August, 1922.

3. Statement of Objects and Reasons annexed to the 1922 Bill, dated 29th August, 1922.

redress this situation, the Central Government in July 1949 addressed a letter to the State Governments inviting suggestions for ensuring speedy settlement of claims. In the light of the suggestions made, a memorandum showing the proposals for amending the Act was prepared. The memorandum was circulated in July, 1953. Later on, a technical committee was appointed in December, 1955 to suggest the amendment of the list of occupational diseases. The Act of 1959 was passed after a consideration of all this material.

An amendment effected in 1962 raised the wage limit of the covered workman from Rs. 400 to Rs. 500 per month.

Effect of Employees' State Insurance Act.

1A.12. In England, after the General Election of June, 1945 which brought the Labour Party into power, the workmen's Compensation Act was replaced by the National Insurance (Industrial Injuries) Act of 1946.

In India also, after the passing of the Employees' State Insurance Act,[1] the area covered by the Workmen's Compensation Act has narrowed down to a certain extent. But, as already pointed out,[2] the Employees' State Insurance Act applies only to (i) factories, and (ii) notified establishments, and, in the rest of the cases the Workmen's Compensation Act still holds the field.

Trend of Developments.

1A.13. It would be of interest to refer to an analysis of the trend of developments by Warren A. Seavey. He says[3]—

"In determining whether there is tort liability when harm has been caused, the focal point of conflict has been whether one should be liable for harm irrespective of fault. The law has been in a state of flux in its desire to protect the two basic interests of individuals—the interest in security and the interest in freedom of action. The protection of the first requires that every person who has been harmed as a result of the activity of another should be compensated by the other irrespective of his fault; the protection of the second requires that a person who harms another should be required to compensate the other only when his activity was intentionally wrongful or indicated an undue lack of consideration for the interests of others. At any given time and place the law is the resultant derived from the competition between these two basic concepts."

Gist of the operative provisions.

1A.14. We shall now have a look at the operative provisions of the Workmen's Compensation Act. Under the Act, if personal injury is caused to a workman by an accident arising out

1. Employees State Insurance Act, 1948.

2. Chapter 1, *supra*.

3. Warren A. Seavey, "Principles of Torts, (143), 56 Harv. Law Rev. 56, 72, reprinted in Selected Essays on Law of Torts (Harvard, 1959), page 1, 2.

of, and, in the course of his employment, his employer shall be liable to pay compensation irrespective of fault, in accordance with the provisions of Chapter 2 of the Act.[1] The expression "workman" is defined so as to include not all employees, but only a limited class. The liability of the employer to pay compensation is, under this provision, excluded in the case of certain minor injuries;[2] and there is no liability for an injury caused by an accident directly attributable to the workman being under the influence of drink or drugs or to the wilful disobedience of orders and rules by the workman, or to the wilful removal or disregard by the workman of safety devices.[3] Certain diseases contracted in an employment are also regarded as "injuries caused by accident",[4] for the purpose of the Act. The liability arising under the Act cannot be excluded by contract.

Chief principles of Workmen's Compensation Act.

1A.15. The chief principles of the Act can be reduced to the following principles. These principles lay down its scope, modify the common law, quantify the compensation or create an alternative machinery :

(1) *Scope of the industrial injury.*—The compensable injury is described as any personal injury occurring by accident "arising out of, and in the course of, the employment."[5]

(2) *Scope of the employment to which the Act applies.*—The Act is applicable to certain specified employments.[6] Moreover, the benefit can be claimed only by a person falling within the definition of "workman".

These two principles lay down the scope of the Act.

(3) *Employer's liability irrespective of fault.*—The employer is (with limited exceptions) liable to pay compensation irrespective of fault.[7]

(4) *Contracting out of the Act not permissible.*—The Act overrides any contract to the contrary.

These two principles modify the common law.

(5) *Calculation of compensation.*—Compensation is, from the point of view of the workman, the most important

1. Section 3(1), Workmen's Compensation Act.
2. Section 3(1), proviso (a).
3. Section 3(1), proviso (b).
4. Section 3(2), section 3(2A), section 3(3) and section 3(4).
5. Section 3(1).
6. Section 2(1)(n), read with the Second Schedule.
7. Section 3.

part of the Act. The broad questions to be determined are—

(a) Nature of the injury, and its consequences[1]—
  (i) Death;
  (ii) Permanent total or partial disablement; and
  (iii) Temporary disablement.
(b) Amount of "wages".
(c) Whether compensation should be periodical or in lump sum.

(6) *Case of death.*—Rights of dependants are dealt with.[2] These two principles quantify the compensation in detail.

(7) *Machinery for speedy settlement*[3].—Since the scheme of compensation is complicated, and usually involves the determination of difficult questions of fact and law, a machinery for speedy settlement is provided.

This last principle creates a machinery alternative to the conventional courts.

A few detailed comments about some of these aspects may be useful.

Liability confined to personal injury.

1A.16. The liability to pay compensation under the Act is confined to "personal injury",—an expression not defined in the Act. The injury must have been caused by "accident". This expression is also not defined in the Act, though, as pointed out above,[4] there is a special provision regarding certain diseases. The accident must arise "out of and in the course of employment",—a phrase which, of necessity, must be interpreted in the light of the facts in each case. If liability arises under the Act,, compensation is payable by the "employer"—which expression is defined[5] in the Act. Lastly, the liability is owed only to a 'workman',[6]—which is an important expression and which is defined in the Act,[7] so as to include his dependants.

The injury must arise "out of and in the course of his employment". These words were used in England in the old Workmen's Compensation Acts from 1897 to 1945. The self-same words have been used in England in the Road Traffic Acts, 1930 to 1960. They have also been used in Employer's liability policies. This expression, is, perhaps, the most important one in the Act.

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1. *Cf.* section 4.
2. Section 2(1)(d) and section 8(5).
3. Sections 19 to 30.
4. See *supra.*
5. Section 2(1)(e).
6. Section 2(1)(n), read with the Second Schedule.
7. See *infra.*

**Importance of the definition of "workman"**

1A.17. The definition of "workman",[1] as given in the Act, specifically excludes a person whose employment is of a casual nature of that casual worker is employed otherwise than for the purpose of the employer's trade or business. The definition also excludes a person working in the capacity of a member of the Armed Forces of the Union. Subject to these two important exceptions, "workman", as defined in the Act, means a person who is—

(i) a railway servant as defined in section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed on monthly wages not exceeding five hundred rupees *in any such capacity as is specified in Schedule II.*

In order to determine the question whether a person is a workman or not, one has necessarily to look to (i) Schedule II, (ii) capacity in which the person is employed [with a modification in case of railway servants falling under item (i)] and (iii) the monthly wages [except in the case of railway servants falling under item (i) of the definition.]

Persons drawing as wagss more than Rs. 500 a month (unless they are railway servants) are not "workman". Persons of this type were presumably regarded as qualified, by their education and their means, to make provision for themselves.

Casual labourers who are not employed for the purposes of the employer's trade or business are not workmen. There are obvious practical difficulties in including them.

Members of the armed forces are also excluded, because they agree to serve on the understanding that hazards are not "accidents". (These persons may, however, be covered by separate statutory or non-statutory provisions, if they sustain injuries in the course of their duties).

In the case of railway workers, falling under item (i) of the definition, the restriction as to the minimum amount of wages does not apply. The apparent assumption is that (with the exception of persons "permanently employed" in the larger railway offices),[2] all railway employees have to undergo a certain amount of risk and there would be great difficulty in making a distinction between those working in the specified capacity[3] and those not so working.

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1. Section 2(1)(n).
2. This exception will be separately examined.
3. Second Schedule.

Second Schedule.

1A.18. With reference to the definition[1] of "workman", thus, the most important part of the Act is the Second Schedule, which contains the list of persons who, subject to the provisions of section 2(1)(n), are included in the definition of "workman". It is to be noted that while railway servants of certain categories[2] become workmen for the purpose of the Act irrespective of their monthly wages, other employees become workmen only if two conditions are satisfied; first their monthly wages must not exceed Rs. 500, and secondly, they must be employed in any such capacity as is specified in the Second Schedule.[3]

1A.19. Thus, for understanding the scope of the Act, the Second Schedule is very important. The Schedule itself is a very long one, containing entries (i) to (xxxii).

Notification by State Governments.

1A.20. Some State Governments have availed themselves of the power vested in them to apply the Act to other hazardous occupations.[4] The Government of Maharashtra has, for example, extended the Act for farm workers. Coconut plucking has been covered in Tamil Nadu. The Governments of Tamil Nadu, U.P., Mysore and Bihar have extended the applicability of the Act to the loading or unloading of cargo on any mechanically operated vehicles or driving such vehicles for the transport of goods. The Government of Bihar has extended the Act to sweepers engaged in cleaning deep surface drains, sewers and on trucks.

In the Mysore State (now Karnataka), outdoor Municipal or District Board workers have been covered in benefits under the scheme. Other works which have been brought within the ambit of the scheme are loading, unloading and transport of timber, works in all establishments using power and the establishments covered under the Factories Act.

Employments covered by the Act.

1A. 21. We now come to the employments covered by the Act, listed in the Second Schedule. It would appear that the various categories of employment, listed in the Second Schedule to the Act, broadly share a common feature, namely, that the employments mentioned are comparatively more hazardous than employments not listed in the Schedule. No doubt, where the Second Schedule includes an employment on the ground of the number of persons employed, it seems to take into account also the economic status of the employer, the obvious assumption being that if a large number of persons is employed, the employer would be prosperous enough and would have capacity to pay.

The principle of hazardous employment is also the basis of the power given to the State Government under section 2(3) to add, to the Scheduled. any class of persons employed in any occupation which the State Government is satisfied is a "hazardous occupation".

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1. See para 1A.17, *supra*.
2. Section 2(1)(n)(i).
3. Section 2(1)(n)(ii).
4. N. Hasan, Social Security System in India, (1972), page 68.

Provision in Soviet Civil Code.

1A.22. It may, in this connection, be of interest to refer to a provision of the Soviet Civil Code, which provides for strict liability in cases of hazardous enterprises. It reads as follows:—

> "454. *Liability for harm caused by a source of increased danger.*—Organisations and citizens whose activity involves increased danger for those in the transport organisations, industrial enterprises building projects, possessors of motor cars, etc., must make good the harm caused by the source of increased danger unless they prove that the harm arose in consequence of irresistible force or as a result of the intention of the victim."[1]

It is, of course, hardly necessary to add that the above provision is a general one applicable in the field of civil wrongs. We have quoted it as illustrative of the idea of danger which has been expressly adopted in the provision.

Hazardous employments in U.S.A.

1A.23. In the U.S.A. also, in many States, the laws relating to workmen's compensation apply mainly to employments listed as hazardous and extra-hazardous employments. Moreover, most of the laws exempt employers having fewer than a specified number of employees[2]. Many States exclude agricultural employment.[3]

In many States of the U.S.A. the laws are compulsory, but in some they are elective. Where they are elective, the employer has the option of rejecting the law, but then he loses the common law defences of—

(i) assumption of risk;

(ii) negligence of fellow employee;

(iii) contributory negligence.

Most employers accept the law[4].

Compensation.

1A.24. The concept of "compensation" under the Act is linked with the nature of the injury—fatal or non-fatal, total or partial, permanent or temporary.

Compensation under the Act is thus limited not only as to persons and employments included, but also as to injuries covered. The compensable injury must be "arising out of and

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1. Article 454, R.S.F.S.R. Civil Code cited in Alice Jay, "Principles of Lianility in Soviet Laws of Torts" (1969) 18 I.C.L.Q. 424, 427 (replacing old article 404).

2. U.S. Department of Labour, State Workmen's Compensation Laws Bulletin No. 161 (1969) page 11.

3. See U.S. Department of Labour, Agricultural Workers and Workmen's Compensation Bulletin No. 206 (1964).

4. U.S. Department of Labour, State Workmen's Compensation Laws Bulletin (1969), page 3.

in the course of employment". The expression "injury" was, even before the Legislature made a provision on the subject, held in many countries[1] to include occupational diseases.

1A.25. The disabilities caused by a personal injury have been classified, in the Act, as follows :— Disabilities-Classification of.

The large majority of cases for which cash benefits are paid involve *temporary* total disablement. The employee is unable (in such cases) to work at all while he is recovering from the injury, but he is expected to recover fully.

A *permanent* partial disablement means a worker has a permanent injury, but is not completely disabled. He is usually able to work. If he cannot go back to his old job, he can often do other types of work or be trained to do so.

As against this, persons having a permanent total disablement are presumed to be unable to work at all, or unable to work regularly in any well-known branch of the labour market. When death occurs, the purpose of compensation is to provide for members of the family or other persons who have been dependent on the deceased workman.

1. *E.g.*, the Massachusetts Court (U.S.A.), see U.S. Department of Labour Bulletin No. 161 (1969), page 19.

## CHAPTER 1B

## EXTRA-TERRITORIAL APPLICATION OF THE ACT

Introductory.

1B.1. We propose to deal in this Chapter, with the extra-territorial application of the Act (concerning section 1). The reasons for discussing the subject at length will be apparent from what follows.

Matters to be considered in connection with extra-territorial operation.

1B.2. The question of extra-territorial application of the Workmen's Compensation Act might assume practical importance, not only in respect of sailors outside India who, apparently, are covered by the Act,[1] but also in respect of Government employees employed outside India,—and also as regards private employees employed on trade or business outside India (who are not, at present, covered). Consideration of the question of insertion of a provision, in this regard, in the Workmen's Compensation Act, requires a brief discussion of the following matters :—

(a) present position;

(b) the competence, with reference to international law, to deal with the subject;

(c) whether the present position should be changed.

For understanding the present position, it is necessary first to refer to the ordinary rule of construction.

The distinction between the domestic and the extra-territorial effect of legislation was clearly developed when Bartolus (1314-57) formulated the two guiding questions as follows:

> *Primo, utrum statutum/sorrigatur intra*[2] *terrium ad nom subditos ? Secundo, utrum effectus statuti porrigatur extra territorium statuentium ?*

*Present position—ordinary rule of construction*

Rule of construction.

1B.3. The second question of Bartolus[3] is relevant for our purpose, namely, whether the effect of a statute extends beyond the territory of the State whose Legislature passed it. The ordinary rule of construction is that a statute does not have

1. See discussion, *infra* Para 1B.10.

2. 'First, whether a statute extends within its territory to those not subject; second, whether the effect of a statute extends beyond the territory of the legislator.

3. Para 1B.2, *supra*.

extra-territorial operation, in the absence of express words or necessary implication to the contrary.

This general principle is applicable to all statutes[1-2] and therefore to the Workmen's Compensation Act[3] as well. Lord Russell's judgment in *R.* v. *Jameson*[4], is instructive on the point.

In *R.* v. *Jameson*[5], Lord Russell of Killowen observed:

"But first I should like to make some observations with regard to the rules of construction applicable to statutes such as this. It may be said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are to be gathered from the language and purview of the particular statute. But there may be suggested some general rules—for instance, if there be nothing which points to a contrary intention, the statute will be taken to apply only to the United Kingdom. But whether it be confined in its operation to the United Kingdom, or whether, as is the case here, it be applied to the whole of the Queen's dominions, it will be taken to apply to all the persons in the United Kingdom or in the Queen's dominions, as the case may be, including foreigners who during their residence there owe temporary allegiance to Her Majesty. And, according to its context, it may be taken to apply to the Queen's subjects everywhere, whether within the Queen's dominions or without."

Rebuttable presumption in England.

1B.4. In England, it is a well founded, though rebuttable, 'presumption that Parliament does not assert or assume jurisdiction which goes beyond the limits established by the common consent of nations'[6]. In 1808, Lord Ellemborough[7] put the famous rhetorical question repeated in 1870 by Lord Blackburn)[8]:—

> "Can the island of Tobago pass a law to bind the rights of the whole world? Would the world submit to such an assumed jurisdiction?"

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1. Halsbury (3rd ed.), Vol. 36, p. 428.
2. (a) *Jefferys* v. *Boosey*, (1854) 4 H.L.C.R. 815, 925 (Per Lord Wensleydale);
   (b) *Macleod* v. *Attorney General for New South Wales*, (1891) A.C. 546 (P.C.).
   (c) *Sirdar Cordyal Singh* v. *Rajah of Faridkote*, (1894) A.C. 670, 683 (per Lord Selborne);
   (d) *Cooke* v. *Vogeler*, (1901) A.C. 102;
   (e) *R.* v. *Jameson*, (1896) 2 Q.B. 425, 430, (per Lord Russell of Killowen).
3. Para 1B.7, *infra*.
4. *R.* v. *Jameson*, (1896) 2 Q.B. 425, 430, (per Lord Russell of Killowen).
5. *R.* v. *Jameson*, (1896) 2 Q.B. 425, 430.
6. (a) *Theophile* v. *The Solicitor-General*, (1950) A.C. 186, 195, per Lord Porter;
   (b) *Colquhoun* v. *Heldon*, (1890) 25 Q.B. 129, 134, 135 (per Lord Esher).
7. *Buchanan* v. *Rucker*, (1808) 9 East 192.
8. *Schibsby* v. *Westenholz*, (1870) L.R. 6 Q.B. 155, 160.

Rule of construction in England as to territorial extent.

1B.4A. *Prima facie,* an Act of the United Kingdom Parliament, unless it provides otherwise, applies to the whole of the U.K. and to no event outside U.K.[1] Of course, it is clear that the United Kingdom Parliament can legislate extra-territorially,[2] and if it does so, English courts must treat the statute as valid, and give it effect[3].

1B.5. The rule is sometimes stated in the succinct form of the principle that "unless the contrary is made clear, an Act of Parliament is not intended to have extra-territorial effect.[4]"

Rule of construction in U.S.A.

1B.6. The necessity for reading legislation in the light of the limitations imposed by the doctrine of international jurisdiction has been appreciated in the United States of America also for a very long time. In 1818, Chief Justice Marshall emphasised[5] that general words in a statute 'must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them.' This rule, which merely illustrates the more basic principle that an enactment 'ought never to be construed to violate the law of nations if any other possible construction remains'[6] has, since then, been often re-affirmed[7], and is not open to doubt.

Competence not denied position on the continent.

1B.6A. The above discussion is not intended to deny the competence of the U.K. Parliament, as a matter of *English Constitutional law,* to pass legislation having extra-territorial effect. There are common law dicta[8] in earlier cases to the effect that legislation cannot change a rule of international law. These appear to proceed upon the theory that International law is the law of nature applied to international relations, and hence is of superior authority to positive law. "To that extent, Lord Mansfield's view may be the last echo in England of Coke's doctrine in *Bonham's case.*[9]" The view which has prevailed[10]

1. *A. G. Alberta* v. *Ruggards Assets etc.* (1953) 2 All E.R. 951, 956 (P.C.).
2. (a) *Cail* v. *Papayanni,* (1863) 1 Moo P.C. (N.S.) 471; 15 E.R. 778;
   (b) *Niboyet* v. *Niboyet,* L.R. (1873) 4 P.D.I.
   (c) *Re Wendt* (1889) 22 Q.B.D. 733;
   (d) *Adam* v. *British & Foreign S. S. Co.* (1898) 2 Q.B. 430;
   (e) *C.E.B. Draper* v. *Edward Turner,* (1965) 1 Q.B. 424; (1964) 3 All E.R. 148, 152.
3. *Theophile* v. *Solicitor General,* (1950) 1 All E.R. 405 (H.L.).
4. *Bank Voor Handel on Scheenvaart* v. *Statford,* (1953) 1 Q.B. 248, 258 per Devlin J. (as he then was).
5. *United States* v. *Palmer,* (1818) 3 Wheat, 610, 631.
6. *The Charming Betsy,* (1804) 2 Cranch 64, 118.
7. *Lauritzen* v. *Larsen,* (1953) 345 U.S. 571.
8. See discussion in Pound, "Common Law and Legislation, (1907-1908) 21 Harvard L.R. 383, 394.
9. Pound, "Common Law and Legislation, (1907-1908) 21 Harvard L. Rev. 383, 394.
10. *cf.* Evatt J. in *Trustees etc. Co.* v. *Federal Commissioner of Taxation,* (1933) 49 C.L.R. 235, 239.

is that the courts are to prevent interference of legislation with international law by interpretation; that, to avoid a conflict between international law and a statute, the courts will resort, if need be, to strained and forced construction. But, if the conflict is unavoidable, the statute prevails.

On the Continent, where different views of the relation of courts to legislation obtain, it is significant that instead of discussing the duty of *interpreting statutes* so as to accord with international law, (as do English and American authors), textwriters consider the *duty of states to change their laws* so as to bring them into harmony with the just demands of other states[1].

Nevertheless, the general rule in Anglo American Law is that the legislature is presumed not to have acted so as to lay down extra-territorial application.

English cases under ... ns Compensation Act.

1B.7. In England, this general rule has been held to be applicable to the Workmen's Compensation Act also. Thus, it has been held that a British workman is not entitled to compensation in respect of an accident in foreign countries while working there, for a British employer[2]. In that case, an English workman in the employment of English contractors was sent out by them to Malta, to work for them there, and met with a fatal accident. It was held that his widow was not entitled to compensation under the Workmen's Compensation Act, 1906. It was also held that the Workmen's Compensation Act, 1906 had no application outside the territorial limits of the United Kingdom, except in the case of seamen and apprentices as provided by section 7 (of the 1906 Act).

Cozens Hardy M.R.[3] said: "What is the widow's claim here? She is claiming, not as party to the contract, not as claiming any rights under a contract made by her or by any person through whom she claims, but she is simply claiming the performance by the defendants of a statutory duty, which statutory duty is said to be found in the Workmen's Compensation Act. Now, that brings us face to face with this proposition. What is the ambit of the statute and what is the scope of its operation? It seems to me reasonably plain that this is a case to which the presumption which is referred to in Maxwell on the Interpretation of statutes in the passage at page 213, which has been read by Mr. Waddy, must apply: "In the absence of an intention clearly expressed or to be inferred from its language, or from the object or subject-matter or history of the enactment, the presumption is that Parliament does not design its statutes to operate beyond the territorial limits of the United Kingdom."

1. Pound, "Common Law and Legislation", (1907-1908) 21 Harvard L.R. 383, 384.

2. *Tomalin* v. *Pearson*, (1909) 2 K.B. 61 (C.A.).

3. *Tomalin* v. *Pearson* (1909) 2 K.B. 61, 64 (C.A.).

Fletcher Moulton L. J. said in the same case : "And, as this is a statutory right, we are driven to inquire what is the ambit logically of the operation of the statute.

"It clearly cannot apply universally all over the world. I have no doubt, for the reasons the Master of the Rolls has given, it applies to the United Kingdom alone. The accident must be one happening in the United Kingdom to a person there who has the statuts of a Workman to some employer who, in some way or another, is made liable to the jurisdiction of this Act."

Cases relating to Ships.

1B.8 Similarly, a British ship on the high seas is not "British territory" so as to enable a workman injured thereon to bring himself within the Act, unless he is within the special provisions relating to seamen[1].

English act of 1925.

1B.9. These decisions were rendered under the English Act of 1906, but are valid for the later Act also. In England, the Act of 1925 applied to members of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner or (if there is more than one owner) the managing owner, or manager, resides or has his principal place of business in the United Kingdom[2].

This is the only limited situation in which the English Act had extra-territorial operation.

*Present position—under the Indian Act*

Present position under the Indian Act.

1B.10. As regards the position under the Indian Act, it may be stated that there is no express provision in the Act regarding extra-territorial application in general. But it would appear that implicitly the Act recognizes that in one situation, the Act is intended to have extra-territorial operation,—though of a very limited character. We refer to the provision as to ships[3]. Section 15 states that "this Act shall apply in the case of workmen who are masters of ships or seamen" (subject to certain modifications). This would seem not to be confined to ships in Indian territorial waters. Nor is it confined to ships registered in India. The word "registered", which occurred in section 15 and in the definition of "seaman" in section 2(1)(k), was omitted[4] in 1933, alongwith the definition of "registered" which appeared previously[5] as section 2(1)(j) and which stated that "registered" means "registered in British India". Section 15(2), under which the time limit for making a claim for compensation is to be counted after news of the death has been received by the claimant etc., suggests

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1. *Schwartz* v. *India Rubber etc. Co.* (1912), 2 Kings Bench 299 (C.A.).
2. Section 35, etc. (English) Act of 1925, corresponding to section 7 of the Act of 1906).
3. Section 15.
4. Act 15 of 1933 (amending the Workmen's Compensation Act). See para 1B.12, *infra*.
5. See para 1B.12, *infra*.

that the Legislature had in mind not merely accidents occurring on the shores of India or within its territorial waters, but also accidents occurring abroad or on the high seas. The procedural provision in section 15(3), to some extent, bears out such a wide interpretation; and the provision in the Act relating to venue,[1] under which, where the workman is the master of a ship or a seaman, any matter under the Act may be done by or before a Commissioner "for the area in which the owner or agent of the ship resides or carries on business," is also wide enough to support such an interpretation. The last mentioned provision (section 21) is helpful in another respect, namely, it indicates a legislative intention to confine the application of the Act, (in relation to ships) to cases where the owner or *agent of the ship resides or carries on business in India.*

Intention of 1933 Amendment.

1B.11. It cannot however be disputed that all these provisions are equivocal, in the sense, that they can be held to be confined to accidents occurring within Indian territorial waters. But that does not seem to be the intention, particularly if the amendment of 1933 is kept in mind.

Position before 1933—requirement of registration.

1B.12. This brings us to the amendment of 1933. It appears that before 1933, there was a requirement that the ship must be registered in British India, but[2] the Report of the Royal Commission on Indian Labour pointed out that many Indian seamen were employed on British ships, and those ships were registered outside British India, so that the Act was not available to them[3] No doubt, as that Commission pointed out, certain arrangements had been made to protect their rights by ensuring that they would be entitled to compensation under the British law, and that the Workmen's Compensation Commission in India would act as the arbitrator (under the British law) for determining the claim under the British law. But, since the arrangement was found to be unsatisfactory, the Royal Commission suggested removal of the word" "registered", in this as well as in the other sections pertaining to ships.

Amendment of 1933.

1B.13. This recommendation of the Royal Commission was duly carried out in 1933. This amendment may be taken as having been intended to have extra-territorial application. If so, international law becomes relevant. and is. therefore. considered below.[4]

*Position under International law*

International law-territorial waters.

1B.14. So far as the application of a law to *territorial waters* is concerned, there is no serious difficulty from the point of view

1. Section 21(1), proviso, see para 1B.26, *infra.*
2. Report of the Royal Commission on Indian Labour.
3. See also para 1B.20, *infra.*
4. Para 1B.14 *et sec. infra.*

of international law. By modern doctrine, the jurisdiction of a State to legislate in relation to events occurring within such waters is, in general, undisputed.

It was pointed out by an American writer,[1] some time ago ;

"If the locale of injury is within a sovereign's own waters, it is part of the Anglo-American tradition that the courts of that sovereign—and indeed other courts—will apply his particular version of the maritime law in translating the facts into juristic results."

"If the ship floats in territorial waters, the law of the waters traditionally speaks more loudly than that of the ship[2]."

Certain restrictions are, no doubt, imposed by conventions as to the exercise of the jurisdiction in relation to ships not registered. But, we need not go into these, as they do not touch legislative competence.

It may also be noted that, in India, fortunately, no such controversy has arisen as has arisen in the U.S.A., as to whether a particular event has occurred on "navigable waters" of the U.S.A., or whether it has occurred on State territorial waters.

