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Security, 2020”,***

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### **ABSTRACT:**

*“Employer-employee relationship once established calls for compensation. It is dispensed to an employee in order to make amends to him for the grievances that he endured which were engendered by the menaces of employment. Employee’s Compensation Act