An opinion given by the Law Officers, including the Queen's Advocate, in 1879, quoted in the Debates in the House of Commons on the Shipping Contracts etc. Bill,[3] may be cited.

"A British ship had put into a Spanish port and we thought in this country (England) that the Spanish authorities were behaving very vexatiously in that they were visiting various claims and penalties on the ship because, quite accidentally and without doing any harm to anyone, a quite unimportant matter had been omitted from the manifest of the cargo. Yet the Law Officers of the time reported to the Foreign Secretary in the terms :

"By the Law of Nations every independent Government is the sole judge of the measures which may best suit, promote, or insure its own people, their interests and safety; may open or chose its territory, waters, and harbours; and altogether refuse to admit, or impose what conditions it may deem fit, upon the admission of foreigners and foreign vessels. These conditions may be absurd, vexatious, inconsistent with or contrary to the usage of all other civilized nations ; still the Government has the right to impose them, and a foreign Government can only protest against their being imposed."

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1. G. H. Robinson, "personal injury in the maritime industry", (1930-31) 44 Harv. L. Rev. 223, 229.

2. See article, "Applicable Law in State Waters", (1964) 27 Temp. L.Q. 479, 480.

3. H. C. Debates, Vol. 698 (15 July, 1964) Col. 1243 (Speech of Mr. Charles Fletcher Cooke).

1B.15. Similarly, if the amendments to be made were confined to ships registered in India, no difficulty would arise in international law. Ships registered in India.

1B.16. But the application of the Act to extra-territorial accidents on non-Indian ships or to other extra-territorial accidents, raises certain problems. Difficulty as regards extra-territorial accidents.

The current view in international law seems to be —

(a) A State has jurisdiction to prescribe rules governing the conduct of its nationals, wherever they are found.

(b) But a State may not prescribe rules governing the conduct of aliens outside its territory, merely because such conduct affects nationals of the State outside of its territory.[1]

1B.17. English legislation and judicial decisions observe these limits. The judicial decisions cited above in connection with the discussion of the ordinary rule of construction,[2] are relevant on this point also. English view.

1B.18. The same principle has been applied in the U.S.A. The earliest judgment relevant to the topic is that of Chief Justice Marshall.[3] Some of the more important recent cases[4] happen to relate to labour legislation,—e.g., the Employer's Liability Act. U.S.A. view.

There are other American cases[5] also, to the same effect.

1B.19. Speaking judicially,[6] Story had said in 1824: "The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens." Ten years later,[7] while Story's view.

1. The position, as stated above, is based on a study of—
   (a) Harvard Researches in International Law Jurisdiction (1935) Vol. 1, page 439, et. seq.
   (b) Jennings, "Extra-territorial Jurisdiction and Anti Trust Laws" (1957), British Year Book of International Law, 157.
   (c) Article in (1962) British Year Book of International Law, 457.
   (d) Winters' article on Maritime Torts in (1954) 3 I.C.L. Q. 115
   (e) Ellis, "Extra-territorial applications of anti-trust legislation" (1970) Netherlands Law Review I.L.A. Conference Issue.
2. See discussion as to rule of construction, *supra*, and as to rebuttable presumption, para 1B.3 and 1B.4, *supra*.
3. *Rose* v. *Himely*, (1808) 4 Cranch 241, 297.
4. (a) *New York Central Railroad* v. *Chisholm*, (1925) 268 U.S. 29 (Employers Liability Act held not applicable to accidents in Canada);
   (b) *Vermilva Brown Co.* v. *Cornell* (1948) 335 U.S. 377 93 L. Ed. 76 (Fair Labour Act and Employment in Bermuda).
5. *McCulloch* v. *Sociedad Nacional de Mondrus*, (1963) 372 U.S. 10.
6. *The Apollon*, (1824) 9 Wheat 362, 370.
7. Story, conflict of Laws, (1934) page 18-20.

he was Dane Professor of Law in Harvard, he stated the following as "general maxims of international jurisprudence."

"(1) As every nation possesses an exclusive sovereignty and jurisdiction within its own territory the laws of every State affect and bind directly all property, whether real or personal, within its territory; and all persons who are resident within it, whether natural-born subjects or aliens; and also all contracts made and acts done within it.

(2) No State can, by its laws, directly affect or bind property out of its own territory or bind persons not resident therein, except that every nation has a right to bind its own subjects by its own laws in every other place."

Broadly speaking, the position is the same today.

**Position reg. ships.**

1B.20. Thus, with regard to extra-territorial accidents on ships *not registered in India,* difficulty arises if the Indian Act, section 15, is given a wide scope. As stated above,[1] the Act (as amended in 1933) is intended apparently to cover such extra territorial accidents.

The Royal Commission on Indian Labour had recommended that special attention should be given to the possibility of extending the Indian Act to Indian seamen while serving on all ships within India's territorial waters *and on British ships engaged in the coastal trade of India.* The great majority of Indian seamen were engaged on ships registered outside India, and mainly on British ships. These seamen could not claim compensation under the Indian Act, though they had the protection of the British and other Workmen's Compensation Acts. These aspects were specifically mentioned by the Royal Commission.

**Amendment of 1933.**

1B.21. It appears that the legal difficulty in extension of the Act beyond the Indian territorial waters to ships not registered in India (from the point of view of international law) was noticed by the officers of the Government, and this was one of the reasons advanced (in the beginning), when the Bill of 1932 was introduced, for not proposing an amendment in the Act so as to cover Indian seamen employed on ships not registered in British India —a situation specifically emphasised in the Report of the Royal Commission on Indian Labour.

1B.21A. However, several members of the Legislative Assembly[2] stressed the need for covering such seamen.

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1. See discussion regarding present position 1B.10 and 1B.13, *supra.*

2. Particularly, Shri N. M. Joshi.

The amendment regarding ships was made at the Select Committee stage.[1-2] The Committee observed:—

> *"Sub-clause (a)(ii) and (iii) and clause* 9—we have omitted the definition of "registered ship" from the Act, as we consider that there is *no longer any need for making any distinction between ships which are registered elsewhere and ships which are unregistered.* We have inserted in item (vi) of Schedule II, the ships to which we consider the Act should be applied."

Material in the file relating to the period when the Select Committee on the 1932 Bill made its report, does not indicate how the objection[3] from the point of view of international law was taken to have been satisfied. But it may be stated that most of the non-Indian ships employing Indian seamen were of British ownership, and obviously they could not raise a legal objection in those days, in the then constitutional set-up. The present position is obviously different.

*Need For Amendment*

Whether it is desirable to cover extra-territorial accidents.

1B.22. The next question therefore is whether (a) besides the case of ships (which is already covered, though in an indirect way),[4] it is necessary to cover other extra-territorial accidents, and (b) whether as regards ships, the position should be changed. Opinion on the subject of competence from the point of view of international law[5] is very much in a fluid state. One has, therefore, to proceed cautiously before extending the scope of the Act. As the Supreme Court of the United States has put it :[6]

> "In dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

If at all the extra-territorial application of the Act is to be further extended, it can be confined to Government servants, or to cases where the employer as well as the employee is a citizen of India. From the point of view of international law, there may

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1. Legislative Department File No. 160/32-C.&G. (1932) (relating to Act 15 of 1933) (National Archieves).
2. Report of the Select Committee, (10 February, 1933) para 3.
3. Para 1B.21, *supra*.
4. Section 15.
5. See discussion, *supra*.
6. *Lauritzen* v. *Larsen*, (1953) 345 U.S. 57.

not be a very serious dispute about the exercise of legislative power where both the parties are the citizens of the country. Hence, if extra-territorial application is extended to those two situations, no serious objection from the point of view of international law is likely to arise. The moment, however, one crosses these boundaries, and tries to regulate compensation for accidents occurring abroad where only one of the parties is a citizen of India, difficulties are bound to arise—both legal and practical.

No need to widen the scope.

1B.23. It would, however, appear that even as regards accidents occurring to Government employees or occurring in cases where the employer and the employee are Indian citizens, no practical difficulty has been experienced or hardship felt by reason of the absence of a provision, and the matter should better be left as it is.

Desirability of restricting the present provision as to ships.

1B.24. In fact, even as regards ships, it is better to confine the Act to ships registered in India. The concept of "Indian ships"[1] has not much direct importance in our statute law.

Conditions now have changed; there are not as many Indian seamen on ships registered outside India as before, and having regard to international law, there is a case for re-insertion of the word "registered".

Such an amendment will, no doubt, have the effect of taking out ships whose owners carry on trade or business in India and employ Indian seamen, if the ships are registered outside India. It is fair that the workmen employed on such ships should also receive compensation but they will have to pursue their remedies under the law of the country whose flag the ship flies. If necessary, the matter could be dealt with by agreement with the foreign country concerned.[2]

The general British view was summarised in these words by the Attorney General in 1964, in the course of the Debate on the Shipping Contracts etc. Bill.[3]

> "In our view, a country such as America acts in excess of its own jurisdiction when its measures purport to regulate acts which are done outside its territorial jurisdication by persons who are not its own nationals and which have no, or no substantial effect within its territorial jurisdiction."

Aircraft.

1B.24. We now come to the question of aircraft. An aircraft has no flag, but the system of registration is applicable. There appears to be some propriety in adopting the criterion of the place of registration of aircraft. Under the Tokyo Convention,

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1. Sections 21 and 22, Merchant Shipping Act, 1958.
2. *c.f.* sections 35 to 37, English Act of 1925.
3. H. C. Debates, Vol. 698 (15 July, 1964) Col. 1279 (Attorney General).

of 1963 for example, (a) the *State in which an aircraft is registered* has power to exercise jurisdiction over offences "against penal law" and over acts which jeopardise safety or good order and discipline; and the jurisdiction of other States (including any which may be overflown) is limited to the circumstances listed in Article 4 of the Convention. (b) The aircraft commander is given specific powers in accordance with his scheme, coupled with an immunity (Article 10), and other States incur certain obligations to assist in its enforcement. (c) For extradition purposes, the offences are deemed to have been committed both in the territory of the State of registration of the aircraft and in the place where they occurred. The Indian Penal Code has also adopted the test of place of registration.

1B.25. It is, therefore, legitimate to give importance to the rule of the place of registration of the aircraft, as has been done in the case of ships, with reference to the Workmens' Compensation Act also.

Section 21.

1B.26. This disposes of the difficult question of application of the Act extra-territorially to ships and aircraft. We should, in connection with the jurisdiction of authorities under the Act, refer to section 21, quoted below:—

> "21(1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before a Commissioner for the area in which the accident took place which resulted in the injury:
>
> "Provided that, where the workman is the master of a ship or a seaman, any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship resides or carries on business."

We are primarily concerned with the proviso to the section. It is really a procedural provision which comes into operation where the Act[1] applies to the particular ship, and has not the status of a rule relevant to the *extra-territorial application* of this Act.[2] Hence, we need not disturb it.

Section 1 - Amendment regarding ships and aircraft.

1B.27. In view of what is stated above, the only amendment needed regarding extra-territorial operation of the Act is to define the extra-territorial operation as confined to ships and aircraft[3] registered in India.

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1. See 1 and Secton 15.

2. See also para 1B.10, *supra*.

3. A new section providing for application to aircraft is proposed (section 15A).

What is stated above as to ships, applies to aircraft also. The extra-territorial application of the Act to aircraft should, therefore, be provided for, on the same lines as is proposed in relation to ships.

Recommendation to amend section 1.

1B.28. We, therefore, recommend that the following sub-section should be inserted in section 1, in order to deal with the extra-territorial application of the Act.

> "This Act shall apply to masters, seamen, and other members of the crew of ships, and captains and other members of the crew of aircraft, outside India, provided that such persons are workmen within the meaning of this Act, and the ship or aircraft is registered in India."

## CHAPTER 2

## DEFINITIONS

Introductory

2.1. We shall deal in this Chapter with the definitions contained in section 2 of the Act. While some of the definitions—such as the definitions of "managing agent" and "minor",—are purely drafting devices, and some have only minor importance—such as the definitions of "managing agent" and "minor",—a number of definitions are of considerable importance, as they are concerned with some of the fundamental concepts of the Act. The definitions of "dependant", "employer", "partial disablement", "total disablement", "wages", and "workman" fall in this category.

Section 2 (1)(d)—"Dependant."—basic Principle.

Some of the other provisions contained in section 2, such as sub-sections (2) and (3), are not in the form of definitions, but they also possess an importance of their own. It is for these reasons that this Chapter will occupy more space than a discussion of statutory definitions would normally occupy.

2.2. We shall concentrate on important definitions. We first take up Section 2(1)(d) which defines the expression "dependant". This is one of the most important definitions in the Act, because on it depends the right of a person to participate in compensation payable on the death of the workman.

The definitions of "dependant" is as follows:—

(d) "dependant" means any of the following relatives of a deceased workman, namely :—

(i) a widow, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother; and

(ii) if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the workman at the time of his death,

(a) a widower,

(b) a parent other than a widowed mother,

(c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grand parent if no parent of the workman is alive.

The basic principle underlying the provision entitling the dependants to claim compensation[1] under the Act, is that there should not be a sudden economic dislocation in the family by reason of death of the workman. The list of dependants is based on certain assumptions as to dependence, having regard to Indian social conditions.

Complexity of the definition.

2.3. The definition of dependant appears to be complex, but the complexity is mainly due to the legislative scheme. The compensation[2] is to be distributed among the dependants. The intention of the legislature is that while in the case of certain relatives this benefit should be available irrespective of whether they are or are not dependent on the workman, in the case of certain other relatives[3] the benefit should be available only if they are dependent on him. In the latter case, again, a distinction[4] had to be made between relatives wholly dependent and those partly dependent on the workman. Apart from this, there are other factors leading to complexity, based on physical condition, age, sex and legitimacy. For example, a son or daughter if infirm, though a major, had to be provided for. This is based on physical condition. In the case of sons, a distinction had to be made between minor sons and major sons. In the case of daughters, the distinction had to be primarily related to their married, or unmarried, status.—but in certain respects, age was also regarded as material. Then, there is a distinction—unfortunate if one may say so[5]—between legitimate and illegitimate children,—not in every case but in certain respects. So long as these distinctions are retained, the room for simplification of the definition is naturally limited.

Improvements in definition of 'dependant'—Legitimacy.

2.4. So much as regards the complexity of the definition of "dependant". As regards the substance of the definition, there are a few improvements worth considering. The distinction between legitimate and illegitimate children[6] is wrong on principle,

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1. Section 8(5).
2. Section 8(5).
3. The distinction between those 'dependent and those not 'dependent is not in harmony with the very expression defined.
4. These distinctions came into the Act by amendments of 1933 and 1938
5. See para 2.4, *infra*.
6. Para 2.3, *supra*.

and out of tune with modern thinking. We think that it should be removed. In other words, a "minor illegitimate son" and an "unmarried illegitimate daughter" should be transferred from category (iii) to category (i) of section 2(1)(d), which contains the definition.

2.5. Illegitimate children are not "non-persons". They are humans, live and have their being.[1] In the U.S.A. it has been held that they are clearly "persons" within the meaning of the Equal Protection Clause[2] of the Fourteenth Amendment of the U.S.A. Constitution.[3]

2.6. Regarding illegitimate children, it may be noted that courts in U.S.A. have gone the furthest. In an American case,[4] the petitioner, an unwed mother, filed an action against one Perez, the putative father of her minor child in the State of Taxas. During the proceedings, it was established that Perez was the "biological father" of the petitioner's child needing support. It was held, however, by the trial court that there was no legal obligation to support an illegitimate child. This view was confirmed on appeal.

The Supreme Court of the U.S.A. reversed the decision, and stated that "once a State posits a judicially enforceable right on behalf of children to needed support from their natural father, there is no constitutionally sufficient justification for denying such an essential right to a child, *simply because her natural father has not married her mother.*"

The Court relied on its earlier ruling, holding that illegitimate children are entitled to wrongful death benefits,[5] and also to a similar decision[6] applying the benefits by way of *workmen's compensation* to illegitimate children.

2.7. In many cases, Congress has made a provision for recovery by illegitimates, but with certain safeguards designed to require proof[7] of paternity.

2.8. It may be noted that numerous Latin and South American countries have attempted to solve the problem by constitutional provisions. The Boliviana Constitution, for example, provides that "inequities among children are not recognised. They have

Constitutional provisions in some Latin American countries.

1. See Note, "The Rights of Illegitimates under Federal Statutes", (1962 76 Harv. L. Rev. 337.
2. No State shall "deny to any person within its jurisdiction the equal protection of the laws.
3. *Levy* v. *Loinsiann*, 20 L. Ed. 2 d 436, 439, (Doughlas J.).
4. *Gamez* v. *Perez*, (1973, 408 U.S. 535; 35 L. ed. 56; 41 U.S.L.W. 417.
5. *Levy* v. *Louisiana*, (1968) 391 U.S. 68.
6. *Weber* v. *Aetne Casuality and Surety Company*, (1972) 406 U.S. 164.
7. Note "Rights of illegitimates under Federal Statutes" (1962. 76 Harv. L. Rev. 337, 339, 344 and footnote 27.

all the same rights and duties.[1]" The Gautemala Constitution provides that "all children are equal before the law and have identical rights.[2]"

The Panama Constitution provides that "parents have the same duties towards children born out of wedlock as towards children born in it. All children are equal before the law and have the same hereditary rights in intestate succession.[3]"

Adopted Children.

2.8A. Secondly it is desirable to treat adopted children in the same way as natural born children, having regard to changed social conditions. In fact, under the General Clauses Act,[4] "son" includes an adopted son, where the 'personal law' permits adoption. Adoption is now being resorted to by non-Hindus also.

2.9. The implementation of the two changes indicated above[5] in the definition of "dependant" permits a slight shortening of category (iii) of the definition.

Section 2 (1)(d)- unborn child of the workman.

2.10. At present, the Workmen's Compensation Act does not contain a *specific* provision for the rights of an unborn person. If a strict textual interpretation is adopted, his rights will not be regarded as covered by the item in the definition of "dependant" which relates to "children".

2.11. It may be noted that in England it has been held that damages may be recovered under the Fatal Accidents Act, 1846, for the benefit of a posthumous child.[6] Ownership may be vested in a child in the womb and such a child constitutes a "life" for the purpose of the rule against perpetuities.[7] So too, such a child can be a "child of the family", within s. 16(1) of the Matrimonial Proceedings (Magistrates Courts) Act, 1960.[8]

There is an interesting provision in the Hindu Succession Act as to the right of an unborn child which reads as follows :—

> "20. *Right of child in womb.*—A child who was in the womb at the time of the death of an intestate, and who is subsequently born alive shall have the same

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1. Constitution, article 183, Pan American Union, Constitution of Republic of Bolivia (1961).
2. Constitution, article 86(2)(3), Pan American Union, Constitution of Republic of Gautemala (1962).
3. Constitution, art. 58, Pan American Union, Constitution of the Republic of Panama (1946).
4. Section 3(53), General Clauses Act, 1897.
5. Regarding illegitimate and adopted children.
6. *The George and Richard*, (1971), L.R. 3 Ad. & E. 466.
7. (a) *Elliot* v. *Lord Joicey*, (1935) A.C. 209 noted in 9 Australian Law Journal 294;
   (b) Re *Stern, Bartlatt* v. *Stern*, (1968) Ch. 732; (1961) 3 All E.R. 1129.
8. *Caller* v. *Caller* (1966) 2 All E.R. 754.

right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of death of the intestate."

Recommendation.

2.12. It appears desirable to make a specific provision to the effect that a child who was in the womb at the time of the death of the workman, and who is subsequently born alive, has the same right to be treated (as a dependant) as if he or she had been born before the death of the workman.[1] We recommend accordingly. This recommendation is confined to an unborn child of the workman and will not include any other unborn dependants.

There should not be any consequential complications. If the child is actually born alive before the award of compensation, the amount due to him can be suitably invested. If he is not born by that time, a suitable provision could (if necessary), be inserted[2] for safeguarding his rights and for ultimate adjustment of the position if a live birth does not take place.

Unmarried daughter and divorced daughter

2.13. Section 2(1)(d)(i) uses the expression "unmarried daughters". It has been held that this does not include a divorced daughter.[3] This interpretation has the effect of totally removing the divorced daughter from the category of dependants, there being no other item covering her. We think that if totally dependant, a divorced daughter should (until re-married) be treated as a dependant.

Re-marriage of widow.

2.14. The definition of "dependant" includes certain widows. In an Andhra Pradesh case,[4] it was held that a widow does not cease to be a dependant on her re-marriage. The Court observed:—

> "There is no provision in the Act to the effect that subsequent events would affect the claim of the dependant to compensation. Further, a similar conclusion follows by a consideration of section 8, sub-section (5), which is in the following terms:—
>
> '8(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner, be allotted to any one dependant. "

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1. Compare Section 20, Hindu Succession Act, 1956 (Para 2.11, supra).
2. Section 8 could be amended suitably, if necessary.
3. (1969) All L. J. 16, cited in the Yearly Digest (1969), Col. 3225.
4. *R. Kotayya* v. *Di Nagavardhanamma*, A.I.R. 1962 Andhra Pradesh 47, para 19, (Sanjeeva Rao Nayadu J.).

2.15. In a Rajasthan case,[1] the contention that the widow became debarred from claiming compensation on account of her re-marriage was rejected, "because in the Act there is no such provision that after re-marriage widow of the deceased would not be regarded as a dependant. Under section 21 of the Hindu Adoptions and Maintenance Act, 1956, a widow remains a dependant, within the meaning of that section so long as she is not re-married. But the definition of the 'dependant' under the Act is not so restricted and the fact that she has re-married will not disentitle her to claim compensation under the Act."

In respect of the widowed mother,[2] the contention that a mother who has re-married cannot be considered to be a "widowed mother", did not appeal to the Madhya Pradesh High Court. The High Court gave the reason that the relationship of a "mother is not destroyed by re-marriage" and, more over, the word "widowed" has been used in contra-distinction to the word "unwidowed".

2.16. With respect, we are unable to see the validity of the reasoning adopted in the decisions cited above. In our view, the widow should be debarred on re-marriage, since there would be some body to look after her. It would be useful to add an explanation to that effect, modifying the above judicial interpretation.

Minor attaining majority before order of Commission.

2.17. We are also of the view that a person who attains majority before the order under section 8(5) is passed, should be debarred from compensation, if his entitlement as a dependant is on the basis of minority only.

Amendment regarding pre-decease

2.18. We are further of the view that in the definition of 'dependant' [item (iii) (f) and (g)], the word "pre-deceased" should be amplified so as to include a case where the person concerned dies before the passing of the order under section 8(5). This is intended to avoid hardship for the children of persons who die in the interval between the workman's death and the date of the order of the Commissioner under section 8(5).

Mino r brother no cha nge.

2.19. During our discussions, we considered the question whether a minor brother should be excluded from the definition of "dependant". But the present provision is based on (i) Indian social conditions, and (ii) the fact of dependence. We therefore decided not to recommend a change in this regard.

Uterine relationship-Recommendation.

2.20. The question whether the words indicating relationship include uterine relationship has arisen under the Act. In one case[3] from Madhya Pradesh, a workman had died in course of work. One B, a minor brother of the deceased, put in his claim for compensation. The court held that from the evidence, it

1. *R. B. Moondra & Co.* v. *Bhanwari*, A.I.R. 1970 Raj 111, 118, para 19.
2. *Intivahji* v. *Amirkhan*, A.I.R. 1959 M.P. 329, Para 4, (P. K. Tare J.).
3. *G. M. Gwalior Sugar Co.* v. *Srilal*, A.I.R. 1958 M.P. 133, 134.

appeared that B was a uterine brother of the deceased (i.e. the mother of B and the mother of the deceased was the same). The question was whether the term "minor brother" occurring in section 2(1), clause (d), included also a minor uterine brother. It was held that the term "minor brother" includes a minor uterine brother under the Workmen's Compensation Act which was a law which has "its roots in charity, sympathy and the advance of socialistic ideas."

2.22. In a Lahore case,[1] it had been held[2] that a "minor brother" includes a consanguine minor brother. The Lahore case also referred to the principle of Mohammedan Law, according to which consanguine brothers and sisters are classified as residuaries (heirs).

The High Court of Madhya Pradesh has held that a consanguine brother and a uterine brother stand on the same footing as both are step-brothers. Reference was also made by the Madhya Pradesh High Court to the provision in the Indian Succession Act,[3] under which (for purposes of succession) there is no distinction between those who are related to the deceased person by full blood and those related by half blood.

In our opinion, the above interpretation should be codified so as to include uterine and consanguine brothers and sisters in the definition of "dependant".

2.21. We recommend the following revised draft of the definition of "dependant", in the light of the above discussion. Recommendation

*Revised draft of section 2(1)(d)*

(d) "dependant" means any of the following relatives of a deceased workman, namely :—

(i) a widow, a minor son, an unmarried daughter, or a widowed mother; and

(ii) if wholly dependant on the earnings of the workman at the time of his death, a *son or a daughter* who has attained the age of eighteen years and who is infirm, or a *divorced daughter*[4] *who has not re-married;*

(iii) if wholly or in part dependant on the earnings of the workman at the time of his death—

(a) a widower,

(b) a parent other than a widowed mother,

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1. *Dependants of Kartar Singh*, A.I.R. 1931 Lah. 752.
2. In *re Mong Kyan*, A.I.R. 1931 Rang. 173, takes a contrary view.
3. Section 27, Indian Succession Act, 1925.
4. As to divorced daughters, totally dependent, see 2(1)(a)(ii).

(c) a minor daughter, if married. . . .or widowed. . . .,

(d) a minor brother or an unmarried sister or a *minor* widowed sister,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son;

(g) a minor child of a pre-deceased daughter where no parent of the child is alive; or

(h) a paternal grand-parent, if no parent of the workman is alive.

*Explanation.*—For the purposes of this clause.

(a) *references to a widowed female do not include a female who re-marries after the death of the workman and before the date of the order of the Commissioner under sub-section* (5) *of section* 8;

(b) *references to an unmarried female do not include—*

(i) *a female who marries before the date of the said order;*

(ii) *a female who is divorced before the date of the said order;*

(c) *references to a brother or sister include a consanguine or uterine brother or sister;*

(d) *references to a minor do not include a person who attains majority before the date of the said order;*

(e) *a child of the workman who was in the womb at the time of the death of the workman, and who is subsequently born alive*[1] *whether before or after the date of the said order, shall have the same right to be treated as a dependant as if he or she had been born before the death of the workman;*

(f) *references to a son, daughter or child include an illegitimate or adopted son, daughter or child;*

(g) *references to a 'pre-deceased' relation include a person who dies before the date of the said order.*

Section 2(1)(e)—employer lending the workman to another employer.

2.23. Where an employer lends a workman, at present, under section 2(1)(e), the lending employer is not liable to pay compensation. Under the English Act,[2] the lending employer is liable. We are of the view that both the lending employer and the borrowing employer should be liable. Usually, the services of the workman are lent at the instance of the lender and the relationship between the lender and the workman continues. In

1. See para 2.12, *supra*.

2. Section 5(1) of the English Act of 1925.

some cases the lender would ordinarily be more rich than the person to whom the services are lent. The lender has also, in most cases, a business interest in lending. He exposes the workman to hazard. Hence he should be liable. The borrowing employer, who uses the services of the workman should, of course, continue to be liable since the hazard is in the new employment.

2.24. Accordingly we recommend the following re-draft of the definition of 'employer'; Recommendation.

(e) "employer" includes—

(i) any body of persons whether incorporated or not;

(ii) any managing agent of an employer;

(iii) the legal representative of a deceased employer; and

(iv) when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, *the person with whom the workman had entered into the contract of service or apprenticeship, as well as* the person to whom the services of the workman are so lent or let on hire.

2.25. For the sake of convenience of reference, it is desirable to insert in section 2, a definition of "monthly wages",—an expression defined in section 5. The following new clause should, therefore, be inserted in section 2(1) after the definition of "minor":— Section 2(1)(fff) (New)—Definit ion of "monthly wages."

"(fff) 'monthly wages' has the meaning assigned to it by section 5.

2.25. In the definition of the expression 'partial disablement', which is to be found in section 2(1)(g), there is scope for improvement in one respect. The definition does not separtely define the expressions 'permanent partial disablement' and 'temporary partial disablement'. The expression 'permanent partial disablement' is used in the proviso to the definition, which, however, does not bring out the idea that it is defining 'permanent partial disablement' *as a apecies by itself*. It may be noted that the expression 'permanent partial disablement' occurs elsewhere in the Act.[1] It would, therefore, be desirable to recast the latter part of the definition so as to bring out this idea. This could be done by converting the proviso to section 2(1)(g) into an Explanation, as follows :— Section 2 (1) (g) partial disablement.

"*Explanation.*—Every injury specified in Part II of Schedule I, shall be deemed to result in permanent partial disablement"

1. See, for example, section 4(1)(c).

At the same time, the expression 'permanent partial disablement' may be defined by adding a new definition—clause (gg)—as follows:—

> "(gg) 'permanent partial disablement' means partial disablement of a permanent nature and includes such injury as is referred to in the Explanation to clause (g)."

Section 2(1)(i) total disablement

2.26. The definition of 'total disablement' in section 2(1)(i) leaves room for improvement in so far as the proviso seeks to define the scope of 'permanent total disablement', but does not directly define it. The expression is used elsewhere in the Act.[1] In the interests of clarity, it is better to revise it on the same lines as has been recommended above with reference to 'partial disablement'.[2]

Workman

2.27. The expression 'workman' is defined as follows :

> "(n) 'workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—
>
> (i) a railway servant as defined in section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II. or
>
> (ii) employed on monthly wages not exceeding five hundred rupees, in any such capacity as is specified in Schedule II,
>
> whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does "not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."

Section 2(1)(n) Definition of workman'

2.28. The definition of "workman"[3] is obviously a very involved one. This complexity is due to the fact that too many ideas—positive and negative—are packed into one sentence regardless of the convenience of those who have to read the Act. In the first place, strain is caused by the excluding words "other than a person" etc., which interrupt the mind of the reader who wishes to proceed with the positive part of the definition. Secondly, repeated recurrence of negative ideas in that part of the

1. See, for example, section 4(1)(b).
2. See discussion relating to section 2(1)(g).
3. Para 2.27, *supra.*

definition which pertains to railway servants, creates confusion. Thirdly, the clarificatory portion represented by the words "whether the contract of employment" etc. tends to increase the prolixity of the definition; and, finally the non-inclusive portion (relating to Armed Forces) gives the impression that the definition is about to end, but immediately there is a provision for the construction of reference to a workman who is dead,—a provision which is confined to very particularised situations.

2.29. Some complexity may be unavoidable in a legal document but still there is scope for improvement. An attempt to disentangle the various elements which cluster together in the present clause, is worthwhile.

Point of Substance.

2.30. So much as regards points of drafting. Some points of substance may now be dealt with concerning the definition of "workman".

2.31. The clause has a separate category of railway servants under which a railway servant as defined in the Railway Act, is a workman subject to two conditions (which we shall discuss later). Section 3(7) of the Railways Act defines a railway servant as follows:—

> " 'Railway servant' means any person employed by a railway administration in connection with the service of a railway".[1]

There are two condition in the clause in the Workmen's Compensation Act. The first is that railway servants who are "permanently employed" in certain offices are excluded. (Roughly they are persons who perform inframural duties). The second is that persons employed in a capacity mentioned in the Second Schedule are excluded—the object, of course, being that if they fall under the Second Schedule, they should satisfy the wages test.

As regards the first condition, in our view, the present wording referring to persons "permanently employed" in an office, is intended to refer not to their *permanent or temporary status*, but to the sphere of *their duties*. It is meant to refer to persons who usually discharge their duties within the four walls of an administrative office,—persons with "intra-mural" functions. This should be clearly brought out.

Also, to avoid doubts as to whether a railway servant can fall under the general category—as is the obvious intention—slight verbal changes are desirable by way of clarification.

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1. Section 3(7), Railways Act.

2.32. Since this clause represents a special category, it should, if it is retained,[1] appear after the general one relating to employees in general.

2.33. The above comments for verbal improvements (with reference to the category of railway servants) have been made on the assumption that the present separate category of railway servants is to be retained. It seems to us, however, that this matter itself requires serious consideration. The present scheme seems to constitute a discrimination between railway servants and other workmen similarly placed. A railway servant (if he satisfies certain conditions mentioned above) is not subject to a maximum regarding the wages. Others are so subject. This discrimination is difficult to support in the face of article 14 of the Constitution and, on the merits, appears to be unjustified. We are therefore of the view that this discrimination should be removed and like railway servants, other employees (if they satisfy the other conditions of the definition) also should be brought within the Act if they fall within the Second Schedule *irrespective of their wages.*

2.33A. Finally we propose certain structural changes in the definition.

Recommendation,

2.34. In the light of the points discussed above, the following re-draft of the defintion is recommended:—

*Re-draft of definition of "workman"*[2] "workman" means any person employed in any such capacity as is specified in Schedule II.

*First Exception.*—A person whose employment is of a casual nature is not a workman if he is employed otherwise than for the purposes of this employer's trade or business.

*Second Exception.*—A person working in the capacity of a member of the Armed Forces of the Union is not a workman.

*Explanation I.*—It is immaterial whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing.

*Explanation II.*—Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."

[Item to be added to the Second Schedule]

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1. For a contrary suggestion, see para 2,33, *infra.*
2. If this re-draft is adopted, the Second Schedule should also be amended to add "railway servant".

We also recommend that the Second Schedule should be amended to add 'railway servant' as below:—

"33. employed as a railway servant as defined in section 3 of the Indian Railways Act, 1890:—

*Provided that* a railway servant *ordinarily* discharging duties in any administrative, district or sub-divisional office of a railway . . . *shall* not be workman by virtue of this item."

Section 2(2).

2.34. We now come to section 2(2). There are certain provisions of the Act where the existence of "a trade or business" of the employer is material.[1] The activities carried on by a local authority may or may not amount to trade or business.[2] In the case of Government Departments also, the activity is often not an economic activity[3] analogous to trade or business. Nevertheless, section 2(2) makes a wide provision whereunder activity of a local authority or of a department acting on behalf of the Government is considered a trade or business.

The reason for the provision is that in the case of activities of the Government or a local authority, it would be difficult to distinguish between activities by way of trade or business and other activities.

We do not wish to disturb the substance of the provision. But we think that in section 2(2), the Government should be mentioned before the local authority. We are also of the view that the present wording in this respect which refers to a "department acting on behalf of the Government" is not appropriate and should be replaced simply by the words "the Government".

Recommendation.

2.35. Accordingly we recommend that section 2, sub-section (2), should be revised as follows:—

"2(2) The exercise and performance of the powers and duties of the *Government* or of a local authority shall,. . . . . for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such *Government or* authority. . . . ."

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1. *B.G.* section 2(1), definition of "workman", and section 12, and the Second Schedule, item 4.

2. As to "business", see A.I.R. 1968 S.C. 554.

3. See A.I.R. 1970 S.C. 1407, 1416 (case regarding the Safdarjung Hospital), New Delhi.

Section 2(3) Power to notify their occupations.

2.36. Section 2(3) reads thus:

> "(3) The State Government, 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 to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply within the State to such classes of persons :
>
> Provided that in making such addition the State Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only."

Proposal giving the power to the Central Govt. also.

2.37. This sub-section thus confers a power on the State Government to add to the Schedule. We have considered the question whether such a power should not be given to the Central Government also so that in the case of employments which have been found to be hazardous and the importance whereof is not confined to a particular State, it would not be necessary for each of the State Governments to take separate action. No doubt the vesting of the power in the State Government, as at persent, has one advantage namely that the State Government can utilise its special knowledge of local conditions. Nevertheless it appeared to us that the question whether such a power should be given to the Central Government also could be usefully considered.

Amendment of section 2(3) desirable.

2.38. We have considered the matter in all its aspects and we recommend that the power should vest concurrently in the Central Government and in the State Governments. Such an amendment will secure uniformity where necessary. At the same time it will retain the present power of the State Government which enables prompt action to meet local needs.

Constitutional aspect considered.

2.39. Before coming to our conclusion in this regard, we have carefully considered the constitutional aspect. In our view, the vesting of the power concurrently in the Central Government and the State Governments[1] is not likely to conflict with the scheme of the Constitution relating to the distribution of the executive power between the Centre and the States. The power to add an 'employment' in the Schedule by a notification is an "executive" one. But it is permissible to vest an executive power in the Central Government concurrently with the State Governments. Subject to the provisions of the Constitution, the executive power of the Union extends[2] under article 73(1) of the Constitution to matters with respect to which Parliament has power to make laws. But there is a proviso to this article

1. Para 2.38, *supra.*

2. Article 73(1)(a) of the Constitution.

under which this executive power shall not, save as expressly provided in the Constitution *or in any law made by Parliament*, extend in any State to matters with respect to which the Legislature of the State has also power to make laws, *i.e.*, matters mentioned in the Concurrent List. The subject of workmen's compensation is in the Concurrent List.[1] Hence an executive power relating to the Workmen's Compensation Act can be conferred on the Central Government, *if it is expressly so provided in a law made by Parliament*. It is true that the Workmen's Compensation Act 1923, though a Central Act, is not *a law made by Parliament*. But any amendment now to be made in that Act by Parliament will be a law made by Parliament and will therefore satisfy the above constitutional requirement.

Under another provision of the Constitution[2]—article 162—the executive power of a State extends to matters with respect to which the Legislature of the State has power to make laws but the proviso to that article also enacts that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and shall be limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof. An *express provision* conferring concurrently on the Central Government the power under section 2(3) would therefore seem to be consistent with the scheme of the relevant provisions of the Constitution as analysed above.

Thus there is no constitutional difficulty if the power to notify the employment is given concurrently to both the Governments.

2.40. We are also of the view that the State Government should, before issuing a notification under section 2(3), send an intimation to the Central Government so that the latter could consider the feasibility of making the addition in the Schedule on all India basis.

State Governments should give intimation to Centre.

2.41. In the light of the above discussion, we recommend that section 2(3) should be revised as follows:—

Recommendation to revise section 2(3).

> "(3) The *Central Government* or the State Government, 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 to Schedule II any class of persons employed in any occupation which it is satisfied is a hazardous occupation and the provisions of this Act shall thereupon apply

1. Seventh Schedule, Concurrent List, Item 24.

2. Article 162 of the Constitution.

*within the territories to which this Act extends*—or within the State as the case may be, to such classes of persons :

Provided that in making addition *the Central Government* or the State Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified injuries only;

*Provided further that the State Government shall, before or at the time of issuing the notification, forward an intimation thereof to the Central Government.*"

## CHAPTER 3

## RIGHT TO COMPENSATION

Introductory

3.1. We propose to devote this Chapter to a discussion of certain basic questions concerning the workman's right to compensation dealt with in sections 3, 4 and 4A of the Act. The employer's liability to pay compensation is the subject-matter of section 3 where the scope of that liability is defined elaborately. The amount of compensation forms the subject-matter of section 4. Section 4A provides that compensation payable under section 4 is to be paid as soon as it falls due. The three sections occupy two printed pages in the Act; we shall concentrate on such of them as are material.

Section 3(1), main para.

3.1A. The main paragraph of section 3(1) creates the right to compensation. If a personal injury is caused to a workman by an accident 'arising out of' and 'in the course of his employment', his employer will be liable to pay compensation in accordance with the provisions of the Chapter.

Medicalexpenses question consideret. Suggestion to extenn E.S.I. Act

3.1B. We notice that a workman who is injured does not get medical expenses under the Workmen's Compensation Act. We suggest to Government that the Employees' State Insurance Act, 1948 which is more liberal in this regard, should be extended to more employments. We cannot recommend an amendment in the Workmen's Compensation Act on this point because such an amendment would practically assimilate the Workmen's Compensation Act to the Employees' State Insurance Act. But, having regard to the considerations of social justice, it is in our view highly desirable that this aspect of the matter be attended to and the question of extension of the Act of 1948 to various employments to which it does not now extend should be actively considered.

Section 3(1), proviso (a).

3.1C. Section 3(1) proviso (a) enacts that the employer shall not be liable to pay compensation in respect of any injury that does not result in the total or partial disablement of the workman for a period exceeding three days. The reason is obvious.

Section 3 (1) proviso (b) (i)—Influence of drugs or drinks.

3.2. Under section 3(1), proviso clause (b)(i) compensation is barred for a non-fatal injury if the accident (which caused the injury) is "directly attributable to" the workman having been under the influence of drinks or drugs. This clause of the proviso requires some examination. The proviso, we

presume, postulates that the accident did arise "out of, and in the course of" the employment. Otherwise the case would be outside the section and would need no proviso to exclude it. But it excludes compensation on the ground that the accident is directly attributable to the situation mentioned above.

Possible justification for the present rule.

3.3. What then is the rational for barring compensation in the situation referred to above? Perhaps one possible justification would be that since the accident was directly attributable to the physical condition of the workman, the employer should not be made liable to compensation even though the accident arose out of and in the course of the employment. In our view, however, the fact that the workman by his (drunk or drugged) condition contributed to the accident, should not justify the exclusion of compensation at the present day. Social justice requires that he should be compensated.

3.4. Another possible justification for the present rule could be that the workman has no business to get drunk while discharging his duties. This also should hardly suffice to deprive him of compensation once he is injured. For fatal injuries, the legislature has already taken a liberal attitude (so that the workman's fault may not be visited on his dependants). The same approach should be extended to non-fatal injuries.

Recommendation 3(1), proviso (b) (i)

3.5. and 3.6. In view of what is stated above, we recommend that section 3(1), proviso (b)(i), should be deleted.

Provisions in the Employees' State Insurance Act, 1948.

3.7. At this stage we would like to refer to several provisions[1] of the Employees' State Insurance Act 1948 and consider how far their principle is worth introducing in the Workmen's Compensation Act. Primarily the object of these provisions is to widen the scope of the expression "course of employment" or to eliminate certain defences or to facilitate the proof of certain facts. Some of these deal with matters not dealt with in the Workmen's Compensation Act, while others—e.g., section 51-B—reverse the position under the Workmen's Compensation Act.

Section 51A, Employees' State Insurance Act.

3.8. We shall first take up section 51A of the Employees' State Insurance Act 1948 which provides as follows :--

> "51A. For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed *in the absence of evidence to the contrary*, also to have arisen out of that employment."

1. Section 51 A to 51 D, Employer State Insurance Act, 1945.

It will be noticed that while section 3(1) of the Workmen's Compensation Act requires proof of two facts,[1] the above section of the Employees' State Insurance Act renders proof of one fact unnecessary. We are of the view that since the provision in the latter Act is a beneficial one and obviously serves social justice, it should be adopted.

Connection between "course of and "out of Presumption in section 51a, Employees State Insurance Act, 1948.

3.9. Of course it is to be noted that before a presumption under the section can be raised, it must be proved that the accident arose "in the course of the employment". The words "arose in the course of", in section 3(1) of the Workmen's Compensation Act, 1923, have been generally[2] construed as referring to the time, place and circumstances of the employment. It is only when these three links are established that the casual connections required by the words "in the course of" can be presumed.

Origin of section 51A

3.10 to 3.15. It may also be noted that section 51A of the Employees' State Insurance Act is ultimately derived from an English provision.[3] Under the Workmen's Compensation Act, the burden of proving that the accident arose "out of" and "in the course of" the employment is on the employee. Under discussion i.e. Section 51A, employees' State Insurance Act 1948 although the burden of proof that the accident arise "in the course of" the employment still lies on the claimant, the burden of proving that it arose "out of" the employment has been shifted.

Meaning of the expressions "in the course of and "out of .

3.16. According to the Supreme Court judgment in *Mackinnon Mackenzie case*,[4] the words "in the course of employment" in the Workmen's Compensation Act, 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 the 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 matter, it is reasonable to believe the workman would not otherwise have suffered. In other words, there must be a casual relationship between the accident and the employment, that is, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless the workman has exposed himself to an added peril by his own imprudent act. This is an interpretation of the existing section. After the proposed amendment, the burden of proof will be shifted, as explained above.[5]

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1. Para 3.14, *supra*.
2. See para 3.34, *infra*.
3. Section 7(4), National Insurance (Industrial Injuries) Act, 1946 (now replaced by the 1965 Act.)
4. *Machinnon Mackenzie* vs *Ibrahim Issac*, A.I.R. 1970 SC 1906, 1908, para 5.6 (follows 1917 A.C. 352). (Case under Workmen's Compensation Act).
5. Para 3.15, *supra*.

A verbal point concerning section 51A.

3.17. Before adopting section 51A of the Employees' State Insurance Act however, a verbal point should be considered. The words "in the absence of evidence to the contrary"., which occur in that section should, while adopting that section, be replaced by the words "until the contrary is proved". The latter formula is more in consonance with Indian legislative practice. In fact the words "shall presume" indicate a rebuttable presumption and no express provision allowing proof to the contrary is needed. However it is desirble to have these words in order to avoid ambiguity.

Recommendation.

3.18. In view of what is stated above, we are of the opinion that section 51A of the Employees' State Insurance Act may be adopted with the verbal change,[1] suggested above.[2]

Effect of wilful disobedience.

3.19. We proceed to deal with another restriction on the right to compensation which is to be found in the existing section. Under section 3(1), proviso (b)(ii), the right to compensation is barred in respect of any injury not resulting in death caused by an accident which is directly attributable to—

> "the wilful disobedience of the workman to an order expressly given or to a rule expressly framed for the purpose of securing the safety of workman".

Section 51B E.S.I. Act.

3.20. The position in this respect under the Employees' State Insurance Act is different.[3-4] The relevant section of that Act is as follows:—

> "51B. *Accidents happening while acting in breach of regulations, etc.*:
>
> An accident shall be deemed to arise out of and in the course of an insured persons's employment 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."

1. Para 3.17, *supra*.
2. For the consequential re-draft of section 3, see para 3.38, *infra*.
3. Section 51B E.S. Act, 1948.
4. For history. See para 3.23 *infra*.

Principle of section 51B Worth adopting.

3.21. The principle of this provision is, in our view, worth incorporating into the Workmen's Compensation Act having regard to modern notions of social justice, according to which emphasis should not be placed on whether the workman was guilty of this or that wrong when the accident occurred. What is material is only the fact that the accident arose out of and in the course of the employment.[1]

Section 3(1), proviso (b)(iii).

3.22. There is an allied question to be considered, Section 3(1), proviso (b)(iii), bars compensation in respect of a non-fatal injury caused by an accident which is directly attributable to—

> "the wilful removal or disregard by the workman of any safety, guard or other device which he knew to have been provided for the purpose of securing the safety of workmen".

It is, in our view, desirable to remove this proviso. The reasons for such an amendment are substantially the same as those indicated above with reference to proviso (b)(ii)[2], to section 3(1).

Section 51B E.S.I. Act considered in detail

3.23. to 3.25. We shall now consider in deail certain points arising out of section 51B of the Employees' State Insurance Act.[3] It would appear that the origin of section 51B lies in a section of the National Insurance (Industrial Injuries) Act 1946, which itself was derived from section 1(2) of the Workmen's Compensation Act 1925 derived from section 7 of the Act of 1923. In some respects, the 1946 Act is wider than the 1925 Act but the differences are not material for the present purpose. The condition that the act must have been done for the purpose and in connection with the employer's trade or business which is found in section 51B of the Employees State Insurance Act, 1948, appears also in the English Act 1946 and in the English Act of 1925. In fact in other respects also section 51B substantially follows the provisions in the English Act of 1946.[4-5]

Adoption of section 51B considered Requirement of trade or business not favoured. Contained in Section 51B.

3.26. What has been stated in section 51B of the Employees's State Insurance Act can be stated in a more direct manner, by enacting that the fact that the rule or order in question was transgressed is immaterial. That is a matter of form.

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1. See para 3.38 *infra*, for suggested additional section.
2. See discussion as to section 3(1), proviso (b)(ii) Para 3.19 to 3.21, *supra*.
3. Para 3.20, *supra*.
4. Section 8, National Insurance (Industrial Injuries) Act, 1946.
5. See also *Noble* v. *Southern Rail Company*, (1942) 2 A.E.R. 383, 386, 387 (H.L.).

3.27. One question of substance however still remains. Is it necessary to incorporate the requirement[1] contained in section 51B that the act must have been done for the purpose of and in connection with the employer's trade or business? This requirement postulates two ingredients, first that the employer must have been carrying on a trade or business, and secondly that the act must have been done for the purposes of and in connection with the employer's trade or business. A trading employer can take the defence that the workman's Act transgressing his orders was not connected with the trade or business. A non-trading employer, though liable generally for an accident, can still take the defence that the workman has transgressed his orders.

3.28. In so far as this requirement postulates that the main object of the act which caused the accident was to further the employer's business,[2] the requirement is objectionable because the proper enquiry should only be whether the act is within the scope of the employment. The second question namely whether a non-trading employer should be brought within the proviso, is of policy. In some cases the statute does make a distinction between trading employers and others. The question whether, in this particular context, the distinction should be maintained is one of policy. On the one hand, it can be argued that if a non-trading employer, say, a doctor who employs a radiologist, is to be made liable, even where the particular act of the workman has been forbidden by him, some hardship would be caused. On the other hand, it can be argued that a workman who transgresses a rule or instruction should, nevertheless be compensated under the Act so long as he dose not go beyond the sphere of employment. Having carefully considered the matter, we are of the view that the requirement of trade or business should not be adopted.

Contributory negligence should be no defence in cases otherwise falling under the Act. Social justice requires that the beneficial provision in section 51-B of the Employees State Insurance Act should not be whittled down, and the absence of a connection with trade or business should be irrelevant. In fact section 3 of the Workmen's Compensation Act, though it is confined to breach of instructions regarding safety devices, is more liberal than section 51-B of the Employees' State Insurance Act in this respect. As a result we recommend that section 51-B should be adopted after omitting this requirement. Also we recommend that Parliament may consider the desirability of deleting clause (b) of section 51-B of the Employees' State Insurance Act.

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1. Para 3.20, *supra*.

2. 2*Borley* v. *Ochanden*, (1925) 2 K.B. 325.

Accidents occuring in the course of transport to or from place of work (Section 51C, Employees State Insurance Act 1948)

3.29. We shall now proceed to section 51C of the Employees' State Insurance Act 1948 which deals with accidents which 'happen'[1] while the workman (insured person) is travelling in the employer's transport. Broadly stated, the effect of the section is that if an accident occurs while the workman, with the express or implied permission of the employer, travels as a passenger[2] by any vehicle to or from his place of work, he is covered even though he is under no obligation to his employer to travel by that vehicle, provided certain conditions are satisfied. This provision is subject to certain conditions. The first condition is that the accident is such as would have been deemed to have arisen out of and in the course of his employment, if the workman had been under an obligation to his employer to travel by that vehicle provided certain conditions are satistime of the accident the vehicle was being operated by or on behalf of the employer (or some other person under arrangements with the employer) and the vehicle was not being operated in the ordinary course of a public transport service.

3.30. This section corresponds to section 9 of the National Insurance (Industrial Injuries) Act 1946 (Eng.). There was no corresponding provision in the Workmen's Compensation Act of England. As a general rule, a man's employment does not begin until he has reached the place where he has to work and it does not continue after he has left it.[3] Where there is no "place of duty", one has to read this general rule in relation to the ambit, scope or scene of duty. Certain exceptions were recognised to this general rule. Mainly those exceptions relate to—

(i) time spent in transport *provided by the employer/* if the workman was under *obligation to use it;*

(ii) means of access to, or egress from the place of work:

(iii) attendance before starting time;

(iv) return to the employer's premises, even after the termination of the employment, for some purpose justified by the terms of the employment;

(v) compulsory use of premises provided by the employer—for example, where, between the hours of active work, the employer is required to use certain premises as a resting place.

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1. The proper word is "occur".

2. Drivers are excluded.

3. *Natherton* v. *Coles*, (1945) 1 All E.R/ 227, 229.

Test of obligation to use transport previously adopted in English cases.

3.31. We are now concerned with the first of the exceptions mentioned above namely time spent in transport provided by the employer. According to the case law under the (English) Workmen's Compensation Act of 1925, the time spent in transport provided by or on behalf of the employer, was regarded as an exception and must be included in the period of employment, *if there was an express or implied obligation* on the workman to use the transport so provided.[1] Under the English Act[2] of 1946 relating to national insurance, however, no *obligation* to use the transport is required in order that the accident be deemed to have arisen out of and in course of the employment.

Test of permission later substituted by Statute in 1946.

3.31A. Thus the statutory provision in the English Act[3] of 1946 which has been adopted in the Employees State Insurance Act 1948, section 51C, enlarges the scope of the exception recognised by judicial interpretation of the Workmen's Compensation Act by removing the requirement of *obligation* to use the transport. Instead it is now provided that the workman must be travelling as a passenger by the particular vehicle to or from his place of work with the express or implied *permission of the employer*. Need for an obligation is expressly ruled out. But certain other conditions have to be satisfied.[4] We are in favour of adopting the principle of the provision in section 51-C. Hence again the drafting could be simplified,[5] and the first requirement[6] that the accident must be such that it would have been deemed to have arisen if the employer had been under an obligation to provide the transport, can be omitted, as merely repeating what is already required by the ingredient indicated by the words "out of and in the course of the employment".

3.32. The second requirement[7] namely that at the time of the accident, the vehicle was being operated by or on behalf of the employer etc., and was not being operated in the ordinary course of public transport service, raises a question of policy. On the one hand, it can be argued that such accident as arise while the workman uses a public transport system or transport not provided by the employer, are not hazards created by the *employer* but are hazards which the workman has to face, though in a sense for the purpose of the employment. It can be argued that this hazard is common to the particular workman and to persons who are not workman within the Act. On the other hand, it can be argued that it is not proper that an injury suffered in furtherance of the employment should escape the protection given by the Act.

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1. *Saint Helena Colliery Co.* v. *Hewitson*, (1924) A.C. 59 (H.L.).
2. Section 9, National Insurance (Industrial Injuries) Act, 1946.
3. Section 9, National Insurance (Industrial Injuries) Act, 1946.
4. These have been set out above. Para 3.29, supra.
5. Compare discussion as to section 51B of the Act of 1948.
6. para 3.29, *supra*.
7. Para 3.29, *supra*.

Position on the Continent as to injuries on way to work.

3.32A. In this connection it would be of interest to compare the position prevailing in some of the legal systems on the Continent. There is a great deal of diversity among the six legal systems on the Continent—Belgium, France, Germany, Italy, Luxemberg and Netherlands,—on the subject of workmen's compensation rules in respect of accidents occuring outside the employer's premises while the workman is on his way to or from work. In Italy and the Netherlands for example, there are no statutory provisions at all on the subject. But while the courts in Netherlands have by *judicial interpretation* extended the concept of "employment-related accident" to include accidents occuring on the way between an employee's residence and his place of employment, the Italian courts have found it impossible to adopt such a liberal view[1].

In Netherlands however the *legislation of* 1967 abolished the traditional distinction between industrial and ordinary accidents. All accidents, from whatever cause, whether or not employment-related, are now subject to the same rules in Netherlands. Consequently the problem of way-to-work accidents has become academic in the Netherlands[2]. Germany has covered trips made for the purpose of keeping work-relates *medical appointments*. France and Belguim are more liberal since they cover trips between the place of work and the place where the employee takes his meals[3].

In this connection, attention may be drawn to the fact that the International Labour Organisation in 1964 adopted a convention calling for compensation of way-to-work accidents. A recommendation adopted at the same time (1964 defines more explicitly the kind of trips which are to be covered under workmen's compensation systems. They include trips between the place of work and (1) the employee's permanent or temporary residence; (2) the place where the employee takes his meals; and (3) the place where the employee ordinarily receive his salary. The exact recommendation is as follows[4]:—

> "5. Each Member should, under prescribed conditions treat the following as industrial accidents :
>
> (a) accidents, regardless of their cause, sustained during working hours at or near the place of work or at any place where the worker would not have been except for his employment;

1. Book Review in (Winter 1972.) American Journal Comparative Law, 164, 165 (Review of Christian Fabry, "Les Accidents De Traijet").
2. Book Review in (Winter 1972.) American Journal Comparative Law 164, 165.
3. Book Review in (Winter 1972) American Journal, Comparative Law, 164, 1659.
4. I.P.O. Conventions (1919-1966), page 1094, Convention of 1964 on Employment Injuries, Recommendation No. 121.

(b) accidents sustained within reasonable periods before and after working hours in connection with transporting, cleaning, preparing, securing, conserving, storing and packing work tools or clothes;

(c) accidents sustained while on the direct way between the place of work and —

(i) the employees' principal or secondary residence; or

(ii) the place where the employee usually takes his meals; or

(iii) the place where he usually receives the remuneration."

3.33. Having carefully considered all aspects of the matter, we are of the view that section 51 C of the Employee's State Insurance Act should be adopted with modification that it should not be necessary that the transport is provided by the employer, if the workman is travelling directly to or from the place of employment.

Emergency (Section 51 D, Employee's State Insurance Act, 1948).

3.34. We now come to another point relevant to the expression "course of employment". It relates to action by way of rescue or otherwise in an emergency. At common Law the voluntary assumption of risk is regarded as justified (and hence not a bar to a claim in tort) in certain situations. Chief amongst these are the situations where a person is under a general or moral duty to save others from peril[1] (e.g., a policeman stopping running horses in a busy street), or is under a legal duty to protect property, e.g., his master's[2] (night watchman going back into burning premises) or otherwise acts instinctively[3] (wife trying to save her husband from falling glass). Mostly these are situations of emergency. They have come to be known as "rescue" cases.

3.35. These cases have a rationale. In the memorable phrase of Cardozo[4], "Danger invites rescue. The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences..... The risk of rescue, if only it be not wanton, is born of the occasion. The emergency begets the man. The wrong-door may not have foreseen the coming of a deliverer. He is accountable as if he had."

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1. *Haynes* v. *Harwood,* (1935) 1 K.B. 146 (C.A.).
2. *D Urao* v. *Samson,* (1939) 4 All E.R. 26.
3. *Brandon* v. *Gxborne Carrett & Co.,* (1924) 1 K.B. 548.
4. *Wagner* v. *International Railroads,* (1921) 232 N.Y. 176 (New York Court of Appeals).

3.35A. Section 51D of the E.S.I. Act 1948 which is based on the same principle, is as follows:— Section 51 D, E.S.I. Act.

> "51D. An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are or are thought to be or possibly to be injured or imperilled or to avert or minimise serious damage to property."

3.36. No such section was contained in the (English) Workmen's Compensation Act but, in cases arising under these Acts, a workman was not treated as acting beyond the sphere of his employment and on his employer's work, if he voluntarily did in an emergency, an act in the interests of his employer outside the scope of his ordinary employment. Courts in England held, under the Workmen's Compensation Act, that where the workman departs from the scope of his duties in an emergency, the accident may be held to arise out of the employment. Decision under the English Workmen's Compensation Act as to emergency.

Thus where an unskilled labourer assisted a machinist in a difficulty and suffered injury, he was held to be covered[1]. "An emergency is something which occurs unexpectedly. It does not necessarily mean an occurrence giving rise to greater danger[2]."

3.36A. It appears to us that an express provision as to emergencies, as in section 51D, E.S.I. Act[3], could be usefully added to the Workmen's Compensation Act also. We do not however consider necessary the requirement as to trade. Provision as to emergency desirable.

Subject to this modification we recommend an adoption of this section though in a simplified form.

3.38. In the light of the above discussion we recommend the insertion[4] of the following new provisions[5] :—

> "3.(1A) For the purposes of this Act, an accident arising in the course of a workman's employment shall be presumed, until the contrary is proved, also to have arisen out of that employment. (Compare section 51A E.S.I. Act, 1948).

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1. *London and Edinborough Shipping Co.* v. *Brown* (1905) 7 F. 488 (Scottish Court of Session).
2. *Deromody* v. *Higgs & Hill Ltd.*, (1937) 4 All E.R. 379.
3. Para 3.35A, *supra.*
4. These could be inserted in section 3 as sub-sections.
5. Section 3(1)(b), proviso (ii) and (iii) to be deleted.

(Compare section 51B, E.S.I. Act, 1948).

3.(1B) An accident shall be deemed to arise out of and in the course of a workman's employment notwithstanding 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, or in disregard of any safety guard or other device provided for the purpose of securing the safety of workmen, if the accident would "have been deemed so to have arisen had the act not been done in contravention of the provision as aforesaid or without instructions from the employer or in disregard of a safety guard or other device as aforesaid, as the case may be.

(Compare section 51C, E.S.I. Act, 1948).

3.(1C) An accident occurring while a workman is, with the express or implied permission of his employer, travelling as a passenger by any vehicle *directly* to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle be deemed to arise out of and in the course of his employment whether at the time of the accident the vehicle was being operated by or on behalf of his employer or by any other person.

"*Explanation.*—In this sub-section, "vehicle" includes a vessel and an aircraft.

Compare section 51D E.S.I. Act, 1948.

3.(1D) Where an accident occurs to a workman in or about any premises at which he is for the time being employed, it shall be deemed to arise out of and in the course of his employment if it occurs while he is taking steps on an actual or supposed emergency at those premises,—

"(a) to rescue, succour or protect persons who are injured or imperilled or who, it is thought, might possibly be injured or imperilled, or

(b) to avert or minimise serious damage to property."

This finishes the new provisions to be introduced and we shall resume our consideration of points concerning section 3.

Sections 3(2) to 3(4).

3.38A. Sections 3(2) to 3(4) will be discussed later[1].

Section 3(5)

3.39. Under section 3(5) a workman has no right to compensation in respect of any injury if he has instituted "in a civil court" a suit for damages in respect of the injury against the employer or any other person. Conversely no suit for damages shall be maintainable by a workman "in any court of law" in respect of any injury, if he has instituted a claim to compensation

1. Para 3.47 et seq, *infra.*

for that injury before a Commissioner or if an agreement has been "come to" between the workman and the employer regarding compensation for such injury.

3.40. Two points arise out of this sub-section—one of interpretation and the other of verbal symmetry. The first point is what is the exact scope of the expression "civil court" in the first part of the sub-section or of the expression "court of law" in the second part? In a Madhya Pradesh case[1], it was held that the expression "civil court" includes a Motor Accident Claims Tribunal constituted under the Motor Vehicles Act so that obtaining compensation from the Tribunal bars a claim for compensation under the Workmen's Compensation Act. Two points while arise.

3.41. So far as this particular tribunal is concerned, there is now a specific provision in the Motor Vehicles Act[2] which provides that where the death of or bodily injury to any person gives rise to a claim for compensation under the Motor Vehicles Act and also under the Workmen's Compensation Act 1923, the person entitled to compensation shall receive compensation under either of the Acts but not under both.

To avoid the possibility of a conflict of views on the subject in respect of similar Tribunals it is in our view desirable—

(i) to define the expression[3] "civil court" as including other Tribunals entitled to order payment of compensation on death of or bodily injury to any person; and

(ii) to use the expression "civil court" in place of the expression "court of law", in the latter half of the sub-section.

Consequentially it will be desirable to add an explanation providing that "suit" includes claims for compensation for the death of or bodily injury to a person under the Motor Vehicles Act or any other law. We would like to make it clear that the agreement referred to in section 3(5) should be registered.

3.42. We recommend the following re-draft of section 3(5) in the light of the above discussion.— Recommendation to revise section 3(5).

*Revised section* 3(5)[4] "Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted

1. *Radhabai* v. *Balu Ram*, (1971) Jabalpur Law Journal 17, (Krishnan and Oza JJ.), cited in the Yearly Digest (1971), Col. 2609.
2. Section 110AA, Motor Vehicles Act 1939.
3. This is not a draft.
4. To be re-numbered if the suggestion to re-number section 3(2) etc. as section 3A is accepted.

in a Civil Court against the employer or any other person, a suit for damages in respect of the injury and no suit for damages shall be maintainable by a workman in any civil court in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been reached between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act *and has been registered under this Act.*

*Explanation.*—In this section—

(a) 'civil court' includes a tribunal having jurisdiction to entertain a claim for compensation in respect of any injury; and

(b) 'suit' includes such claim before such tribunal."

Claims under other Acts.

3.42A. We are of the view that where a claim for compensation for an accident which could have been made under the Workmens' Compensation Act, is made before a civil court or other tribunal, the provisions of the Workmen's Compensation Act as to right to compensation (both of the workmen and the dependants) should apply, and the question of quantum of Compensation should also be determined in accordance with the provisions of the Workmen's Compensation Act. The principal idea is that the beneficial provisions of the Act excluding certain defences should be attracted, as also provisions as to persons who are dependants. Irrespective of the form, the principles governing these matters ought to be the same in respect of such claims. The new proposal will apply to claims before civil courts as well as tribunals.

Recommendation to insert new sub-section.

3.42B. Accordingly, we recommend that the following new sub-section should be inserted in section 3:—

"Where in respect of a death or personal injury, a claim for compensation which could have been made under this Act, is made before a civil court or before a tribunal, the provisions of this Act as to the right to compensation (both of the workmen and of the dependants), shall apply to such claim and the amount of compensation shall also be determined as far as may be in accordance with the provisions of this Act."

Section 3A i.e. 3(2) to section 3 (4) renumbered.

3.43. Sections 3(2), 3(2A), 3(3) and 3(4) relate to certain occupational diseases. If certain specified conditions are satisfied, the contracting of the occupational diseases by the workman is regarded as an injury by accident and there is a rebuttable presumption that the accident arose out of, and in the course of,

the employment. This is the broad effect of these sub-sections. In other words, to the concept of "personal injury caused by accident" which is the basis of a claim under sub-section (1), these sub-sections add the concept of disease subject to certain conditions.

The conditions are numerous. In the first place the workman must be employed in an employment specified in the Third Schedule. In the second place the occupational disease contracted by the workman must be one which is specified in the Third Schedule as "peculiar" to the particular employment. In the third place, in case of employment in Part B or Part C of the Third Schedule, the employee must have been in the service of the employer continuously for a specified period but this requirement (of continuous period) is to be read as subject to certain provisions which relax it or certain other provisions which explain and interpret it. These matters of detail need not be gone into at present.

3.44. To the list of disease given in the Third Schedule, the State Government (in the case of Part A and Part B of the Third Schedule) or the Central Government (in the case of Part C), can make additions after following the procedure laid down in section 3(3). Where the requirement of continuous[1] period is relaxed, there arises a need to distribute the liability between two or more employers—a matter provided in sub-section (2A).

3.45. Except as provided in sub-sections (2), (2A) and (3), compensation is not payable for a disease unless the disease is *directly attributable* to a specified injury by accident arising out of and in the course of employment.

This brief analysis of the sub-sections in question is offered to facilitate further consideration of the matter.

Too many Provisions crowded together.

3.46. Now the first difficulty that one experiences when reading the sub-sections concerning diseases is in the nature of a strain caused by too many provisions crowded together as sub-sections. The topic of disease deserves at least one separate section for itself, so as to relieve the strain. Secondly, the *first proviso* to section 3(2), (which is apparently in the *form* of a proviso) really adds to the main provision regarding employments in Part C, so far as the requirement of continuous minimum period is concerned. It enacts a substantive provision having an importance of its own. Broadly stated, its effect is that irrespective of the length of the continuous period of service, if (a) a workman, while in the service of one or more employers in the employment in Part C, contracts the peculiar occupational disease, and (b) the disease has arisen out of and in the course of the employment, then the contraction of such disease 'shall be deemed to be an injury by accident' within the meaning of the section.

1. Para 3.43, *supra*.

This "deeming" is not subject to proof to the contrary. It is desirable that the first proviso to sub-section (2) should appear as a substantive provision (for employments in Part C), followed by the other substantive provision in the main sub-section (for employments in Part C). The second proviso to sub-section (2) is grammatically inaccurate though its sense is fairly clear. It applies to employments in Part B or in Part C and provides for cases where the contraction of the disease takes place *after cessation* of the employment. Such a special provision is necessary apparently because the main sub-section—section 3(2)—speaks of "whilst in service".

Need for classification of the provisions.

3.47. It would appear that understanding of these sub-sections would be facilitated if the four sub-sections—3(2), 3(2A), 3(3) and 3(4)—were put in a separate section and some attempt was made to classify the provisions into—

(i) common provisions;

(ii) provisions applicable to employments in Part A of the Third Schedule;

(iii) provisions applicable to employments in Part B of the Third Schedule; and

(iv) provisions applicable to employments in Part C of the Third Schedule.

This improvement is suggested in view of the fact that the present arrangement hardly conduces to a clear understanding of what is intended. Moreover in so far as the employments in Part C are concerned, there are as already stated above[1] not one but two substantive provisions. Certain other drafting improvements in the second proviso[1] are also desirable.

Recommendations.

3.48. On the above basis the following redraft of section 3(2), (2A), (3) and (4),—to be put as section 3A—is recommended.[2]

Occupational disease When to be deemed to injury by accident.

[section 3 (2), main para in part]

[Section 3 (2), main para in part.]

3A(1): If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment the contracting of the disease shall be deemed to be an injury by accident within the meaning of section 3, and unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment.

(2) If a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period

1. Para 3 46, *supra*. 1-a. See para 3.46 *supra*.

2. Existing section 3(5) could be renumbered as section 3B.

shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of section 3, and unless the contrary is proved, the accident shall be deemed to have arisen out of and in the course of the employment;

Provided that if it is proved— [Section 3(2), Second proviso in part]

(a) that a workman, having served under any employer in any employment *specified in Part B of Schedule III for a continuous period of six months*[1] *has*, after the cessation of such service contracted any disease specified in the said Part B as an occupational disease peculiar to the employment; and

(b) that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of section 3.

(3) If a workman, whilst 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, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section, and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment. [Section 3 (2), main para in part]

(4) If it is proved— [Section 3 (2), first proviso]

(a) that a workman, whilst in the 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 that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of, and in the course of, the employment,

the contracting of such disease shall be deemed to be an injury by accident within the meaning of section 3.

1. The present second proviso to section 3(2) is ambiguous in this regard, but presumably the above is the correct reading. See section 3(2), main para.

[Section 3 (2), second proviso in part]

(5) If it is proved—

(a) that a workman, having served under one or more employers in any employment specified in Part C of Schedule III for a continuous period specified *under sub-section (3)* for that employment, has after the cessation of such service, contracted any disease specified in the said Part C as an occupational disease peculiar to the employment; and

(b) that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of section 3.

[Section 3 (2A)]

(6) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of section 3 and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may in the circumstances deem just.

[Section 3(3)]

(7) The State Government in the case of employments specified in Part A and Part B of Schedule III, and the Central Government in the case of employments specified in Part C of that Schedule, 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 Schedule III, 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 disease peculiar to those employments respectively, and thereupon the provisions of this section shall apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

[Section 3 (4)]

"(8) Save as provided by sub-sections (1) to (7), no compensation shall be payable to a workman 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."

Section 4(1) General scheme as to compensation.

3.49. We now proceed to a consideration of the general scheme of compensation. The amount of compensation under sub-section (1) of section 4—which is one of the longest sub-sections in the Act—depends on a number of factors.

There is of course a common element of gradation namely the amount of monthly wages; the amount recoverable in respect of an injury (whatever its nature) is linked up with the amount of monthly wages of the particular worker. This part of the scheme is to be ascertained from the Fourth Schedule to the Act. In addition, the amount of compensation varies according as the injury has resulted in (i) death (ii) permanent total disablement (iii) permanent partial disablement or (iv) temporary disablement. In the case of permanent partial disablement, again there is a distinction between an injury specified in Part II of the First Schedule and an injury not so specified. If the injury is so specified, the percentage of compensation is laid down by the Schedule itself while if the injury is not specified, the percentage is not so laid down but is proportionate to the loss of earning capacity permanently caused by the injury. This might be explanied more elaborately.

In the case of death, a specified amount mentioned in the Fourth Schedule is to be paid and in the case of permanent *total disablement* also, a specified amount mentioned in the Fourth Schedule is to be paid. No other complications enter here.

But in the case of a permanent *partial disablement,* the amount specified for permanent *total* disablement is first to be taken into account and then a percentage is to be applied thereto. The percentage given in the Schedule as appropriate to the particular kind of injury is to be applied for this purpose. In other words, the amount specified in respect of permanent total disablement is to be reduced to that percentage. In the case of certain injuries however no such statutory percentage is laid down and the appropriate percentage has to be arrived at on the facts of each case.

In the case of temporary disablement whether total or partial the amount specified in the Fourth Schedule is to be paid as a half monthly payment.

3.50. The provisions as to compensation might appear to be somewhat complicated but the complexity seems to be unavoidable. From the layman's point of view, structural improvements could be suggested only in[1] clause (d) of section 4(1) relating to temporary disablement.

3.51. Section 4(1), clause (d), imposes a strain on the mind when reading. In the interests of proper understanding of the section it is desirable to split up this clause into two parts—(i) the main proposition and (ii) the detailed provisions. The main proposition could be retained as at present. The detailed provisions could be transferred along with existing section

Section 4 (1) (d).

1. See discussion relating to section 4(1)(d), para 3.51, *infra.*

4(2) to a new section.[1] The revised provisions will then be as follows:—

*Revised section* 4(1)(*d*)

[Section 4 (1) (d) in part]

"(d) Where temporary disablement whether total or partial results from the injury and the injured workman has been in receipt of monthly wages falling within limits shown in the first column of Schedule IV—a half-monthly payment of the sum shown against such limits in the fourth column to be paid *in accordance with the provisions* of section 4A....."

*Section 4A (to be added*[2]*)*

(1) The half-monthly payment referred to in clause (d) of sub-section (1) of section 4 shall be payable on the sixteenth day—

(i) from the date of the disablement where such disablement lasts for a period of twenty-eight days or more or

(ii) after the expiry of a waiting period of three days from the date of the disablement where such disablement lasts for a period of less than twenty-eight days;

and thereafter half-monthly during the disablement or during a period of five years whichever period is shorter. (Provisoes as at present).

Section 4A Compensation to be paid promptly.

3.52. It is one of the chief principles of the Act that compensation as provided in the Act shall be paid as soon as it falls due. Theoretically, compensation falls due as soon as liability is incurred under section 3(1); but acceptance of the liability or quantification of the liability may sometimes take time. To provide for such a situation, the Act has a provision requiring the employer, where he does not accept the liability to the extent claimed, to make a provisional payment based on the extent of liability which he accepts. This is the gist of sub-sections (1) and (2) of section 4A.

If the employer is in default in paying the compensation due under the Act for one month from the date of it fell due, the Commissioner may, under sub-section (3) of section 4A, direct that in addition to the amount of the arrears, simple interest at the rate of 6 per cent per annum on the amount due "together

1. The new section will be numbered as section 4A. Present section 4A will then become section 4B.

2. Present section 4A to be re-numbered as section 4B.

with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding 50 per cent of such amount", shall be recovered from the employer by way of penalty.

Paucity of Case-law and improvements needed in drafting.

3.53. This section (section 4A) was inserted in 1959. No reported cases on this section have come to our notice. But sub-section (3)[1] of the section appears to be capable of improvement in some respects. As it is also possible that some of the expressions used in sub-section (3) might create controversies, drafting changes are also desirable.

Questions to be considered.

3.54. The first question to be considered is whether the power to direct the payment of interest under section 4A(3) is to be exercised only when the Commissioner decides the claim and awards compensation.

This apparently is the present position and could be made clear. The second question is whether the interest to be awarded under the sub-section is regarded as a kind of penalty or whether only the "further sum not exceeding 50 per cent" is to be regarded as a penalty. The words "by way of penalty" occurring at the end of section 4A(3) would suggest the former interpretation, while the separate mention in section 30(1)(aa) of "interest or penalty" would suggest the latter interpretation, which is also more appropriate and should be adopted.

Thirdly in so far as the amount payable under the section is described as a penalty, it would be desirable to provide for notice to the employer before a penal order is passed. Fourthly we are of the view that the rate of interest mentioned at present—6 per cent—should be increased to 9 per cent and the Commissioner should be bound to award interest at that rate in every case where the employer is in default.

Recommendation.

3.55. To carry out the above improvements we recommend the following re-draft of section 4A(3).

[*Revised section 4A*(3)]

"4A(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner—

(a) *at the time of ordering payment of such compensation* shall direct that the employer shall, in addition to the amount of the arrears, pay simple interest at the rate of *nine per cent* per annum on the amount due, and

1. Para 3.52, *supra*.

(b) if, in the opinion of the Commissioner, there is no justification for the delay, may direct that the employer shall in addition to the amount of the arrears pay a further sum not exceeding fifty per cent of such amount by way of penalty:

*Provided that an order for the payment of penalty shall not be passed under clause (b) without giving reasonable opportunity to the employer to show cause why it should not be passed.*

## CHAPTER 3A

## COMPUTATION OF COMPENSATION

Introductory.

3A.1. Certain matters concerning the method of calculating compensation—sections 5 to 7—will be dealt with in this Chapter. While the right to compensation and the amount of compensation have been dealt with in earlier sections (sections 3 and 4), certain matters of detail which are relevant to the method of calculation remain to be dealt with and they form the subject matter of this Chapter. Since the amount of compensation depends on the amount of wages either directly[1] or indirectly[2],—the definition of "wages" in section 5 is important enough. In case of temporary disablement, compensation is in the form of half-monthly payments,[3] and sections 6 and 7 are relevant thereto. Compensation on death is to be distributed—section 8. Assignment is barred by section 9.

### *Method of calculating wages*

Section 5(a) and 5(b).

3A.2. For calculating monthly wages section 5 provides several methods.

Method of calculating wage.

The normal situation of a workman employed under the same employer continuously for 12 months is dealt with in clause (a) under which the monthly wages are 1/12 of the total wages earned for the whole 12 months.

We are of the view that this clause requires modification in one respect. At present, the total wages for the whole 12 months are to be taken into account and divided by 12 but, in fairness, the wages for the last month should be decisive. Under the present law a workman who got a rise in wages a month or so before the accident does not get the benefit of that rise, if he is injured. This should be changed by amending clause (a).

Recommendation to amend section 5(a)

3A.2A. We therefore recommend that in section 5(a) for the words "one-twelfth of total wages etc. the words "the wages for the last full month immediately preceding the accident", should be substituted.

Comment on s.5, clause (b), first method.

3A.3. This finishes section 5(a). In order to arrive at a proper, fair and consistent computation of monthly wages, two alternative methods of computation are provided for in clause (b) which applies where the continuous employment under the

1. Section 4(1)(a), 4(1)(b) and 4(1)(d).
2. Section 4(1)(c).
3. Section 4(1)(d).

employer was for less than a month. The first method in clause (b) applies where the continuous period of service was less than one month. Under this clause,—

> "the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a *workman employed on the same work by the same employer.*"

With reference to this clause it was observed in a Sind case[1],—

> "These words are not as explicit as they might be. The words 'continuous' and 'service' which find place in clauses (a) and (c) have been omitted." (i.e. they have been omitted in the computation part).

The clause could be made more explicit on this point.

Commen on clause b), second method.

3A.4. Where the employer had no regular employees, this first method of computation would not apply and for computing the workman's monthly wages, one must have regard to the words "or if there is no such workman so employed", and pass on to the second method provided in clause (b) under which the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by (a) workman "employed on similar work in the same locality."

With reference to these words it has been observed judicially[1] that—

> "these words manifestly include *wages from any source and any employer.*"

It may be advisable to provide this explicitly.

Recommendation to amend section 5(b).

3A.5. We recommend that the change indicated above[2] with reference to section 5(b), should be carried out by a suitable verbal amendment.[3]

Section 5(c)

3A.6. In section 5 clause (c), which is a residuary provision, it is clear[4] that the words "last continuous period of service immediately preceding the accident" mean continuous employment "under the same master". No amendment is needed here.

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1. *Pestonji* v. *Asibai,* A.I.R. 1949 Sind 50, 53 para 25.

2. Para 3A.3 and 3A.4, *supra.*

3. Amendment not drafted with reference to section 5(b).

4. *Pestonji* v. *Asibai,* A.I.R. 1949 Sind 50, 52, para 20.

Contract labour.

3A.7. One question concerning contract labour has also to be considered under section 5. It is well-known that when contract labour is employed, the contractor usually pays less than the employer. Therefore the Commissioner appointed under the Act should, in case of contract labour, have power to increase the amount of wages for the purpose of computation under the Act if the wages which would have been payable if the employer had directly employed the workman exceed those paid by the contractor. The matter can be included in section 5 which deals with the computation of wages. The Commissioner could be given a power, similar to that which he now has, under section 5(b) to take into account the wages of other workmen in similar employ although of course the present power is meant for a different purpose.

Recommendation to add an Explanation regarding contract labour.

3A.8. We therefore recommend that, to section 5 a suitable provision authorising the Commissioner to consider, in case of contract labour, a direct employee's wages should be added, in the shape of an Explanation,[1] on the following lines;

> "*Explanation* 2.—In the case of a workman employed on contract labour, the Commissioner shall have power to direct that the amount of wages of the workman shall be computed at a higher rate, if the wages which would have been payable if the employer had directly employed him exceed those paid by the contractor, and, for this purpose, the Commissioner may take into account the wages of other workmen in similar employ".

Cases not covered by section 6.

3A.9. The Act makes no express provision for altering compensation except in section 6. By the terms of section 6, it is limited to half-monthly payments which are prescribed by the Act *for only temporary disablement* (partial or total). Besides section 6 there is no other provision in the Act which empowers the parties to seek a reopening of the question of compensation whether fixed by an agreement or determined by an award. Should other cases be covered? In a Calcutta case,[2] the question was discussed and the following comment made:

> "The reason why the Act has made an exception in the case of the temporary disablement appears to me to be plain. The disablement being temporary, is normally bound or due to disappear, or it may be that it will grow worse and be aggravated into a permanent disability, but whether or not the subsequest development be for the better or for the worse, the disablement is for the time being of a

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1. Present Explanation to be renumbered as Explanation 1.

2. *Angus Co. Ltd.* v. *Chouthi*, A.I.R. 1955 Cal. 616, 619 (Chakravarti, C.J.).

temporary character, and since it is temporary, provision for future adjustment is obviously called for.

> "Since the compensation is to be paid for the disablement, there will be no reason to pay it when the disablement has ceased for, again, since compensation is payable for disablement as it is at the time the compensation is fixed, there is no reason why the full amount should continue to be paid, although the disablement diminishes and the earning capacity is correspondingly restored. Looking at the matter from the other point of view, since the compensation is originally assessed on the basis of a temporary disablement, there is no reason why the figure so assessed should be maintained, even if the disablement worsens and deteriorates into a permanent disability."

3A.10. In the same case,[1] it was pointed out that "it is not impossible that when a personal injury suffered by a "workman is assessed for the purpose of compensation, some mistake should be made, nor is it impossible that even a permanent disablement, when it is partial, may deteriorate. In the case of permanent disablement of a *total character*, the question perhaps does not arise. But it is conceivable that in the case of a permanent disability *of a* partial character, there may be aggravation. Why the Legislature has made no provision for such cases, it is not for us to say."

At the same time, the judgment explains the present narrow position thus :—

> "It may have been thought that it would be quite impossible to work the Act if successive applications made at different points of time during the remainder of the workman's life were to be permitted and it was to be decided each time whether an aggravation had occurred and if it had occurred, whether it was an aggravation of the injury itself as such or whether the deterioration had been occasioned by the operation of external causes. We are, however, not concerned with question on legislative policy and our sole function is to interpret the Act, as we find it."

It appears to us that the passage quoted above explains satisfactorily the absence of a specific provision and so we do not recommend any change in this regard.

Section 6(1).

3A.11. Section 6(1) provides for the review of half monthly payments payable under the Act. The review is by the Commissioner on the application either of the employer or of the

1. *Angus Co. Ltd.*, v. *Chouthi*, A.I.R. 1955 Cal. 616.

workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or subject to rules made under this Act on application made without such certificate.

Review is thus permissible under two situations; first where a qualified medical practitioner certifies as to a change in the condition of the workman and secondly, subject to rules under the Act without such certificate of course on an application.

3A.12. The Act is silent as to the exact circumstances to which the second situation is applicable,—except that rules[1] will provide for it. It is desirable that the Act should give some guidance as to the cases for which the second situation is meant; the situation intended should be broadly indicated in order to make the sub-section more intelligible and self-contained. From the rules it appears that the circumstances provided for (in the rules) relate to increase or decrease in wages and the like. Some of the important grounds mentioned in the rules could be mentioned in section 6 of the Act with a residuary power to add other circumstances by rules.

3A.13. In the light of the above discussion we recommend the following re-draft[2] of section 6(1) : Recommendation.

"6(1) Any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner—

(a) on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman; or

(b) subject to rules made under this Act, on application made without such certificate—

(i) *by the employer on the ground that since the right to compensation was determined, the workman's wages have increased*[3];

(ii) *by the workman, on the ground that since the right to compensation was determined, his wages have diminished*;

1. Section 32(2)(a).

2. The grounds of review are taken from some of the grounds mentioned in the rules.

3. See section 4(1)(d), proviso (b).

(iii) *by the workman, on the ground that the employer*[1]*, having commenced to pay compensation, has ceased to pay the same notwithstanding the fact that there has been no change in the workman's condition such as to warrant such ceasation;*

(iv) such other ground as may be prescribed."

Section 7-Commutation of half-monthly payments.

3A.14. Section 7 reads as follows:—

"7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be."

Recommendation.

3A.15. The procedure for commutation of compensation is laid down[2] in the Rules. We think that it should find a place in the Act. Hence we recommend that the following sub-section should be added[3] in section 7:—

"(2) Where an application is made to the Commissioner under sub-section (1) for the redemption of a right to receive half-monthly payments by the payment of a lump sum, the Commissioner—

(a) shall form an approximate estimate of the probable duration of the disablement, and

(b) shall order payment of a sum equivalent to the total of the half-monthly payments which would be payable for the period during which he estimates that the disablement will continue, less one-half per cent of that total for each month comprised in that period:

Provided that fractions of a rupee included in the sum so computed shall be disregarded.

(3) When, in any case to which sub-section (2) applies, the Commissioner is unable to form an approximate estimate of the probable duration of the disablement, he may, from time to time, postpone a decision on the application for a period not exceeding two months at any one time."

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1. This is intended to provide an additional sanction for delay in payment.
2. Rule 5 of the rules under the Act.
3. Present section 7 to be re-numbered as sub-section (1).

## CHAPTER 4

## DISTRIBUTION OF COMPENSATION

Section 8.

4.1. Once compensation is computed in accordance with the provisions of the Act, the next important question that arises is the distribution of the amount so computed. In the case of death, the persons entitled are the dependants as defined in the Act[1], but every dependant is not necessarily entitled to claim a right of participation in the compensation. It is for the Commissioner to decide whether a particular dependant[2] should be allowed to do so and if he is allowed, then what share should be apportioned to him. The provisions of section 8 which deals with the subject are of importance.

Recommendation to replace Section 8 by three sections.

4.2. Any person—whether lawyer or layman—who reads the section is struck by its length and complexity. The section, as originally enacted, was a very short one; but successive amendments have engrafted one provision after another on the section so that, as it stands at present, it has neither the clarity nor the brevity of the original and as one proceeds to read it, one loses thread of the principal idea with which the section begins.

Broadly speaking, the principle topics dealt with in the section are : deposit, distribution and investment. This can be illustrated by the following analysis :—

| | Section No. | Topic |
|---|---|---|
| Deposit | 8(1) | Compulsory deposit. |
| | 8(2) | Voluntary deposit. |
| | 8(3) | Receipt for compensation deposited. |
| Distribution | 8(4) | Deduction of certain expenses from the money deposited and notice preliminary to determination of distribution. |
| | 8(5) | Apportionment. |
| | 8(6) and 8(7) in part | Payment of the sum apportioned. |
| Investment | 8(7) in part | Investment |
| | 8(8) | Variation of the sum invested. |
| | 8(9) | Recovery where variation is on the ground of fraud impersonation or other improper means. |

1. Section 2.

2. Section 8(5).



28 M of Law/74—6

It would be convenient if section 8 is replaced by three sections—8, 8A and 8B—each section to deal with one of the topics mentioned above[1].

We shall now discuss the changes needed in the several sub-sections of section 8.

Section 8(1) to 8(4).

4.3. Under section 8(1), *inter alia,* subject to a proviso allowing small advances, no payment of compensation in respect of a workman whose injury has resulted in *death* shall be made otherwise than by deposit with the Commissioner. Under the same sub-section, no lump sum payment to a woman or person under legal disability shall be made otherwise than by deposit. Under section 8(1), again, *any other sum* amounting to not less than 10 rupees payable as compensation *may be* deposited with the Commissioner. Section 8(2) permits deposit of compensation in cases other than those of death. Section 8(3) provides that the receipt of the Commissioner shall be a sufficient discharge and section 8(4) permits certain deductions to be made.

Section 8(1) 8(6)& 8(7) provision regarding workmen.

4.4. Section 8(1) requires consideration in some detail. There are two situations for which the mode of payment of compensation is specifically laid down in section 8(1). First where the injury has resulted in death; and, secondly where a lump sum is to be paid as compensation to a woman or a person under legal disability. In these two cases the compensation *must be* deposited with the Commissioner; it cannot be paid directly by the employer to the person entitled.

As regards the first situation, there can be no controversy, the object of deposit being to secure that the dependants are ascertained and the compensation apportioned amongst them under section 8(5) by the Commissioner.

As regards the second situation, again, there is no controversy as regards persons under legal disability. But as regards women, some re-consideration of the present law is necessary. The effect of the present provision for compulsory deposit is that it is not immediately paid to the person entitled. Even after deposit under section 8(6),—injury resulting in death—"the Commissioner *may*.....pay the amount to the person entitled thereto". Under section 8(7), where the lump sum deposited is payable to a woman (or a person under legal disability), the amount "may be invested", applied or otherwise dealt with for the benefit of the woman or of such person during his disability in such manner as the Commissioner may direct". This scheme involves avoidable delay and inconvenience where the person entitled is an adult woman.

The net effect of these provisions is that compensation payable to an adult woman is not necessarily paid to her in cash *immediately.* It has to be deposited with the Commissioner and

1. Re-drafts showing proposed splitting up not prepared.

after that, its immediate payment to her is subject to the discretion of the Commissioner who may (if it is not paid immediately) invest it, apply it, or otherwise deal with it for the benefit of the woman.

Section 8(1) Recommendation to amend.

4.5. We are of the view that this scheme (which appears to have been introduced by an amendment of 1929) requires modification having regard to progress achieved by women. The English Act[1] was in this respect confined to persons under legal disability. No doubt in 1929 when the scheme was introduced, conditions in India were different from those in England and the provisions were perhaps needed for the protection of women. But at the present day, some modifications in this scheme may be necessary because some women may resent even the protection thrown around them.

It would therefore be proper if, having regard to the advancement in the socio-economic condition of women, the application of the above provision in section 8(1) is modified by giving a discretion to the Commissioner to permit direct payment to the woman by the employer without deposit under sub-section (1). This will require an amendment of sub-section (1) of section 8.

Recommendation regarding section 8(1)

4.5A. Accordingly we recommend that the following proviso should be inserted below section 8(1):—

> "Provided further that in the case of a lump sum to be paid as compensation to a woman, an employer may, if the Commissioner is satisfied that it is a fit case for direct payment and so certifies, make a direct payment to her."

4.5B. This finishes that part of section 8 which deals with the deposit of compensation. We proceed to the second part[2] of the section dealing with distribution of compensation.

Section 8(5)

4.6. Section 8(5) dealing with distribution of compensation is as follows:—

> "(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit or may, in the discretion of the Commissioner, be allowed to any one dependant."

This is one of the most important provisions in the Act and we propose to discuss a few points concerning this sub-section which are of practical significance.

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1. Section 26, Workmen's Compensation Act, 1925 (Eng.).
2. *Cf.* analysis in para 4.2, *supra*.

Section 8(5)—Desirability of guidelines—Recommendation.

4.7. It is plain that distribution of the compensation amongst the dependants is a matter entirely for the determination of the Commissioner and sub-section (5)[1] furnishes no guidelines to him.

In our view it is desirable to insert some guidelines in this regard. Without attempting to be exhaustive we may state that the Commissioner should take into account—

(i) nearness of relationship—e.g., the dependant being the widow, child or parent of the deceased;

(ii) the means of the dependant and the extent of his dependence on the workman;

(iii) the desirability of not distributing compensation amongst a very large number of persons,—which may lead to its being frittered away.

We therefore recommend that the following proviso should be inserted below section 8(5):

"Provided that in exercising his discretion under this sub-section, the Commissioner shall have due regard to—

(i) the nearness of relationship of the dependant to the deceased;

(ii) the means of the dependant and the extent to his dependence on the deceased;

(iii) the desirability of ensuring that the amount of compensation is not distributed amongst an excessively large number of persons so as to lead to its being frittered away; and

(iv) other relevant considerations."

Section 8(5) and effect of death.

4.8. Then there is another question which arises out of section 8(5). Compensation is to be apportioned by an order of the Commissioner to one or more dependants. What is to happen when a dependant dies after the death of the workman and before apportionment? What is the nature of his right? This question has created some difficulty.

For example, in a Calcutta case[2], an argument was put forth by the employer that no right could accrue in favour of a dependant at all till the enquiry is finished by the Commissioner and the distribution order is made. If therefore the dependant dies before the distribution order is made, the compensation should be refunded—that was the contention. This contention was held to be not tenable. The court held that it was true that section 3 which imposes the liability upon the employer to pay compensation does not specify the person or persons to whom it is payable but section 8 makes it clear that nobody has any right to

1. Para 4.6, *supra*.

2. *Pasupathi Dutta* v. *Kelvin Jute Mills*, A.I.R. 1937 Cal. 495, 497.

it except the dependants and this is the case whether the compensation is paid direct or through the Commissioner. In certain cases the compensation has to be deposited with the Commissioner and this is for ensuring proper distribution. The High Court observed :

> "In my view, 'dependant' in section 8 includes the heirs or legal representatives of the dependant as defined by section 2, where the dependant has died since the death of the workman."

4.9. The High Court pointed out that the compensation is to be deposited with the Commissioner for safe custody and equitable distribution, particularly when there are more dependants than one, but though the Commissioner has got the entire discretion in the matter and can allot the entire amount to one dependant, he cannot deprive the sole dependant of any portion of the compensation nor can he give any portion of the same to one who is not a dependant.

4.10. In England, a similar view was taken by the House of Lords[1] (though Lord Dunedin dissented). It appears, however, that the House of Lords did find some difficulty in arriving at the decision. The law in England was subsequently altered by statute[2]. In the (English) Workmen's Compensation Act of 1925 which replaced the Act of 1906, it is provided in section 2(3): English Law.

> "Where a dependant dies before a claim under this Act is made, or if a claim has been made, before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to payment of compensation, and the amount of compensation shall be calculated and apportioned as if that dependant had died before the workman."

4.11. The High Court of Calcutta, in the case cited above[3], after referring to the statutory provision in England[4], observed:—

> "There is no corresponding provision in the Indian Act. If the opposite view is taken, the position would be that the right to compensation would depend upon the accident of the time when the Commissioner made his inquiry or when the dependant dies. If the Commissioner were delayed in making his inquiry through some cause, such as a heavy list or some

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1. *United Collieries Ltd.* v. *Simpson,* (1909) A.C. 383.
2. See section 2(3), Eng. Act of 1925.
3. *Pasupathi Dutta* v. *Kelvin Jute Mills,* A.I.R. 1937 Cal. 495, Para 4.8, *supra.*
4. Para 4.10, *supra* .

other unavoidable delay, dependants might die uncompensated after suffering privations through the loss of the workman upon whom they were dependant. Such could not be the position under the Act."

Madras view.

4.12. As was held in a Madras case,[1] under section 8 sub-section (4), the right of the employer to get a refund arises only when a workman dies without any dependant and the Commissioner at the time of the distribution knows that he has left no dependant within the meaning of the Act. But, if the workman leaves a dependant and the claim of that dependant is recognised by the Commissioner as the person entitled to receive the compensation, any claim on the part of the employer for a refund can no longer arise under that clause.

This is no doubt the present position. The right to compensation vests in the dependant on the death of the workman, subject to the order of the Commissioner under section 8(5).

Recommendation regarding section 8(5).

4.13. We are, however, of the view that the right should not so vest and that in the case of death of a dependant before the order under section 8(5) is passed, the amount should be subject to distribution amongst others (see the English section)[1-a]. If the death occurs after the order but before the actual payment, the same principle should apply and the amount should be subject to re-distribution among the surviving dependants held entitled. We think that the scheme of the Act is that the factum of dependence is the primary consideration. We recommend that suitable provisions[2], be inserted in this behalf.

Section 8(6) —Recommendation.

4.14. Section 8(6) reads as follows:

"8. (6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability, and may, in other cases, pay the money to the person entitled thereto."

The word "compensation" in this sub-section is wide enough to cover half-monthly payments. We are of the view that in the case of half-monthly payments, payment to the adult female should be compulsory and should not depend on the discretion of the Commissioner.

Apart from this point of substance, a verbal change is needed. The latter half of the sub-section, which deals with "other cases", is not very clear because in effect (though not in form), it contemplates two negatives. The first half provides for cases

1. *Abdurrahman* v. *Beeran Koya*, A.I.R. 1938 Mad. 402.

1-a. Para 4.10, *supra*.

2 Draft not annexed.

where the payee is *not* a woman or person under legal disability. The latter half, when it speaks of "other cases", has therefore really in mind cases where the payee *is* a woman or person under legal disability. There is scope for verbal improvement in this respect.

We therefore recommend that the sub-section should be revised as follows:

> "8. (6) Where any compensation deposited with the Commissioner is payable to any person,—
>
> (a) the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability *or if the compensation consists of a half-monthly payment payable to an adult woman not under legal disability, pay the* money to the person entitled thereto;
>
> (b) the Commissioner may, *if the person to whom it is payable is a woman or a person under legal disability, and the compensation does not consist of a half-monthly payment payable as aforesaid,* pay the money to the person entitled thereto."

4.15. Section 8(7) reads as follows:— Section 8(7) —Recommendation.

> "(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability the Commissioner may, of his own motion or an application made to him in this behalf, order that the payment be made during the disability to any *dependant* of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the *workman.*"

In the latter half of the sub-section[1], the word "dependant" would create an impression that the sub-section is applicable to cases of death[2] but that is not the true position.

Half-monthly payments are, under section 4(1)(d), payable on the disablement of a workman and it would appear that the expression "dependant" in the latter half sub-section (7) really means a person who would be a dependant if the workman died.

1. Half-monthly payments.

2. See definition of "dependant" in section 2(d) which speaks of relatives of a deceased workman.

Incidentally section 8(7) is applicable only where payment has not been made under section 8(6). That should be made clear.

The sub-section should therefore be revised as follows :

"(7) Where—

(a) any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may, *if the Commissioner has not ordered payment under clause (b) of sub-section* 6, be invested, applied or otherwise dealt with for the benefit of the woman or such person during his disability in such manner as the Commissioner may direct ;

(b) a half-monthly payment is payable to any person under a legal disability, the Commissioner, *if he has not ordered payment under clause (b) of sub-section* (6), may of his own motion or on an application made to him in this behalf, order that the payment be made during the disability to *any person who would be a dependant if the workman died*, or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman."

Section 9.

4.16. Section 9 provides as follows:

"Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any may be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same."

The words "or pass to any person other than the workman" in section 9 seem to make a distinction between a workman and a non-workman. This gave rise to an argument in a Madras case[1] to the effect that if a dependant who has become entitled to compensation dies before receipt of the amount, the amount lapses. The assumption was that the dependant was a non-workman. Fortunately the argument failed. But the matter requires examination.

It may be mentioned that this section corresponds to a section of the (English) Workmen's Compensation Act,[2] 1925, which ran as follows:

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1. *I. M. Abdurrahman* v. *Nadakkhri M. B. Koya*, AIR 1938, 1 Mad, 402.
2. Section 40, Workmen's Compensation Act, 1925 (Eng.).

> "A weekly payment payable under this Act or any scheme certified under this Act or a sum paid by way of redemption thereof, shall not be capable being assigned, charged or attached and shall not pass to *any other person* by operation of law nor shall any claim be set off against the same."

It will be noticed that the words "person other than the workman", which occur in our section 9 do not occur in the English Act, and therefore the emphasis on "non-workman" is not found in the English Act.

4.17. We are now recommending a provision[1] whereunder, in case of death of the dependant, the amount will be subject to distribution amognst other dependants. Hence no clarification in Section 9 is needed with reference to the question raised in the Madras case.[2]

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1. See recommendation as to section 8(5), para 4.13, *supra*.
2. Para 4.16, *supra*.

## CHAPTER 5

## NOTICES AND REPORTS

Introductory.

5.1. In order that the provisions conferring right to compensation may not remain a dead-letter, the Act has a number of sections (sections 10, 10A, 10B and 11), requiring various kinds of notices, reports and statements and providing for immediate medical examination of the workman. The primary object of these provisions has somehow got blurred because of the hapazard manner in which the provisions have come to be inserted, and—if we may say so with respect—because of the casual manner in which the various statutory requirements have been inserted. The result has been that considerations of proper enforcement of the Act have not received the attention which they deserve; and somehow, the relevant provisions—particularly section 10—give one the impression of an over-legalistic statute, likely more to put obstacles in the way of claims for compensation than to provide facilities for their proper assertion. We make these introductory observations in order to explain why, in the case of the sections with which this Chapter is concerned, it has become necessary to resort to a re-casting of the provision, as also to a number of changes of substance.[1]

Section 10 (1) notice to be optional.

5.2. In section 10(1), there is, on the part of the workman, an obligation to give notice of accident to the employer. If the notice is not given, the claim of the workman for compensation cannot be entertained unless the case falls within one of the exceptions specified in the section or unless the Commissioner waives this requirement. In our opinion this provision should be deleted. It is possible that the employer may deny receipt of notice or may not maintain the required notice-book under sub-section (3), and nice questions of fact requiring evidence may then arise. We are therefore of the view that there should be no such obligation on the workman. The giving of notice—which we would prefer to describe as an "intimation"—should be a facility allowed to the workman and not an obligation imposed on him. He can avail himself of the facility in order to preserve evidence of his *bona fides*. But failure to do so should not entail a bar to the claim being entertained[2].

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[1]. See discussion as to sections 10, 10A and 10B, *infra*.

[2]. For redraft of section 10, see para 5.8, *supra*.

5.3. Section 10(2) reads— Section 10 (2)

"10(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer on upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed."

This sub-section will need consequential changes in view of our recommendation to substitute voluntary intimation in place of compulsory[1] notice.

5.4. Section 10(3) reads— Section 10 (3).

"The State Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf."

We are of the view that the maintenance of such a book should be obligatory *for all employers*. If the workman chooses to give an intimation,[2]—(we are recommending the substitution of an intimation in place of notice).—he should have available a bound book in which the intimation will be entered.

5.5. Section 10A *confers a power* on the Commisioner to require statements from employers regarding fatal accidents. At present the Commissioner has a power but there is *no duty*. We think that it should *be mandatory* on the Commissioner to do so whenever a fatal accident occurs and the Commissioner has information thereof. We recommend that the section should be so amended[3]. Section 10A

5.6. Section 10B(1) main paragraph reads— Section 10B (1).

"10B(1) Where, *by any law for the time being in force*, notice is required to be given to any authority, by or on behalf of an employer, of any accident occuring on his premises which results in death or serious bodily injury, the person required to give the notice shall, within seven days of the death or serious

1. See recommendation as to s. 10(1), Para 5, *supra*.
2. See recommendation as to section 10(1), para 5.2, *supra*.
3. For redraft of section 10A, see para 5.8.

bodily injury, send a report to the Commissioner giving the circumstances attending the death (or serious bodily injury);

We are of the view that section 10B which is a useful provision should apply in every case, and not merely where some other law provides for notice of a fatal accident. We recommend that section 10B should be suitably amended for the purpose. We propose to omit S. 10B(1), proviso and S. 10(2).

**Object of the amendments recommended in section 10, 10A and 10B.**

5.7. The changes which we have recommended in sections 10, 10A, and 10B are intended to ensure—

(i) prompt intimation of accidents *at the instance of the employer;*

(ii) effective provisions for *checking* by the Commissioner; and

(iii) sufficient facility to the workman to put on record what he knows about the accident,—without being under a legal obligation to do so.

The revised scheme has three major features—the employer should be primarily responsible to give notice of serious accidents (section 10B), subject to checking by the Commissioner (section 10A) and, in addition, the above facility of intimation by the workman should be available (section 10). These three major feature of the revised scheme are complementary to one another.

**Re-drafts of section 10, 10A & 10B.**

5.8. In the light of the above discussion we recommend the following re-drafts of sections 10, 10A and 10B which are to be re-numbered as indicated below:

*RE-DRAFT OF SECTION 10B*

*RE-NUMBERED AS SECTION* 10.

**[S. 10B(1) main paragraph.]**

10(1) *Where an accident occurs on the premises of an employer and results in the death of a workman or serious bodily injury to him, the employer shall,* within seven days of the death or serious bodily injury, send a report to the Commissioner giving the circumstances attending the death or serious bodily injury.

[S. 10B(1) proviso omitted]

**[S. 10B(1) Explanation.]**

*Explanation*—"Serious bodily injury" means an injury which involves or in all probability will involve the permanent loss of the use of, or permanent injury to, any limb, or the permanent loss of or injury to the sight or hearing, or the fracture of any limb, or the enforced absence of the injured person from work for a period exceeding twenty days.

[S. 10B(2) omitted] [Section 10 (3)]

(2) Nothing in this section shall apply to factories to which the Employees' State Insurance Act, 1948, applies.

*RE-DRAFT OF SECTION 10, PORTION RELATING TO INTIMATION, RE-NUMBERED AS SECTION 10A.*

[Exis ing Section 10 (2), in part modified.]

10A. (1) Where an accident *causing the death of or personal injury to a workman* occurs, the workman to whom injury is caused by the accident, or, in case of death, any dependant,[1] *may, if he so desires,* give to the employer *an intimation* of the accident, stating, in simple language,—

(a) the name and address of the person injured *or dead,*

(b) the cause of the injury *or death,* and

(c) the date on which the accident occurred.

[Existing Section 10 (2), in part modified.]

(2) *The intimation* of accident given under sub-section (1) may be served on—

(a) the employer, or

(b) any one of several employers, or

(c) *in case of any employer carrying on a trade or business,* any person responsible to the employer for the management of any branch of the trade or business in which the injured or dead workman was employed.

[Existing section 10 (4)]

(3) *An intimation* under sub-section (1) may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or by entry in a book maintained under sub-section (4), or if the workman or dependant so *desires, by both such delivery and such entry.*

section 10(3)]

(4) *Every employer shall maintain* at the premises at which workmen are employed, a bound *intimation book,* in the prescribed form, in triplicate, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting bona fide on his behalf *or to the dependant* of a deceased workman.

*Provided that where the workman is employed, or was, before his death, employed, in any such employment as is mentioned in item 23 of the Second Schedule[2], the provisions of*

1. The reason for separately mentioning dependant is obvious.

2. Item relating to agriculture.

*this sub-section shall not apply except in so far as the State Government, by notification in the official Gazette, otherwise directs.*

(5) *Every employer shall, as soon as may be after receipt of the intimation under sub-section* (1), *send a copy of the intimation to the Commisioner and give another copy to the workman from the intimation book.*

*RE-DRAFT OF SECTION* 10*A*.
*RE-NUMBERED AS SECTION* 10*B*.

Existing section 10 A.]

10B.(1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, *he shall* send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has no disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

*REDRAFT OF PART OF SECTION* 10 *RELATING TO LIMITATION FOR CLAIM RENUMBERED AS SECTION* 21*A*.

Existing section 10 (1), main-para modi-

21A. (1) No claim for compensation shall be entertained by a Commissioner unless the claim is preferred before him within two years of the occurrance of the accident or, in the case of death, within two years *of the* date of death:

[Existing section 10 (1), first proviso]

*Explanation* 1.—Where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3[1] are applicable, the accident shall be deemed to have

1. This is a reference to existing s. 3(2). The reference to the renumbered provision to be substituted.

occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease:

*Explanation* 2.—In case of partial disablement *which is* due to the contracting of any such disease and which does not force the workman to absent himself from work, the period of two years shall be counted from the day the workman *gives intimation* of the disablement to his employer; *or*[1] *if the workman does not give such intimation, from the day on which his employment under the employer commenced.* [Existing section 10 (1), second proviso]

*Explanation* 3.—If a workman, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment,[2] ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected. [Existing section 10 (1), third proviso]

(2) The Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the claim has not been preferred in due time as provided in sub-section (1), if he is satisfied that the failure was due to sufficient cause. [Section 10 (1), fifth Proviso modified]

5.9. Section 11 deals with medical examination of the workmen. [Section 11-Medical Examination.]

Sub-section (1) provides that where a workman has given notice of an accident, he shall, if the employer, before the expiry of 3 days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination. In the case of a workman receiving a half-monthly payment, he has to submit himself for such examination from time to time; and there is a proviso prohibiting an employer from requiring the workman to submit himself for medical examination otherwise than in accordance with the rules. We are at the moment concerned with the notice of accident referred to in this provision. The scheme of the section is that before three days expire from the time of service of the notice, the employer can require the workman to undergo the medical examination. Since we are recommending separately[3] that notice of accident—now to be called intimation of accident—by the workman will be optional and not obligatory, this provision requires modification for obvious reasons. Cases of death or serious bodily injury will usually come to the notice of the employer;

1. *Intimation by workman is now proposed to be discretionary — see re-draft of section* 10 *— but, in this case, such a provision is unavoidable.*

2. This is reference to existing section 3(2).

3. See discussion as to section 10.

in fact, the employer is required himself to report them.[1] Cases not involving death or serious bodily injury are also likely to come to his notice. We therefore think that the period of three days should now be computed from the date of the occurrence of the accident, even where an intimation of the accident has not been given by the workman.

[Recommendation as to section 11(1).]

**5.10.** The opening portion of section 11(1) is somewhat involved and we propose to recast it slightly.

Accordingly we recommend that section 11(1) should be revised as follows:—

> "11.(1) Where *an accident occurs* and the employer, before the expiry of three days from the time at which the *accident occurs*, offers to have *the workman* examined free of charge by a qualified medical practitioner, the workman shall submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time:
>
> Provided that workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed."

[Section 11(6)—Recommendation for amendment.]

**5.11.** In section 11(6), the words "whose instructions he had followed" should be replaced by the words and "followed his instructions", to make the wording more simple.

1. Section 10B.

## CHAPTER 6

## PROTECTION OF COMPENSATION AND OTHER PROVISIONS REGARDING RIGHT TO COMPENSATION

[Introduction-]

6.1. The right to compensation conferred by the Act could be thwarted by agreements shutting out the right or by the real employer engaging workmen in the name of some other person, (say, contractors) or by the insolvency of the employer, or by an illegal transfer of assets and the like. Sections 12 to 14 and 17 afford the necessary protection against such devices. Section 18A provides for penalties for contravention of certain provisions of the Act.

These sections have a very important feature in common. Their primary object is to protect the right to compensation and to make certain other provisions which either serve as a safeguard against an attempt to circumvent or violate the provisions of the Act, or nullify the effect of legal events (such as, insolvency) which might otherwise impair the right to compensation. These sections and sections 15-16 which happen to be placed amidst them will now be discussed.

[Section 12.]

6.1A. Section 12 imposes liability on a person who gets certain works done through contractors in certain circumstances. The section is essentially linked up with the distinction between a servant and an independent contractor. The common law rule based on this distinction has been over ridden by this section which has been enacted pursuant to a specific public policy. Ordinarily the degree to which the principle may intervene to control the details of the performance of the agent, is the broad test applied to distinguish between a servant on the one hand and as independent contractor on the other hand. But here, ignoring the common law concept, a specific provision has been made.

Of course such liability, apart from the Act, as may be attached at common law to the principal of an independent contractor, remains unaffected, if the remedy is pursued as at common law and not under the Act.

[Common law rules as to contractors.]

6.2. Some of the well recognised "Common law rules" as to independent contractors include the following[1]. A principal is liable in contract or tort for the acts of his agent regardless of whether the agent is a servant, independent contractor or neither.

1. Broden, "Employment relationship under Social Security, (1960) 33 Temp. L.Q. 307.329.



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if the principal directs a specific tortious act or result, if the agent makes certain representations which he is authorised or apparently authorised to make, and if the situation is such that the duty to protect the third person may not be delegated by the principal. The principal is not liable in other circumstances.

Special provision in section 12.

6.3. Ordinarily the question who is the "employer" of a person claiming to be a workman is one of fact. But the legislature can make special provisions for special situation. We are here concerned with one such special provision. Where the employer has engaged a contractor, there is a legal fiction[1] whereunder the employer of the contractor is liable to workmen engaged by the contractor. In the English Act, the words "undertaken by the principal" appear, in place of the words 'which is ordinarily part of the trade or business of the principal" which occur in our sub-section (1),—words qualify the kind of work which is to be executed by the contractor.[2]

To state the position broadly, even though the work may be within the scope of the general purposes of the principal, he is not liable in England if the work is not a part of the trade or business which the principal *undertakes*. For example, where the manufacturers of mouldings employed a contractor to stock timber imported by them for the purposes of their business, they were not held liable[3].

6.4. The Legislature has substituted the very material words "which is ordinarily part of the trade or business of the principal", for the words "undertaken by the principal", which occur in the English Act. The English Act applied only to work *undertaken by the principal*, but the Indian Act applies to work done by a contractor *which is ordinarily part of the trade or business of the principal*. "The variation was obviously deliberate, and the two phrases do not mean the same thing[4]." It may be that work which is ordinarily part of the trade or business of the principal, nevertheless, was not the *work undertaken in the particular case or usually undertaken by the principal*.

6.5. It may be noticed that sub-section (4) of section 12 (of the Indian Act) is a replica of sub-section (4) of section 6 of the English Act and refers to work undertaken or usually undertaken by the principal. But the word "undertaken" does not occur in the Indian Act in the first sub-section.

6.6. The principle of social justice underlying section 12(1) is that where a person by contract, entrusts[5] certain work to

1. Section 12.
2. Section 6, English Act of 1925.
3. *Hockey* v. *West London Timber Co.* (1914) 3 Kings Bench 1013.
4. A.I.R. 1942 Bom. 20.
5. This is not a paraphrase of the section.

another person, and that other person engages a workman, the person *entrusting* the work is liable as employer under the Act (if certain conditions are satisfied).

The important words are:—

"any compensation which he would have been liable to pay if that workman had been immediately employed by him". The fact that the first mentioned person is not the *immediate employer* thus becomes immaterial. The intervention of the person to whom the work is *entrusted* does not destroy the legal link between the person entrusting the work and the workman. To put the matter is a different way, the narrow legal view of contract of employment is extended (for the purposes of the Act) if certain conditions are satisfied, to the case of employment of workman by another person, if he is one to whom the work has been entrusted by contract. Those conditions are—

(a) the contract (entrusting the work) is in the course of, or for the purpose of, the trade or business of the person entrusting the work;

(b) the contract must be for the execution, by or under the contractor, of the whole or any part of any work which is ordinarily part of the trade or business of the principal (i.e., the person entrusting); [These two conditions are to be found in section 12(1)];

(c) this section does not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal "has undertaken, or usually undertaken, as the case may be", to execute the work or which are otherwise under his control or management."

[This requirement is contained in section 12(4)].

6.7. Thus, the extension of the liability beyond the immediate employment seems to be based on a number of conditions, namely.—(a) the business character of the *contract*, (b) the *work* being part of the ordinary business, and (c) *potential control* or management of the employer as indicated by the *geographical contiguity* of the premises where the accident has occurred.

6.8. The geographical contiguity of the premises where the accident occured has perhaps been inserted in order to indicate the possibility of control. This is reasonable on the whole. We recommend no change in this respect.

Section 13

6.9. This disposes of section 12 and we may now take up section 13. In certain circumstances a person who has paid compensation has the right to indemnity because the person legally liable is not the employer. Section 13 provides for this situation and deals with the remedies of the employer against the third person.

The section[1] is an follows:—

> "13. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damage in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid."

The words "person by whom the compensation was paid" principally refer to the employer. The other person to whom the section applies is the person indemnifying under section 12. (Section 12 provides for indemnity as between the employer and a contractor, and as between a contractor and sub-contractor and so on).

Some controversy seems[2] to have arisen in the past as to how far section 13 is applicable between the principal contractor and the sub-contractor. Section 12(2) was amended on this point in 1933. This matter is now dealt with by section 12(2), as amended[3].

Recommendation to amend section 13.

6.10. The drafting of section 13 could be made more simple than at present and we recommend that section 13 should be re-drafted as follows:—

> "13. (1) Where—
>
> .....
>
> (a) the injury *for which compensation is payable* under this Act, was caused under circumstances creating a legal liability *of* any person to pay damages in respect thereof; and
>
> (b) the workman has, in respect of *such* injury, recovered compensation *under this Act from any other* person,
>
> the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under section 12, shall be entitled to be indemnified as aforesaid."

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1. Section 13 corresponds roughly to section 30 of the English Act of 1925.
2. See *Chynibhoy* v. *Gunpat*, A.I.R. 1933 Bom. 338.
3. See statement of Objects and Reasons annexed to the Bill of 1932, Notes on Clause 9 (13 Feb., 1932).

Section 14 Recommendation

6.11. Section 14 makes certain provisions relating to insolvency of the employer. A small verbal change is needed in sub-section (4) where the reference to section 230 of the Indian Companies Act 1913 should be replaced by a reference to section 530 of the Companies Act 1956[1].

Section 14A

6.12. Section 14A provides that compensation shall be a first charge on assets transferred by the employer before paying the compensation in so far as the assets consist of immovable property. The language of the section could be made more simple as the present drafting is a bit involved.

The following re-draft of section 14-A is therefore recommended:

"14A. Where—

(a) *liability to pay any compensation under this Act has arisen, and*

(b) *the employer transfers his assets before the amount of the compensation has been paid.*

such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first "charge on that part of the assets so transferred which consists of immovable property."

Section 15(1)

6.13. Section 15 relates to ships. Certain questions relating to extra-territorial application have been separately discussed[2].

Sub-section (1) of section 15 lays down one of the modifications applicable in case of workmen who are masters of ships or seamen. It provides that the notice of the accident and claim for compensation may be served on the master of the ship; "but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident." Since the notice of accident (at present required under section 10) is now proposed to be made optional in every case[3], the quoted portion of section 15(1) should be omitted.

Section 15(3).

6.14. Section 15(3) relates to depositions taken outside India where an injured master or seaman is discharged in any part of India or "His Majesty's Dominions or in any other foreign country". The specific mention of His Majesty's Dominions is no longer required and the quoted words should be replaced by the words "in any foreign country".

1. Draft not annexed.

2. See discussion relating to section 1 and extra-territorial application — Chapter IB.

3. See discussion as to section 10. Para 5.2, *supra*.

Section 15(5) and 15(6).

6.15. Sub-section (5) of section 15 bars the payment of compensation in respect of any injury for which provision made for payment of a gratuity, allowance or pension under certain war-pensions scheme made under a British statute[1] or under a scheme made in 1942 by the Central Government, entitled "The War Pensions and Detention Allowances (Indian Seamen) Scheme, 1942. Sub-section (6) deals with cases where a person applies for compensation under one of the scheme referred to above and the application is rejected or payments made in pursuance of the application are discontinued on the ground that the injury is not one covered by the scheme.

In such a case the limitation for giving notice of accident for making a claim is modified—we are not concerned with the details of the modification.

It appears that the schemes referred to in sub-section (5) of section 15, are now obsolete[2]; and, if that is so, sub-section (5) and sub-section (6) should both be deleted.[3]

Section 15A (New)

6.16. There is no special provision in the Act in relation to aircraft[4],—such as is contained in section 15 as to ships. Such a provision is obviously needed since in certain cases, persons employed on aircraft fall within the Second Schedule. We recommend that section 15 should be applied to aircraft with such modifications as are required[5].

Section 16.

6.17. Section 16 deals with eturns as to compensation and needs no change.

Section 17.

6.18. Under section 17, any contract or agreement whereby a Workman relinquishes his right of compensation would be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation. In a Gujarat case[6], the heirs of a deceased workman accepted an *ex-gratia* payment of a sum of money from the employer, *giving up whatever legal rights they had to claim the amount by reason of death by the accident*. The question arose whether a contract entered into *after the libility arose* is hit by section 17. It was held that the agreement was hit by section 17 and was void. There is nothing in the section which limits its operation to a contract or agreement entered into *before the liabilily has arisen*. The sec-

1. Pensions (Navy, Army, Air-force and Mercantile Marine) Act, 1939 (2 and 3 Geo. VI. Ch. 83).
2. This is subject to verification from the Ministry concerned.
3. In case, similar schemes are in operation in later statutes, they should be provided for by a fresh provision.
4. As to extra-territorial application, see discussion relating to section 1.
5. Draft not annexed.
6. *Chaunhalben* v. *Burjorji Sethna* (1972) A.C.J. 440 (Guj.) cited in the Yearly Digest (1971), Col. 2610 (Akbar S. Sarela J.).

tion applies irrespective of whether the contract (of the nature contemplated by the section) is made before or after the accident.

Recommendation as to section 17.

6.19. It may be convenient to codify this judicial interpretation[1] so as to make this beneficial provision comprehensive. We therefore recommend that in section 17 after the words "whether made before or after the commencement of this Act", the words "*and whether made before or after a right to compensation has accrued under this Act*" should be inserted.

Section 17A (New Display of abstracts.

6.20. Since the Workmen's Compensation Act is a measure meant for the benefit of the workers, it is desirable that the workers should know of their rights under the Act. This purpose can be achieved by giving wide publicity to the provisions of this Act and one method of giving such publicity is to require the employers to display the relevant abstracts of this Act in their premises—*i.e.,* in the place of work. In many other Labour Laws and Social Welfare Laws, there are provisions for giving publicity to those particular laws by requiring the management to exhibit the abstracts of these Acts at *prominent* places in their premises[2]. One such provision, section 62 of the Mines Act, 1952, is reproduced below:

> "There shall be kept posted up at or near every mine, in English and in such other language or languages as may be prescribed, the prescribed abstracts of the Act and of the regulations and rules."

In the Workmen's Compensation Act, section 32(2)(c), also lays down that the State Government may make rules providing for prescribing abstracts of this Act and requiring the employers to display notices containing such abstracts. Since this Act is a Central Act, it would be much better to have uniformity in the matter throughout the country. Instead of leaving it to the rules, it is desirable that a section should be introduced in the Workmen's Compensation Act in this respect.

Recommendation.

6.21. We therefore recommend the insertion of a new section on the subject. It will also be necessary to introduce a penalty clause for contravention of the new section. Necessary amendment can be introduced in the penal section[3] which provides for a fine of Rs. 500 for contravention of certain sections of the Act. Consequently the provision in the rule-making section can be removed[4].

1. Para 6.18, *supra*.
2. See –
   (a) Section 108, Factories Act, 1948;
   (b) Section 62, Mines Act, 1952;
   (c) Section 19, Maternity Benefit Act, 1961.
3. Section 18A.
4. Section 32(2)(o).

The new section requiring the display of abstracts of important provisions of the Act will be[1] on the following lines[2]:

"17A. There shall be kept posted up at or near every place of work where workman are employed substracts of "sections 3 and 4—

(a) in the language of the State; and

(b) where the majority of the workman employed in that place do not understand the language of the State, also in the language of the majority of workmen."

Section 18A.

6.22. Section 18A provides penalties for contravention of certain provisions of the Act. We recommend the following changes in the section:—

(a) the maximum amount of fine should be increased from five hundred rupees to one thousand rupees, having regard to the fall in the value of the rupee.

(b) Imprisonment upto six months should be added.

(c) Section references should be altered having regard to the scheme proposed[3] for the re-arrangement of sections 10, 10A and 10B.

(d) As a new section[4] relating to display of extracts is proposed to be added, violation of the provisions of that section should also be made punishable under section 18A.

Section 18A should, in the light of the above discussion, be revised as follows:—

Penalties.

"18A. (1) Whoever

(a) fails to send a report which he is required to make under section 10, or

(b) fails to maintain *an intimation book which he is required* to maintain under sub-section (4) of section 10A, or

(c) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of section 10B, or

---

1. Section 18A also to be amended.

2. Section 32(2) to be consequentially amended.

3. See recommendation as to section 10, 10A and 10B.

4. See recommendation to insert section 17A.

(d) fails to make a return which he is required to make under section 16, or

(e) *fails to display extracts of the provisions of this Act as required by section 17A,*

shall be punishable with *imprisonment upto six months* or with fine upto *one thousand rupees or both.*"

## CHAPTER 7

## COMMISSIONERS,THEIR JURISDICTION AND PROCEDURE

Introductory.

7.1. Sections 19 to 26 deal with the appointment of Commissioners, their jurisdiction and procedure. Of course, the Act does not contain all the law of procedure that is applicable to the Commissioners, because many of the matters are left to rules.[1] A certain amount of uniformity in procedure would, no doubt, be desirable; but, at the same time, having regard to the fact that Commissioners are appointed by the State Governments, and also in view of the need to maintain a certain measure of elasticity in proceedings before the Commissioner, the present Act has left the matter mostly to the rules confining itself to a few important matters, such as, the venue, the form of application, the power to call witnesses, the appearance of parties, the method of recording evidence, and costs. The provisions being sketchy, there is not much room for improvement, except that such of the provisions as are based on the corresponding sections of the Code of Civil Procedure, now require re-examination, in view of the changes proposed in that Code.[2] We should also note that the provision relating to application[3] to the Commissioner suffers from a basic flaw[4]. The elementary (but fundamental) proposition that a claim may be made is missing.

If there is no bar of limitation[5], then, a claim may be entertained by the Commissioner—this proposition is given only an indirect recognition elsewhere in the Act[6]. The matter should, we think be dealt with more directly. We shall deal with the point in detail[7] under section 22.

Section 19

7.2. Section 19 needs no change.

Section 20 (1)

7.2A. Section 20(1) reads—

> "20(1) The State Government, may by notification in the Official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such area as may be specified in the notification."

1. Section 32(2)(c), (d), (f), (i), (j) etc.
2. See discussion relating to section 25.
3. Section 22.
4. See para 7.13, *infra*.
5. Section 10.
6. Section 10.
7. Para 7.13, *infra*.

Usually, senior judicial officers are appointed as Commissioners. But it is not feasible to impose a rigid requirement that officers appointed as Commissioners should have judicial experience. Hence, we are unable to accept a suggestion made in that regard[1].

7.3. There is a brief provision relating to experts in section 20(3). Under this sub-section, any Commissioner may, for the purposes of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any subject relating to the matter under inquiry, "to assist him in holding the inquiry". The provision is not confined to medical experts, and any matter on which "special knowledge" can be acquired, could come within this provision. The number of reported cases on this sub-section is very small[2], but its utility is obvious.

Section 20(3) obscurity of position of expert.

However, there is a certain amount of obscurity as to the exact position of the person chosen "to assist the Commissioner in holding the inquiry" under the section. Is he in the position of an assessor, or is he in the position of an expert witness? If he is an assessor, then, he is practically a member of the Court[3]. If he is an expert witness, he would be subject to cross-examination by the parties.

7.4. In general, when the opinion of a person having special knowledge of a subject is intended to be utilised by or before a Court, there are several courses open, as will be evident from the brief analysis given below :—

(i) *Assessor*—The person possessing special knowledge could be an 'assessor'. He then becomes a member of the court. He sits throughout the proceedings. He does not give any "evidence", and cannot, therefore, be subject to cross-examination by the parties[4].

(ii) *Court expert*—The person possessing special knowledge could be described as a "court expert"[5]. He remains independent of the parties, but is not a member of the court. What he renders to the court can be properly called a "report" or "advice". This, category is not known to our legal system. We are referring to it since the present provision, it may be argued, is in this category.

1. S. No. 70 (Suggestion by one High Court).
2. *Akbar Ali* v. *Java Bengal Line, Calcutta*, A.I.R. 1937 Cal. 697, 701, 702.
3. The word "court" is used here in a wide sense.
4. *Cf.* English Act, 1925. First Schedule Rules 5 and 11.
5. For history of expert evidence, see Learned Hand's article in 15 Harvard Law Rev. 40.

(iii) *Court witness*—The person having special knowledge could be treated as a court witness. In this case, he has to be summoned[1] and examined on oath, and would be subject to cross-examination by either party[2].

(iv) *Witness of a party*—The person possessing special knowledge could be summoned as a witness *at the instance of either party* (or produced by a party without a summons), Like any other witness, he would be examined on oath, and cross-examined. The court has no initiative in the matter.

7.5. It appears to us that so far as the Workmen's Compensation Act is concerned, there is no need to carve out a separate category—(ii) above[3],—for the reasons already mentioned. Nor is it necessary to give the specialist the position of an assessor—(i) above. Category (iv) above—witness of a party—needs no express provision.

7.6. and 7.7. It is therefore enough to empower the Court to call him as a Court witness—category (iii) above[3-a].

7.8. Power to summon a court witness is already contained in the Code of Civil Procedure, and that will be available to the Commissioner[4].

7.9. If the specialist appointed under section 20(3) gives an opinion, the parties should have the right to test the validity of his opinion. At present, the person appointed is more of the nature of an assessor, and is not subject to examination by the parties. The present provision is also defective in another respect; the specialist may be consulted in chambers by the Commissioner, and the parties then know nothing of the advice given by him. This defect should be removed.

Recommendation.

7.10. In the light of the above discussion, we recommend that in place of section 20(3), the following sub-section should be substituted :—

"(3) If, for the determination of any matter, the appraisal of which requires special knowledge, it is

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1. Section 23, Workmen's Compensation Act.

2. See case-law on —
   (a) Order 16, rule 14, Code of Civil Procedure, 1908;
   (b) Section 540, Code of Criminal Procedure, 1898; and corresponding Section in the 1974 Code.
   (c) Section 165, Indian Evidence Act, 1872.

3. Para 7.4 (ii) *supra*.

3—a. Para 7.4 (iii) *supra*

4. Section 23, Workmen's Compensation Act, and Order 16, rule 14, Code of Civil Procedure, 1908.

necessary to obtain the opinion of an expert the Commissioner may summon such expert to appear as a witness and express his opinion on that matter.

(3A) Where a person summoned under sub-section (3) appears, he shall be examined by the Commissioner, and may then be cross-examined by the parties."

Section 21 (1).

7.11. Section 21 deals with the venue of proceedings and the transfer of cases.[1]

Under section 21(1), any matter to be done by or before the Commissioner shall, subject to the provisions of the Act and the Rules, be done by or before a Commissioner for the area in which the accident took place which resulted in the injury. Under the proviso to the sub-section, which is meant for cases where the workman is the master of a ship or a seaman, any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship resides or carries on business. The reference in section 21(1) to "agent of the ship" is really a reference to the "agent of the *owner* of the ship". We recommend that this should be brought out by a suitable verbal amendment.[2]

Section 22(1).

7.12. Section 22, sub-section (1) begins negatively, by providing that no application for the settlement of any matter by a Commissioner (other than an application by a dependant or dependants for compensation), shall be made unless and until some question has arisen between the parties in connection therewith, which they have been unable to settle by agreement. This provision, at first sight, gives the impression that before the Commissioner can assume jurisdiction, some attempt at settlement must have taken place between the parties and proved abortive. This, of course, is not the intention; and it has been judicially[3] made clear that there is no obligation on the parties to attempt to settle, before they can proceed to make an application to the Commissioner.

Express provision as to right to make an application desirable.

7.13. An equally serious flaw in the present Act is, that the elementary proposition that a workman can make an application for compensation,—which, of course, is[4] implicit in the Act—does not find a place in the section. In view of the general understanding that the right to make an application under a special statute should be conferred in express words, it is desirable to have an express provision, particularly because the right to compensation under the Act is different from the common law right to damages. The prevalent view seems to be that a claim by the workman before the Commissioner does not fall

1. As to the proviso, see para 1B.23 *supra*.
2. Draft not annexed.
3. *C. E. Corporation* v. *Dureraj*, A.I.R. 1960 Orissa 39.
4. See also para 7.1, *supra*.

within section 22, but within section 10. But every section 10 begins negatively, *vide* the words "no claim shall be entertained" in section 10. It bars a claim filed after the expiry of the period of limitation. We are of the view that a positive provision empowering the person concerned to make a claim is needed.

Recommendations, to Amend section 22.

7.14. In view of what is stated above, we recommend that in place of sub-section (1) of section 22, the following provisions should be substituted.

> "(1) *Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before the Commissioner.*
>
> (1A) *Subject to the provisions of sub-section* (1), *no* application for the settlement of any matter by a Commissioner, other than an application by a dependant or dependant for compensation, shall be made—
>
> (a) *unless and until some question has arisen between the parties*, or
>
> (b) *if the parties have been able to settle the question by agreement.*"

Section 22 (2)(b)

7.15. Under section 22(2)(b), the following particulars, are to be given in an application to the Commissioners :—

> "(b) In the case of a claim for compensation against an employer, the date of service of the notice of the accident on the employer, and, if such notice has not been served or has not been served in due time, the reason for such omission."

Recommendations.

7.16. As the giving of notice of accident by the workman is not to be optional[1] and is to be described as an intimation, we recommend that as a consequential amendment, section 22(2)(b) should be revised as follows :

> "(b) in the case of a claim for compensation against an employer, the date of service of *intimation* of the accident on the employer, *if such intimation has been served*....."

Section 22A

7.17. There is a verbal point concerning section 22A, under which, after the deposit of a sum by an employer as compensation for injury resulting in death, the Commissioner has power

1. See discussion as to section 10.

to require the employer to make a further deposit. In sub-section (2) of the section, such a determination of the Commissioner is described as an "award". But, everywhere else in the Act, the word used is "order". The use of a different word is not appropriate, and, in fact, has created some controversy in another field, namely, whether[1] the decision of the High Court under section 30 on appeal from an order of the Commissioner is a "judgment" within clause 15, of the Letters Patent.

Recommendations.

7.18. It seems, therefore, to be advisable to replace the word "award" by the word "order"[2] in section 22A. We recommend that section 22A should be so amended.

Section 23

7.19. Section 23 deals with the powers and procedure of Commissioners. It needs no change.

Section 24

7.20. Section 24 relates to the appearance of parties. It needs no change.

Section 24A and 24B (New)-Legal aid.

7.21. For the effective representation of claimants under the Act, a provision regarding legal aid is desirable. In the absence of legal aid, the provisions conferring rights remain a dead letter, for want of proper assertion of those rights. In this connection, attention may be invited to our Report on the Code of Civil Procedure[3], where we have made a recommendation that where a person permitted to sue as an indigent is not represented by a pleader, the court shall assign a pleader to him at the expense of the State.

Eligibility for legal aid.

7.21A. In relation to the eligibility for proposed legal aid, we have, after some consideration, come to the conclusion that it is not necessary to lay down any means test. The right to legal aid should be available to every workman, irrespective of his financial condition. We do not think that such a provision would cast any undue burden on the State, because, in practice, those who can afford to engage a private lawyer, will always do so.

While legal aid for workmen who are injured and who are alive presents no difficulties, a peculiar difficulty might arise in relation to their dependants. This difficulty arises because of the fact that there might be a conflict of interest amongst the dependants, where rival claims are put up under section 8(5) in respect of apportionment of compensation amongst the various dependants. It is obvious that the official lawyer—whom we propose to designate as the Claims Prosecutor—would be placed in an embarrassing position if he were to be burdened with the duty of pleading before the Commissioner the case of each dependant in respect of his claim to apportionment. In

1. See *Rajvayi* v. *Mackinon Machenzie & Co.*, A.I.R. 1970, Bom. 278, 283 para 14 & 15.

2. See, for example, section 30, which speaks of "order".

3. 54th Report (Code of Civil Procedure), Chapter 33, recommendation to insert Order 33, rule 9A (new).

so far as the case of dependants is common to all of them, he would have no difficulty, but where there is a conflict of interest of the nature mentioned above, his position would be embarrassing. We, therefore, propose to make it clear that in such cases, he will not represent the dependants in respect of matters on which there is a conflict of interest. In case of conflict, the official lawyer shall not represent them in respect to the conflict. Subject to this rider, it may be provided that every workman[1] (alive) and all dependatns together shall be entitled to be represented by an official lawyer.

7.22. We are not suggesting any elaborate provisions as to procedure for grant of legal aid. As regards appeals and references before the High Court, the procedure in this regard will be governed by rules to be made by the High Court. As to proceedings before the Commissioner, the necessary rules can be made by the Government under the general rule-making power. If necessary, the relevant section[2] can be suitably amplified.

Procedure for grant of legal aid.

7.23 & 7.24. We may note that the Committee on Legal Aid has also made a recommendation[3] as to legal aid in proceedings under the Workmen's Compensation Act. We apprehend, however, that implementation of the Report will take time, because that Report contemplates a comprehensive scheme. In the meantime, it is necessary to make some provision in the Workmen's Compensation Act as to legal aid.

We hope that our recommondations will be implemented at an early date.

7.25. We are of the view that so far as proceedings before the Commissioner are concerned, there should be at least one legal practitioner in each Commissioner's office, who should conduct cases on behalf of workmen and dependants. He should be appointed by the State Government.

As regards proceedings before the High Court, the High Court should assign an Advocate *ad hoc* at the expense of the State, if the workman is qualified for legal and under our scheme.

Recommendation.

7.26. Accordingly, we recommend insertion of the following new sections :—

"24.A. (1). The State Government shall, in respect of every area for which a Commissioner is appointed, appoint a qualified legal practitioner as Claim Prosecutor.

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1. Irrespective of income.

2. Section 32(2)(c).

3. Report of the Expert Committee on Legal Aid (1973), Ch. 8.

(2) The claims Prosecutor shall represent,without fee, all workmen and dependants in proceedings before the Commissioner, except those who do not wish to avail of his services.

Provided that where there is a conflict of interests among the dependants, the Claims Prosecutor shall not represent them in relation to such conflict."

"24B. (1) Where, in proceedings under this Act before the High Court, a workman or dependant is not represented by an advocate, the High Court shall assign an advocate to him, at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting advocates to be assigned in the High Court under sub-section (1);

(b) the facilities to be allowed to such advocates in the High Court;

(c) the fees payable to such advocates by the Government, and, generally, for carrying out the purposes of sub-section (1)."

Section 25

7.27. Section 25 is as follows :—

Section 25--Recording of evidence

"25. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with is own hand and shall form part of the record—

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall, sign the same, and such memorandum shall form part of the record.

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word."

It would be noticed that under this section the Commissioner can dictate the memorandum of evidence *only if he records* the reason of his inability to make the memorandum himself. This

restrictive provision follows the corresponding provision in the Code of Civil Procedure.[1] We are of the view that the dictation by the Commissioner should be provided for, irrespective of any question whether he is able or unable to make the memorandum himself. We have made a similar recommendation in our Report on the Code of Civil Procedure.[2]

Recommendation.

7.23. Accordingly, we recommend that section should be amended so as to read as follows :—

"25. (1) The Commissioner shall, as the examination of each witness proceeds, make or *dictate or cause to be mechanically recorded*—

(a) *the evidence of any medical witness*, as nearly as may be, word for word;

(b) a brief memorandum of the substance of the evidence of *every other witness*.

(2) *Such evidence or memorandum, as the case may be shall be signed or otherwise authenticated* by the Commissioner, and shall form part of the record."

Section 26.

7.29. Section 26 relates to costs. It needs no change.

1. Order 18, Rules 5 and 13, C.P.C. (Appealable and non-appealable cases respectively).

2. 54th Report, Chapter 18.

## CHAPTER 8

## REFERENCE, REGISTRATION OF AGREEMENTS, APPEAL AND RECOVERY

Introductory

8.1. In certain cases, the Commissioner may like to submit to the High Court a question of law for its decision. Even where the Commissioner has already made his order, an appeal lies to the High Court from his order, in certain cases. On the other hand, the parties may themselves settle the matter by agreement; but, in that case, the agreement must be registered with the Commissioner, who has to be satisfied as to its genuineness. Finally, where an amount becomes payable under the Act by any person, either by reason of an order of the Commissioner or under an agreement, or otherwise, a provision as to the recovery of the amount has to be made. These matters are dealt with in sections 27 to 31, which will be dealt with in this chapter.

Sections 27 to 29.

8.2. Section 27 deals with the power to submit cases. Registration of agreements is dealt with in sections 28 and 29. They need no change.

Section 30-Recommendations to delete sub-section (3).

8.3. Section 30 deals with appeals from the orders of the Commissioner. Sub-section (3) of the section reads thus :

> "The provisions of section 5 of the Indian Limitation Act, 1908 shall be applicable to appeals under this section." This sub-section is now redundant, in view of section 5, Limitation Act, 1963, and should be deleted. We recommend its deletion.

Section 30A.

8.4. Section 30A provides for withholding payment of sums deposited before the Commissioner, pending appeal. No change appears to be needed in this section.

Section 31.

8.5. Section 31 deals with recovery, and needs no change.

## CHAPTER 9

## RULES

Introductory.

9.1. This chapter is concerned with the power to make rules (sections 32 to 36). The principal section to be considered is section 32, which deals with power of the State Government to make rules. Certain changes are required in sub-section (2) of section 32, which enumerates the matters in respect of which rules may be made. These are mentioned below.

Section 32 (2)—Various clauses requiring amendment.

9.2. *Clause* (j).—Under section 32(2), clause (j) fees may be prescribed for proceedings under the Act. We think that there should be a maximum of, say, two rupees[1] as regards applications.

Accordingly, we recommend that in clause (j), after the words "fees", the words and brackets "(*not exceeding two rupees in case of applications*)" should be inserted.

*Clause* (l).—The notice book under (existing) section 10 is now proposed to be made compulsory,[2] and is to be called an intimation book.

Accordingly, clause (l) of section 32(2) should be revised as follows :—

> "(l) for prescribing.....the form of *intimation book* to be maintained by employees."

*Clause* (m): In clause (m) of section 32(2), the reference to "section 10A" should be replaced by a reference to "section 10B", in view of proposed re-arrangement[3] of sections 10, 10A and 10B.

*Clause* (n) : Since the report under (existing) section 10B is now to be made compulsory in every case[4], clause (n) should be omitted from section 32(2).

*Clause* (o): Clause (o) empowers the State Government to make rules requiring employers to display abstracts of the

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1. These fees are in addition to the court fees (if any) levied under the Court Fees Act.
2. See discussion re. section 10.
3. See discussion as to sections 10, 10A and 10B.
4. See discussion as to section 10B.

Act. We have recommended[1] the insertion of a specific section on the subject. Clause (o), therefore, becomes redundant, and should be deleted from section 32(2).

*Clause* (cc) : A new clause should be added as to rules regarding legal aid[2]. It will be as follows :—

> "(cc) *prescribing the mode of selecting advocates to be assigned in proceedings before the Commissioner under section 24A, the facilities to be allowed to such advocates by the Government, and, generally for carrying out the purposes of sections 24A, in so for as it relates to proceedings before the Commissioner.*"

Section 35 (1) main paragraph recommendation to amend.

9.3. The next Section requiring change is section 35(1). In section 35(1), main paragraph, the reference to any part of His Majesty's Dominions, (which occurs twice) should be omitted. The words "any other country" should suffice. Other consequential changes should be made.

Section 35 (1) Second proviso (New).

9.4. While rules can be made under section 35(1) to give effect to arrangements for the transfer of money deposited with a Commissioner where the person entitled to the money resides in a foreign country, the proviso to the sub-section lays down that a sum deposited in respect of a fatal accident shall not be transferred without the consent of the employer concerned, until the Commissioner has passed orders determining its distribution under section 8(4) and 8(5). During our discussions we considered the question whether there should also be a provision prohibiting such transfer, where the employee prefers an appeal. We think that this would be a reasonable provision, and accordingly recommend that the following further proviso should be inserted[3] below the existing proviso to section 35(1) :—

> "*Provided further that where the employer concerned prefers an appeal under clause (a) of sub-section (1) of section 30, the sum deposited under this Act in respect of any accident shall not be so transferred without the consent of the employer concerned until the appeal is disposed of.*"

Section 36.

9.5. Section 36 needs no change.

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1. See discussion relating to section 17A.
2. See discussion re. s. 24A and 24B. (New).
3. *Cf.* section 30A.

## CHAPTER 10

## SCHEDULES

Introductory.

10.1. The Act has four Schedules annexed to it, namely,—

SCHEDULE 1. List of injuries deemed to result in permanent total disablement.

SCHEDULE 2. List of persons who, subject to the provisions of section 2(1)(n), are included in the definition of workman.

SCHEDULE 3. List of occupational diseases.

SCHEDULE 4. Compensation payable in certain cases.

The first and fourth Schedules are important for the purpose of computing the amount of compensation. The Second Schedule is relevant to the scope of the Act. The Third Schedule is important, since it lists the diseases which attract the application of the Act.

First Schedule—no changes needed.

10.1A. We think that it is not necessary to recommend any changes in the first Schedule, and therefore we have no suggestions to make with reference to that Schedule.

Second Schedule—employment in agriculture.

10.2. With reference to the Second Schedule, we first come to an important type of employment, namely, agricultural employment. The present scheme of the Act concentrates on industrial employment, and, though some activities connected with agriculture are mentioned in some of the items in the Second Schedule, there is no comprehensive item relating to agriculture. Having regard to certain important consideration,[1] this matter requires detailed discussion.

Directive Principles relating to economic justice and conditions of work.

10.3. We have already mentioned[2] that the Constitution lays down the Directive Principle[3] that the State shall try to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

10.4. In article 43, the Constitution provides that the State shall endeavour "to secure by suitable legislation..... to all workers *agricultural,* industrial or otherwise..... conditions of work ensuring a decent standard of life." This article

1. See *infra.*
2. Chapter 1 *supra.*
3. Article 38 of the Constitution.

not only specifically mentions agricultural workers, but also places them in the forefront, thus indicating the desirability of giving a priority to them.

10.5. Economically, agricultural labourers are the poorest.[1] Socially, they are the lowest in strata.[2] They are not organised. They are heavily in debt. Moreover, any imbalance in their economic condition is likely to have serious repercussions on the general economy of the country. Hence, it is specially necessary that the extension of the Act to them should be considered as an urgent measure of social justice. Their lot was neglected for a long time, in framing welfare legislation. This neglect, during the pre-independence period, may have been due to the fact that much of the legislation relating to welfare of labour was modelled on the lines of the corresponding laws in Western countrres, where agriculture did not possess primary importance.

We are making these general observations in order to explain the need for expanding the scope of the Act by extending it to agricultural workers.

10.5A. We may mention that persons employed in agriculture have, in the course of their duties, to subject themselves to various hazards. The following list of the hazardous factors or activities is illustrative only.—

(i) use of pesticides,

(ii) snakes, jackals or other dangerous creatures,

(iii) hazards from bunds or excavation, or

(iv) carrying heavy loads.

Of course, the liability to pay compensation under our proposal will not be confined to accidents arising from these hazards. We have mentioned them merely to emphasise the justifiability of extending the Act to agricultural employment, subject to the criteria to be inserted in that behalf[3].

Considerations to be borne in mind.

10.6. At the same time, we realise that it would be impracticable to extend the Act to agricultural employment *in general*, because such an extension would bring in, within the scope of the Act an unmanageably large number of persons. We have to have due regard to the employer's capacity to pay, as also to the need for the existence of an organised activity, and also to the nearness of hazards, in deciding the activities to which the Act should be extended.

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1. K. K. Ghosh, Agricultural Labour in India, (1969) page 97.
2. K. K. Ghosh, Agricultural Labour in India, (1969), page 79.
3. Para 10.11, *supra*.

Possible tests.

10.7. We have no specific material before us in this connection. But tentatively, as a common sense test, we are mentioning certain possible criteria. Government may adopt one of them, or devise any other test for ensuring that only persons having the capacity to pay will be covered. The criterion in this regard should be objective, not involving determination of nice questions of fact or law.

The possible tests are:

(a) Minimum man days, i.e. the number of labourers multiplied by the number of days for which they were employed during a specified period should satisfy a certain minimum, or

(b) Minimum number of labourers should have been employed for a minimum number, of days during a specified period; or

(c) Agricultural income should satisfy a specified minimum; or

(d) Acreage under cultivation and quality of land should be of a specified minimum grade;

(e) Any other test which may be considered appropriate by Parliament.

We make no positive recommendation as to the test to be adopted, but, as already stated, we leave it to Parliament to adopt any of the test suggested above by us, or to adopt any other test which is just and fair, at the same time avoiding complicated questions.

We did not hold an inquiry on this point, because an inquiry by us would have involved considerable expense which we wished to avoid at the present time. Since conditions vary from State to State, the inquiry would also be complicated and time-consuming. Government, with its resources, can deal with details in lesser time, and with lesser expense.

With these preliminary observations, we proceed to state the present position regarding employment in agriculture, and to consider the changes needed.

Present position—Second Schedule

10.8. For ascertaining the present position, the Second Schedule has to be consulted. The Schedule itself is a very long one, containing entries (i) to (xxxii). It would appear that the only items which can *possibly* be pressed into service in connection with agricultural employment, are items (iii) and (xxix) of the Schedule, quoted below[1] :—

"(iii) employed for the purpose of making, altering, repairing ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of

1. Second Schedule, items (iii) and (xxix).

an article in any premises wherein or within the precincts whereof twenty or more persons are so employed;

(xxix) employed in farming by tractors or other contrivances driven by steam or other mechanical power or by electricity."

Item (iii), quoted above, cannot be applied to agricultural employment without straining the language. Item (xxix), quoted above, is confined to the actual process of 'farming', and also requires the use of specified contrivances.

There is an item connected with tube-wells, which reads as follows[1]:—

"(xxii) employed, otherwise than in a clerical capacity, in the construction, working repair or maintenance of a tube-well."

There are also specific items relating to coffee etc. and palm-trees. But all these are confined to specific processes. There is no item covering agricultural employment in general.

Notification by State Governments.

10.10. We have already noted[2] that some of the notifications issued on the subject are relevant to agricultural operations. But there has been no systematic attempt at a comprehensive amendment in this respect.

Hazard constituted by mechanical contrivances used in agriculture.

10.11. In so far as mechanical and allied contrivances are used in employment in agriculture also, the employment becomes as much hazardous as industrial employment; and the extension of the Act to injuries resulting from accidents caused by such contrivances in agricultural employment would, therefore, be justified in principle part from the additional consideration that the Second Schedule to the Act already contains mention of one type of employment in agriculture,[3] relating to persons employment in *farming by tractors* etc., as we have already pointed out[4]. The question, however, still remains whether the Act should be extended to employment in agriculture.

Views received from States by Ministries.

10.12. Before we took up the question of revision of the entire Act, we had taken up *suo motu* the limited question of extension of the Act to employment in agriculture, and our tentative proposals on the subject were circulated for comments to the Ministry concerned and to State Governments and others. From

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1. Second Schedule, item 30.
2. Para 1A.2. *supra*.
3. Second Schedule item 29.
4. See para 10.8, *supra*.

the comments which we received from the Ministry of Labour,[1] it appears that the Ministry had also circulated a similar proposal to States. That Ministry has been good enough to furnish us with a gist of the comments received from State Governments, as well as a list of the hazardous employments in agriculture as forwarded by various States. We have studied those lists, and, while we find that many of the items suggested in the lists are substantially covered by existing items in the Second Schedule, a few are not so covered.

10.13. It was observed from the replies received from the State Governments[2] that some State Governments were not favourably inclined to the proposal for extension of the provisions of the Act to the workmen employed in agriculture. The arguments given by them against the proposal were broadly on the following lines :—

(i) Many agriculturists have small holdings, and they will not be in a position to bear the expenditure on payment of compensation under the Act.

(ii) Scattered nature of employment, illiteracy among the employers, and employees, and poor means of communication to reach the place of employment will present a difficulty of considerable magnitude in the administration and execution of the provisions of the Act ;

(iii) In agriculture, as opposed to industrial type of work, the manual work is not directly exposed to hazards and hence does not involve risk to life, except when farming through mechanised system is done by making use of tractors etc. digging of channels, making of bunds etc. which are already covered under the Act.

10.14. We have taken all these points into consideration. We hope that the limited recommendations which we are going to make will avoid the difficulties said to be likely to arise. As we have already point out[3], our intention is to cover only those employers who can afford to bear the expense.

Importance of Agricultural employment

10.15. Finally, we would like to re-emphasise the importance of agricultural employment. Writing in 1969, the National Commission on Labour[4] noted as follows :—

> "Agricultural labour excluding small cultivators, according to the Census, accounts for 30.6 millions. Agriculture in its broad connotation accounts for nearly

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1. Comments of the Ministry of Labour, Deptt. of Labour and Rehabilitation (17 October, 1973).
2. Para 10.11, *supra*.
3. Para 10.11, *supra*.
4. National Commission on Labour Report, (1969), page 394, para 28.6.

> 50 per cent of our national income and engages about 70 per cent of the working population."

The same Commission noted[1] that agricultural labour is mostly provided by economically and socially backward classes. These figures and facts bring out the magnitude of this occupation of employment in agriculture. It is also well-known that mechanisation is on the increase in agriculture as in other walks of life.

10.16. We would also like to quote what was stated in a recent study[2] dealing with personal injuries—

> "The rate at which social institutions and ideas are being turned upside down is not merely dramatic—it is accelerating every year in a fashion which demands a great deal of mental energy to keep pace. It cannot be good enough, therefore, to adjust merely to the contemporary needs. Some deliberate attention should be given to the foreseeable demands of the years immediately ahead. And if there may seem to be a weight of tradition against change, at least it is worth remembering that the apparent heresies of one generation become the orthodoxies of the next. The ultimate validity of any social measure will depend not upon its antecedents, but upon its current and future utility."

Desirability of amendment.

10.17. There is, therefore, considerable justification for widening the scope of the Act on the subject mentioned above.

Extension of the Act-how to be achieved.

10.18. Before making our recommendation on the subject, we may first dispose of the course to be adopted for so widening the Act, i.e. for extending the benefits of the Act to agricultural employment as indicated above. There are two courses open. One method would require only a notification by the State Government. The State Government has power[3] to add to the List in the Second Schedule, any class of persons employed in any occupation which, the State Government is satisfied, is a "hazardous occupation". This power can be utilised for the above purpose. The other alternative is an amendment of the Act by Parliament. We are definitely in favour of the latter course, as it would introduce uniformity.

This takes us to the question of legislative competence, that is to say, competence of Parliament to extend the Act to agricultural employment.

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1. National Commission on Labour, Report (1969), page 393, para 28.4.
2. Woodhouse Commission—Report on compensation for personal injury (New Zealand) (1969), para 33, cited in note on Compensation for personal injury (1969) 20 I.C.L.Q. 191, 196.
3. Section 2(3).

Legislative power to enact the amnedment under consideration.

10.19. Under the Constitution, the power to make a law for the "welfare of labour" is a concurrent one, and amongst the sub-heads of the power as mentioned[1] in the relevant legislative entry, "workmen's compensation", is specifically mentioned. That sub-head is, obviously, wide enough to cover legislation relating to workmen connected with agricultural employment. There should, therefore, be no constitutional difficulty if an amendment by Parliamentary legislation is recommended and undertaken to extend the Act to such workman. In fact, entry 29 in the Second Schedule to the Act was amended in 1959, and the amendment illustrates actual exercise of the power.

10.20. Having taken the various aspects into consideration, we are making certain recommendations on the subject. If our recommendations are accepted, we trust that all the usual hazards of agriculture will be covered by a combined operation of the existing and new entries relevant to agricultural operations.

Recommendation relating to employments in agriculture.

10.21. We now proceed to deal with the lines on which the amendment should be made. The principal consideration will, of course, be the actual or potential hazards in the employment. Such hazards may be evidenced by the size of the undertaking, or by the nature and area of work, and the like. In the first place, therefore, we recommend extension of the Act to any agricultural employment which satisfies the criterion to be inserted in this regard after determination by Parliament. We have already[2] indicated the possible criteria.

10.22 and 10.23. In addition to what we have recommended above,[3] we recommend that where any agricultural operation involves the use or handling of any contrivance driven by steam or other mechanical power or by electricity, the Act should apply. The hazard supplies the justification in such cases[4]. In such cases, the application of the Act should be irrespective of the capacity to pay, this being merely an extension of what is contained in the Second Schedule, item 29.

Item 1 — exclusion of clerks.

10.24. We have finished consideration of agricultural employment. We now take up the amendments needed in the Second Schedule in other respects. We have a few comments on item 1, which reads thus —

> "employed, otherwise than in a clerical capacity or on a railway in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle."

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1. Constitution, 7th Schedule, Concurrent List, item 24.
2. Para 10.7, *supra*.
3. Para 10.21, *supra*.
4. See para 10.11, *supra*.

The expression "in connection with", which appears in item 1, is an expression of wide content.[1] With this, one may contrast the expression "in the construction of", which could have a narrow meaning.[2] Those words are used in item 10.

Clerical employment various items discussed.

10.25. The exclusion of persons employed in a clerical capacity is of interest. In this connection, it may be noted that there are, in the Second Schedule, several items which exclude persons working in a clerical capacity.[3] The formula varies. First, in some of the entries, the substantive entry speaks of a person employed "in connection with" the specified operation[4], and persons working in a clerical capacity are excluded. Secondly, in some of the items, the formula employed in the main entry is "a person employed in" (or "on") *certain premises*, and a geographical contiguity is, therefore, required[5]. Lastly, in some of the items, no geographical contiguity is required[6], but, nevertheless persons working in a clerical capacity are excluded.

10.26. Items in the first category[7], referred to above[8], exclude persons acting in a clerical capacity, for the reason that otherwise the wide wording "in connection with", would cover persons not on the premises, and not directly involved in the hazardous operation.

10.27. As regards items in the second category[9], which require a geographical contiguity, there is, in our view, a case for removing the exception for persons[10] acting in a clerical capacity[11] in item 3, but not in item 18 where the area covered is very large, being an "estate".

The position under item 2 is not identical with the first category, since the requirement of contiguity itself restricts the entry.

10.28. As regards items in the third category, the exclusion of persons[12] working in a clerical capacity is, strictly speaking, unnecessary, because it is difficult to see how a clerk can be

1. *Dukhiini* v. *Corporation of Calcutta*, A.I.R. 1951 Cal. 653, 655, para 9.
2. See *Prativa* v. *Corporation of Calcutta*, (1951) 55 Cal. W. N. 496 (Case of a building inspector, held to be excluded) (Decision on item page 10).
3. Items 1, 2 5, 10, 14, 18, 19 and 30.
4. Items 1, 5 and 14.
5. Items 2 and 18.
6. Items 10, 19 and 30.
7. Items 1, 5 and 14.
8. Para 10.25, *supra*.
9. Items 2 and 18.
10. To indicate precisely the amendment required, a re-draft is given at the end of this Chapter.
11. See recommendation in para 10.34, *infra*.
12. Para 10.25.

employed. "in the construction" of an aerial ropeway[1],—as is assumed in item 10. However, perhaps, for abundant caution, the exception seems to have been inserted; and its removal at this stage might be unwise, as it might be construed as extending the benefit of the main provision to persons acting in a clerical capacity, even though they are remote from the place where the hazardous work is carried on.

Item 2.

10.29. We now come to item 2[2]. It has been held in a Bombay case[3] that it is not necessary under item 2 that the deceased should be working in the manufacturing process itself. It is enough if he is working in the premises where persons are employed in a manufacturing process, and if the deceased is employed in those premises otherwise than in a clerical capacity. Thus, a night watchman employed to keep watch on the premises of a pumping station[4], was held to fall within item 2, since he was employed in premises which satisfied the conditions of item 2.

10.30. It may be useful to codify the above interpretation.

Ambiguity in item 2.

10.31. There is also an ambiguity in this item. It is quoted below :—

> "(ii) employed, otherwise than in a clerical capacity, in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948, is being carried on, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, whether or not employment in any such work is within such premises or precincts and steam, water or other mechanical power or electrical power is used."

10.32. Do the words "and steam, water or other mechanical power or electrical power is used govern both the parts of the item, (premises and work), or do they govern only the second ? Apparently, both parts are intended to be covered, the hazard being constituted by the use of power in either case. This could be made clear.

10.33. It is also desirable to add nuclear or chemical energy, in this item[5].

10.34. In the first part of item 2, the exception regarding clerical employment should be removed, as there is no reason why clerks should be excluded[6] in this case, as the hazard constituted by the premises is shared by all persons. In the second

1. Item 10.
2. Item 2 is quoted in para 10.31, *infra*.
3. *Laxmibai* v. *Bombay Port Trust*, A.I.R. 1954 Bom. 180, paragraph 3.
4. Pumping is a manufacturing process.
5. Compare item 19 as proposed to be revised. Para 10.54, *infra*.
6. See discussion as to item 1. Para 10.27 *supra*.

half of the item also, it should be removed, since the requirement is that the *work must involve power*. We propose accordingly a re-draft in respect of this item.

10.35. Item 3 refers to persons employed for the purpose of making, altering, etc. any article in any premises where 20 or more persons are so employed. The Explanation to the article, (which was added in 1962), explains that persons employed outside the premises but in work incidental to or connected with the work relating to making, altering, etc. of the article, shall be deemed to be employed within such premises. The emphasis in this item is on the particular premises.[1] Item 3.

To some extent, this item overlaps item 2, which applies to premises where a manufacturing process is carried out and power is used[2]. Of course, the idea in the Explanation which governs item 3 is to club together persons employed internally and persons employed externally so as to make up the requisite number of 20. This item need not be disturbed.

10.36. Item 4 relates to employment in the manufacture or handling of explosives in connection with the employer's trade or business. Of course, the definition of 'trade or business' applicable to the Government and local authorities[3] makes this item applicable, so far as the Government or local authorities are concerned, *to all their activities*. Item 4.

There are, on the statute book, specific laws relating to explosives and explosive substances, nevertheless, the Legislature has not thought it necessary to refer to those laws for the purpose of defining the meaning of explosives, and the ordinary meaning has been regarded as enough. In the circumstances, a change in this regard is not suggested.

10.37. But we are of the view that persons employed on premises where explosives are manufactured in connection with the employer's trade or business should be covered, *even if they are not themselves directly employed in such*. We recommend a redraft of item 4 accordingly.

10.38. Item 5 refers to persons employed in three kinds of employments — Item 5.

(a) in any mine as defined in the Mines Act, *in any mining operation*, or

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1. *Firm G. D. Gian Chand* v. *Abdul Hamid*, A.I.R. 1938 Lahore 855.
2. Para 10.3, *supra*.
3. Section 2(2).

(b) in any mine as so defined, *in any kind of work other than clerical work,* incidental to or connected with any mining operation or (connected) with the mineral obtained, or

(c) in any mine as so defined, *in any kind of work whatsoever below the ground.*

10.39. That the employment under item 5 must *be in a* mine, is a requirement common to the three kinds of the work enumerated above,—though this aspect could have been brought out more clearly. A suitable change is desirable to bring it out.

10.39A. It is, in our view, also desirable to make it clear that in item 5, the expression "mine" is intended to cover also mines connected with minor minerals. Item 5 applies to mines as defined in[1] the Mines Act, 1952. That Act defines a mine as meaning "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on," and as including certain other things not material for our purpose. The definition does not exclude minor minerals. The expression "minor minerals" is defined in a later Act as follows[2]:—

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral."

A clarification to the effect that item 5 covers minor minerals would be useful.

Item 6.

10.40. Item 6 relates to a person employed as the master or as a sea-man of certain ships. Broadly speaking, the ship must be propelled by power or must have the specified tonnage (minimum 25 tonnes net), or it must be a sea-going ship provided with *sufficient area* for navigation under sails alone. This item does not appear to require any change.

Item 7.

10.41. Item 7 relates to persons employed for the purpose of specified operations connected with ships. In paragraph (a) the reference to the Indian Ports Act, 1908, might require to be added to, by mentioning the latest Central Act relating to certain major ports. The enumeration of various types of work is rather elaborate, but has the utility of precision and of avoiding doubts.

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1. Section 3(1)(j), Mines Act, 1952.

[2]Section 2(e), Mines and Minerals (Regulation and Development Act, 1957).

10.42. Item 8 refers to persons employed in the construction, maintenance, repair or demolition of specified buildings, specified dams or embankments, roads, bridges, tunnels or canals, wharfs, etc. Several points arise with reference to this item. Item 8.

(i) Sometime ago, a question seems to have arisen whether the word "repair" in this article includes painting, and the question seems to have been answered in the affirmative.[1-2] It may be desirable to mention painting in item 8. It is specifically mentioned in item 7.

(ii) In this item, the reference to "twelve feet" in paragraphs (a) and (b) should be replaced by a reference to the *corresponding meters*.

(iii) Paragraph (a) is confined to specified buildings—broadly speaking, multi-storeyed buildings or buildings with a certain height. Apart from multi-storeyed buildings, the height is the criterion. The two requirements are not cumulative; one of them is enough[3]. The above position may be brought out more clearly by splitting up.

As regards the words "employed in.....", a Calcutta[4] case is of interest. The case was concerned with a person employed under the Corporation of Calcutta as a Building Inspector who had met his death at the hands of a riotous mob. It was contended on his behalf that he was a workman, because he was "eployed in the construction, repair or demolition of buildings and other like constructions and, therefore, came under Cl. (VIII) of Sch. II to the Act. Harries C.J., who delivered the judgment of the Court, pointed out that a Building Inspector employed by the Corporation had nothing to do with the construction of buildings, and that, in any event, the work which the deceased was employed to do was substantially work of a nature which would not bring him within the category of persons employed in the construction, repair or demolition of buildings. It was in that context that the learned Chief Justice observed that in coming to a conclusion as to whether a man was or was not a workman, his ordinary work was to be regarded and that if the work in which a person was substantially employed was work which would not bring him within the category of workmen, the fact that on very rare occasions he might do something that would bring him within that category would not suffice for the purposes of the Act.

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1. *Nadirsh* v. *Krishna Bai*, A.I.R. 1936 Bom. 199.

2. *Bachia* v. *Shanti*, A.I.R. 1946, All. 200, 473, 474, following *Berriman* v. *L. & N. E. Rly. Co.* (1945) I.K.B. 462.

3. *Subhadrabai* v. *Malwa*, A.I.R. 1961 Madhya Pradesh 349.

4. *Pratiya* v. *Corporation of Calcutta*, (1951) 55 Calcutta Weekly Notes 498, discussed in A.I.R. 1957, Cal. 653.

Item 9.

10.43. Item 9 applies to persons employed in setting up, maintaining, repairing or taking down "any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same." We do not recommend any changes in this item.

The word "telegraph" is defined in the Telegraphs Act as including a wireless telegraph.[1] So we do not think it necessary to add a definition of "telegraph" in this item.

Item 10.

10.44. Item 10 covers persons employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline, or sewer. The exception for persons in clerical capacity has already been discussed.[2]

Item 11.

10.45. Item 11 refers to persons employed in the service of any fire brigade, and needs no change.

Item 12.

10.46. Item 12 applies to persons employed upon a railway as defined in clause (4) of section 3, and sub-section (1) of section 148, of the Indian Railways Act, 1890, either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration. The principal object seems to be to cover persons employed by (independent) contractors on railway works. Such persons need not claim under the general provision as to sub-contractors.

No change of substance is required in this item. But the words "by a person fulfilling a contract" etc. go with the word "employed". A slight re-casting is desirable to bring this out.

Item 13.

10.47. Item 13 refers to persons "employed as Inspector, mail guard, sorter or van peon in the Railway Mail Service (or as a telegraphist or as a postal or railway signaller), or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department."

Persons engaged on similar activities connected with Wireless communications will be covered[3], in view of the definition of "telegraph" in the Telegraphs Act.

10.48. In this item, we would recommend only a slight re-casting so as to keep railway signallers etc. separate.

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1. See Indian Telegraph Act, definition of "telegraph".

2. See discussion relating to item 1, para 10.28, *supra*.

3. Section 12.

4. *Cf.* Indian Telegraphs Act, definition of "telegraph".

Item 14.

10.49. Item 14 refers to persons employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas. It needs no change.

Item 15.

10.50. Item 15 reads :

> "Employed in any occupation involving blasting operations."

It needs no change.

Item 16.

10.51. Item 16 reads :

> "Employed in the making of any excavation in which on any one day of the preceding twelve months more than twenty-five persons have been employed or explosives have been used, or whose depth from its highest to its lowest point exceeds twelve feet."

The reference in item 16 to twelve feet could be replaced by reference to corresponding metres. The item should cover *twenty five* or more persons.

Item 17.

10.52. Item 17 refers to persons employed in operation of any ferry boat capable of carrying more than ten persons.

It needs no change.

Item 18.

10.53. Item 18 covers persons employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed.

It needs no change.

Item 19.

10.54. Under Item 19, persons employed, otherwise than in a clerical capacity, in "the generating, transforming or supplying of electrical energy or in the generating or supplying of gas" are covered.

We recommend that Nuclear and Chemical energy should be added in this item.[1]

Item 20.

10.55. Persons employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouse Act, 1927, fall within item 20, which needs no change.

Item 21.

10.56. Item 21 relates to persons employed in producing cinematograph pictures intended for public exhibition or in exhibition or in exhibiting such pictures.

The words "public exhibition" would, presumably, cover exhibition on the television net-work.

Items 22 to 25.

The item needs nochange.

10.57 to 10.61. No substantial changes are required in items 22 to 25.

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1. Compare item 2 as proposed to be revised. Para 10.33, *supra*.

Item 26.

10.62. Item 26 relates to persons employed in the handling or transport of goods in, or within the precincts of —

(a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed, or

(b) any market in which on any one day of the preceding twelve months fifty or more persons have been so employed.

It needs no change.

Item 27.

10.63. Item 27 relates to persons employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radio-active substances.

It needs no change.

Item 28.

10.64. Item 28 relates to persons employed in or in connection with the construction, erection, dismantling, operation or maintenance of an aircraft as defined in section 2 of the Indian Aircraft Act, 1934. If the scope of air-borne vehicles itself become widened, the necessary amendment, one can presume, will be made in the Aircraft Act.

The item needs no change.

Item 29.

10.65. Persons employed in farming by tractors or other contrivances driven by steam or other mechanical power or by electricity fall within item 29. We have separately dealt with the question of widening this item.[1]

Item 30.

10.66. Item 30 reads :

"Employed, otherwise than in a clerical capacity, in the construction, working, repair or maintenance of a tubewell."

It needs no change.

Item 31.

10.67. Item 31 refers to persons employed in the maintenance, repair or renewal of electric fittings in any building.

It needs no change.

Item 32.

10.68. Persons employed in a circus fall within item 32. No change is suggested, in this item.

Persons employed in employment requiring them to handle snakes (New item to be added.)

10.68A. We have finished the existing items. We shall now deal with a few new items. We propose to add a new item to cover persons employed in any employment which requires them to handle snakes[2] for the purpose of extraction of venom or for the purpose of looking after snakes. The need for it is obvious.

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1. See discussion as to extension of the Act to agricultural employment; para 10.21 to 10.23, *supra*.

riculture, see para 10.21 to 10.23 *supra*.

Persons exposed to hazards (Additional item to be included in the second Schedule).

10.69. We regard it as a serious drawback in the existing Act, that it fails to cover those employees who, though not *directly employed* in the specified hazardous employments, are, nevertheless, exposed to those very hazards by reason of the fact that the duties of their employment require them, whether occasionally or frequently, to face those hazards. For example, an office worker who ocasionally has to visit a thermal power house for checking, say, stores, in order to verify the accounts of certain purchases made for the power house, is exposed to the same hazards as a worker employed on the premises. But, as the law stands now, if he is injured by an elecrical apparatus in the power house, he is not covered by the Workmen's Compensation Act. Similarly, a person performing administrative duties, who has to go to a Government-owned factory for some such purpose as is mentioned above, is not covered by the Act. The existing scheme is based on the distinction which exists between the hazard constituted *directly* by one's usual employment, and the hazard, occasionally arising from isolated contacts with the hazardous object.

10.70. In our view, this distinction should, having regard to the modern tendency to increase rather than decrease the right to compensation, be removed. Where the accident is due to the hazard constituted by a scheduled employment, compensation should be admissible whether the workman is one employed *in the very employment* (which is hazardous), or whether he comes into contact with that hazard only at isolated times in the course of his duties. We, therefore, recommend the insertion of a general item at the end of the second Schedule, to cover such a situation.

Second Schedule—regarding of items.

10.71. We now come to a question of arrangement. There are 32 items mentioned in the Second Schedule. Reading of this list is a laborious process, and whenever one wishes to find out whether a particular employment is or is not included in the Schedule, one has to made through the entire Schedule without the aid of any headings.

While it is not intended that the Schedule should be made more general—that would only be at the sacrifice of precision—it is desirable that some device should be adopted to make reference to the Schedule more convenient then it is at present. With this end in view, we recommend that the items in the Schedule should be grouped under a few broad groups. If necessary, the group headings could be accompanied by a note to be inserted in the Schedule itself[1], to the effect that the headings are inserted for the sake of convenience only.

10.72. There is scope for simplification in this respect, because, at present, there is repetition of the same field of employment in several items, though with a different requirement in

1. For consideration by the draftsman.

each case. For example, (artificial) power or energy in general figures in item 1, and electrical energy in particular appears in items 19, 20, 21 and 31. Explosives appear in item 4, but also re-appear in items 15 and 16. Wild animals occur directly in items 22 and 24, and indirectly in item 32, which relates to employment in a circus.

Basis of re-grouping.

10.73. This repetition of a common element affords one convenient basis for re-grouping the existing items; this could be done without necessarily disturbing the language of each item. Another basis for re-grouping of the items is furnished by the idea that modes of transport, such as, ships (items 6 and 7), railways (items 12 and 13), ferries (item 17) and aircraft (item 28), could be grouped together. Petroleum, explosives and mines (items 4 and 5, 14, 15 and 16) could be brought together. Plantations and mechanised operations in agriculture (items 18, 29, and 30) can constitute one group. Climbing trees (item 23) and diving (item 25) could be clubbed together. These are personal hazards.

Re-draft of Second Schedule.

10.74. A re-draft of the Second Schedule, with the items re-arranged and placed under groups, bearing in mind the possible basis for classification indicated above, is given below.[1] It also carries out the amendments which we have recommended in each item.

Recommendation.

10.75. In the light of the above discussion, we recommend following redraft of the Second Schedule.

"SCHEDULE II
[See Section 2(1)(n)]

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(n), ARE INCLUDED IN THE DEFINITION OF WORKMEN.

The following persons are workmen within the meaning of section 2(1)(n) and subject to the provisions of that section, that is to say, any person who is *employed as stated in any one of the following items* :—

*Group A.—Power and electricity*[2]

[Existing item 1]

1. employed, otherwise than in a clerical capacity or on a railway, in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle ;

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1. Para 10.75, *infra*.

2. The group headings have been inserted for the sake of convenience only

2. employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical, *nuclear or chemical* energy or in the generating or supply of gas ; [Existing item 19]

3. employed in a lighthouse as defined in clause (d) of section 2 of the Indian Lighthouses Act, 1927 ; [Existing item 20]

4. employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures ; [Existing item 21]

5. employed in the maintenance, repair or renewal of electric fittings in any building ; [Existing item 31]

*Group B — Manufacturing*

6. employed, . . . . . [Existing item 2]

(a) in any premises wherein or within the precincts whereof a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1943, is being carried on, or

(b) in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, whether or not employment in any such work is within such premises or precincts ;

Provided steam, water or other mechanical power or electrical, power *or nuclear or chemical energy is used in the manufacturing process referred to in sub-clause (a) or in the work referred to in sub-clause (b).*

*Explanation*:—

It is immaterial for the purpose of sub-clause (a) that the person employed in the premises is not himself employed in the manufacturing process.

7. employed for the purpose of making altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises where or within the precincts whereof twenty or more persons are so employed;. . . . . [Existing item 3]

*Explanation.*—For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article shall be deemed to be employed within such premises or precincts :

*Group C—Mining, Petrol etc. and explosives*

[Existing item 4] 8. employed in the manufacture or handling of explosives in connection with the employer's trade or business; or on premises where such manufacture of explosives is carried on or

[Existing item 5] 9. employed, in any mine, as defined in clause (j) of section 2 of the Mines Act, 1952,—

(a) in any mining operation; or

(b) in any kind of work, other than clerical work, incidental to or connected with any mining operation or connected with the mineral obtained, or

(c) in any kind of work whatsoever below ground; or

*Explanation.—For the avoidance of doubts, it is hereby declared that for the purposes of this clause, and for the purpose of the definition of "mine" in the Mines Act,* 1952 *as adopted by this clause, the expression "minerals" includes minor minerals.*

[Existing item 14] 10. employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas;

[Existing item 15] 11. employed in any occupation involving blasting operations;

*Group D—Transport and Communications*

[Existing item 6] 12. employed as the master or as a seaman of—

(a) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled; or

(b) any ship not included in sub-clause (a), of twenty-five net tonnage or over; or

(c) any sea-going ship not included in sub-clause (a) or sub-clause (b) provided with sufficient area for navigation under sails alone;

[Existing item 7] 13. employed for the purpose of—

(a) loading, unloading, fuelling, constructing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to[1] the Indian Ports Act, 1908, of goods which have been discharged from or are to be loaded into any vessel; or

(b) warping a ship through the lock; or

1. If necessary reference to other laws relating to ports should be added

(c) mooring and unmooring ships at horbour wallberths or in pier; or

(d) removing on replacing dry dock caisoons when vessels are entering or leaving dry docks; or

(e) the docking or undocking of any vessel during an emergency; or

(f) preparing splicing coir springs and check wires, painting depth marks on locksides, removing or replacing fonders whenever necessary, landing of gangways, maintaining life-buoys up to standard or any other maintenance work of a like nature; or

(g) any work on jolly-boats for brining a ship's line to the wharf;

14. employed upon a railway as defined in clause (4) of section 3, and sub-section (1) of section 148, of the Indian Railways, Act, 1890, *by a person fulfiling a contract with the railway administration*; *whether such employment is* directly or through a sub-contractor. [Existing item 12]

14A. employed as a railway servant as defined in section 3 of the Indian Railways Act, 1890 : [Transferred from the definition of workman]

*Provided that* a railway servant *ordinarily* discharging duties in any administrative, district or sub-divisional office of a railway .....*shall* not be a workman by virtue of this item."

15. employed,— [Existing item 13]

(a) as a telegraphist or as a postal or railway signaller; or

(b) as an inspector, mail guard, sorter or van peon in the Railway Mail Service, or

(c) in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraph Department;

16. employed in the operation of any ferry boat capable of carrying more than ten person; [Existing item 17]

17. employed in the handling or transport of goods in, or within the precincts of;— [Existing item 26]

(a) any warehouse or other place in which goods area stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed, or

(b) any market in which on any one day of the preceeding twelve months fifty or more persons have been so employed;

[Existing item 28] 18. employed in or in connection with the construction, erection, dismantling, operation or maintenance of an aircraft as defined in section 2 of the Indian Aircraft Act, 1934;

*Group E—Construction*

[Existing item 8] 19. employed in the construction, maintenance, repair or demolition of—

(a) any building which is designed to be or is or has been—

(i) more than one storey in height above the ground: or

(ii) *three and a half metres or more* from the ground level to the apex of the roof; or

(b) any dam or embankment which is *three and half metres or more* in height from its lowest to its highest point; or

(c) any road, bridge, tunnel or canal; or

(d) any wharf, quay, sea-wall or other marine work including any moorings of ships;

[Existing item 9] 20. employed in setting up, maintaining, reparing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same;

[Existing item 10] 21. employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline, or sewer;

[Existing item 16] 22. employed in the making of any excavation in which on any one day of the preceding twelve months twenty-five or more persons have been employed or explosives have been used, or in the *making of any excavation* whose depth from its highest to its lowest point exceeds *three and half metres*.

*Group F—Agriculture*

23. employed—

[New] (a) *in any agricultural employment which satisfies the following conditions, namely*.....or[1]

Existing] item 29 (b) in any *agricultural operation* involving the use or handling of any contrivance driven by steam or other mechanical power or by electricity .

*Explanation—In this item, "agriculture" includes horticulture, forestry or bee keeping and "agricultural" shall be construed accordingly.*

1. The conditions are left to be filled up after the criterion to be adopted in this behalf is decided. See discussion in para 10.7.

24. employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; [Existing item 18]

25. employed, otherwise than in a clerical capacity, in the construction, working, repair or maintenance of a tube-well; [Existing item 30]

*Group G—Wild Animals and Snakes*

26. employed in the training, keeping or working of elephants or wild animals [Existing item 22]

27. employed in operation for the catching or hunting of elephants or other wild animals; [Existing item 24]

28. employed in a circus; [Existing item 32]

29. *employed in any employment which requires the person employed to handle snakes for the purpose of extraction of venom or for the purpose of looking after snakes;* [New]

*Group H—Climbing and diving*

30. employed in the tapping of palm-trees or the felling or logging of trees, or the transport of timber by inland waters, or the control or extinguishing of forest fires; [Existing item 23]

31. employed as a diver; [Existing item 25]

*Group I—Fire*

32. employed in the service of any fire brigade. [Existing item 11]

*Group J—X Ray and radio-active substances*

33. employed in any occupation involving the handling and manipulation of radium or X-rays apparatus, or contact with radio-active substances. [Existing item 7]

*Group K—Supplementary*

34. *employed in any employment which is of such a nature that in the course of his duties, the person employed has to subject himself to a hazard arising from any employment mentioned in any other item in this Schedule. If his employment is incidential to or connected with any employment so mentioned, and if the personal injury is caused by an accident which occurs on the premises where the employment so mentioned is carried on."* [New]

*Explanation.*—In this Schedule "the preceding twelve months" relates in any particular case to the twelve months ending with the day on which the acclodent in such case occurred.

3rd Schedule

10.76. Having finished consideration of the Second Schedule, we now take up the Third Schedule. The Third Schedule contains the list of occupational diseases, and has to be read with sections 3(2), 3(2A) and 3(3). The subject is of a technical character, and since we have not received any concrete suggestions in respect of them, we are not recommending any changes of substance in the Schedule. A few minor points concerning the Schedule are discussed below.

Third Schedule The word "sequelae"

10.77. There are several items in the Third Schedule (list of occupational diseases), which use the word "sequelae", while describing certain diseases. For example, in Part A of the Third Schedule, one of the diseases listed is "compressed air illness or its sequelae". This word, which is peculiar to the language used by Pathologists, is derived from the Latin word "sequel", which means "follow". The word connotes a morbid condition or symptom following upon some disease.

It would appear that this word caused some controversy in England[1]. One of the scheduled diseases in England (in the workmen's Compensation Act of 1906) was "lead poisoning and its sequelae". The County Court Judge had found that the granular kideny (from which the diseased workman died) was one of the consequences of lead poisoning (a scheduled disease), but there was no finding that *in this particular* case it was consequent upon lead poisoning. An appeal was preferred and allowed. The Court of Appeal pointed out that these words had no operation unless it was first established to the satisfaction of the County Court Judge that lead poisoning was either the proximate or the ultimate cause of death, in the particular case. Cozens—Hardy M. R. observed as follows:—

> "It is not sufficient that death was caused by something which *may in some cases*[2] be a sequela of lead poisoning but may also be a sequela of gout or alcoholismh. In short, it must be proved that death was a consequence of lead poisoning in *the case of this particular individual*, not necessarily a direct or immediate consequences but at least a remote consequence."

Farewell L. J. explained the meaning of the expression "sequelae", in the following terms:—

> "It is clear, if sequelae be translated into plain English and called 'or its consequences"—i.e., the consequences, not a possible consequence[3], the allegation then is that the man died not from lead poision-

1. *Haylett v. Vigor & Co.*, (1908) 2 Kings Bench 837 (Court of Appeal).
2. Emphasissupplied.
3. Emphasis supplied.

ing, but from a consequence of lead poisoning and it is as necessary for him to prove this case as it would be for him to prove that he had died from lead poisoning if that had been the case. The schedule cannot be read as if the words were "lead poisoning or granular kideny"; it can only be "lead poisoning". It is impossible to have the consequence without the cause, which is the gist of the liability."

10.78. It would, therefore, appear that the object of inserting the words "or its sequelae" in the Schedule to the Act was to prevent an employer from evading his liability to pay compensation on the ground that his employee had died, not actually from the scheduled disease, but from a complaint *which supervened or was consequent upon it*. At the same time, the death or injury must be *traceable to a consequence* of the scheduled disease.

Recommendation regarding the expression 'sequelae'.

10.79. In view of what is stated above, it would be advisable to substitute, in the Third Schedule, for the words "its sequelae", (wherever they occur), the words "any disease caused thereby in the particular case", and we recommend accordingly.

Arrangement of items in the Third Schedule.

10.80. The Third Schedule also leaves scope for improvement in respect of arrangement of the items. At present, the items in the Schedule bear no number, and are arranged in a haphazard fashion. The following changes are proposed to facilitate reference:

(1) Division of the Schedule into Parts.

(2) Hazards otherwise than by poisoning will be placed first in each Part. Hazards by poisoning will be placed next.

(3) Numbering of the items (with separate numbering within each part).

(4) In enumerating hazards by poisoning, alphabetical order is to be followed, as far as possible.

The revised arrangement will be as follows:—

Third Schedule

(see section 3)

*List of Occupational Diseases*

| Occupational disease | Employment |
|---|---|
| **PART A** | |
| 1. Anthrax . . . . . | Any employment :—<br>(a) involving the handing of wool, hair, bristles or animal carcases, or parts of such carcasses, including hides, hoofs and horns; or |

| Occupational disease | Employment |
|---|---|
| | (b) in connection with animals infected with anthrax; or<br>(c) involving the loading, unloading or transport of any merchandise. |
| 2. Compressed air illness or *any disease caused thereby in the particular Case* | Any process carried on in compressed air. |
| 3. Poisoning by lead tetraethyl. | Any process involving the use of lead tetraethyl. |
| 4. Poisoning by nitrous fumes | Any process involving exposure to nitrous fumes. |
| 5. Poisoning by organic phosphorus, insecticides. | Any process involving the use or handling or exposure to the fumes, dust or vapour containing any of the organic phosphorus insecticides. |
| **PART B** | |
| 1. Occupational Cataract due to infra-red radiations. | Any manufacturing process involving exposure to glare from molten material or to any other sources of infra-red radiations. |
| 2. Chrome ulceration or *any disease caused thereby in the particular case.* | Any process involving the use of chromic acid or bichromate of ammonium potassium or sodium, or their preparations or the manufacture of bichromate. |
| 3. Pathological manifestations due to :—<br>(a) radium and other radioactive substances;<br>(b) X-rays. | Any process involving exposure to the action of radium radioactive substances or X-rays. |
| 4. Primary epitheliomatous cancer of the skin. | Any process involving the handling or use of tar, pitch, bitumen, mineral oil paraffin, or the compounds, products or residues of these substances. |
| 5. Telegraphist's Cramp | Any employment involving the use of telegraphic instruments. |
| 6. Poisoning by arisenic or its compounds, or *any disease caused thereby in the particular case.* | Any process involving the production, liberation or utilisation of arsenic or its compounds. |
| 7. Poisoning by benzene, or its homologues, their amido and nitroderivatives or *any disease caused thereby in the particular case.* | Any process involving the manufacture, liberation, or use of benzene, homologues and their amido and nitroderivatives. |

1. We have separately recommended substitution of a different wording in place of 'sequelae'. Para 10.73, *supra.*

| Occupational Disease | Employment |
|---|---|
| 8. Poisoning by carbon disulphide or *any disease caused thereby in the particular case.* | Any employment in :—<br>(a) the manufacture of carbon disulphide; or<br>(b) the manufacture of artificial silk by viscose process; or<br>(c) rubber industry; or<br>(d) any other industry involving the production or use of products containing carbon disulphide or exposure to emanations from carbondisulphide. |
| 9. Poisoning by halogenated hydrocarbons of the aliphatic series and their halogen derivatives. | Any process involving the manufacture liberation and use of hydrocarbons of the aliphatic series and their halogen derivatives. |
| 10. Poisoning by lead, its alloys or compounds or any disease caused thereby in the particular case excluding poisoning by lead tetra-ethyl. | Any process involving the handling or use of lead ore of lead or any of its preparations or compounds except lead tetra-ethyl. |
| 11. Poisoning by manganese or a compound of manganese, or *any disease caused thereby in the particular case.* | Any process involving the use of, or exposure to the fumes, dust or vapour of, manganese or a compound of manganese, or a substance containing manganese. |
| 12. Poisoning by mercury, its amalgams and compounds, or *any disease caused thereby in the particular case.* | Any process involving the use of mercury or its preparations or compounds. |
| 13. Poisoning by phosphorus or its compounds, or *any disease caused thereby in the particular case.* | Any process involving the liberation of phosphorus or use or handling of phosphorus or its preparations or compounds. |
| **PART C** | |
| 1. Asbestosis . . . | Any employment in :—<br>(1) the production of :<br>(i) fibre cement materials; or<br>(ii) asbestos mill board; or<br>(2) the processing of ores containing asbestos. |
| 2. Bagassosis . . . | Any employment in the production of bagasse mill board or other articles from bagasse. |
| 3. Coal Miner's Pneumoconiosis. | Any employment in coal mining. |
| 4. Silicosis . . . . | Any employment involving exposure to the inhalation of dust containing ca |

Amendment Recommended.

10.81. In the Fourth Schedule, for cases where the monthly wages exceed Rs. 400, the present figures are Rs. 10,000, 14,000 and Rs. 87.50 respectively, in the 2nd, 3rd and 4th columns of the Schedule. We think that a specific item for the Rs. 400-500 group is required.

We therefore recommend that in the Fourth Schedule, for cases where the monthly wages are from Rs. 400 to 500, the present figures,—Rs. 10,000, 14,000 and Rs. 87.50—should be retained, and, as regards cases where the monthly wages exceed Rs. 500, the figures in the 2nd, 3rd and 4th columns of the Fourth Schedule should be Rs. 11,000, 15,000 and Rs. 100 respectively.

*Comparative Table with reference to Second Schedule*

| Existing item | Proposed item |
|---|---|
| 1 | 1 |
| 2 | 6 |
| 3 | 7 |
| 4 | 8 |
| 5 | 9 |
| 6 | 12 |
| 7 | 13 |
| 8 | 19 |
| 9 | 20 |
| 10 | 21 |
| 11 | 32 |
| 12 | 14 |
| 13 | 15 |
| 14 | 10 |
| 15 | 11 |

| Existing item | Proposed item |
|---|---|
| 16 | 22 |
| 17 | 16 |
| 18 | 24 |
| 19 | 2 |
| 20 | 3 |
| 21 | 4 |
| 22 | 26 |
| 23 | 30 |
| 24 | 27 |
| 25 | 31 |
| 26 | 17 |
| 27 | 33 |
| 28 | 18 |
| 29 | 23(b) |
| 30 | 25 |
| 31 | 5 |
| 32 | 28 |

We would like to place on record our warm appreciation of the valuable assistance we have received from Shri Bakshi, Member-Secretary of the Commission in the preparation of this Report.

P. B Gajendragadkar . . . . . Chairman.

P. K. Tripathi . . . . . Member

S. S. Dhavan . . . . . Member

S. P. Sen-Varma . . . . . Member

P. M. Bakshi . . . . . Member-Secretary

Dated: New Delhi,
the 15th October, 1974.

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1. Member Shri B. C. Mitra has not signed the Report. Please see the forwarding letter.

MGIPRRND—28 M of Law/74—Sec. IV (N.S.)—10-3-75—2000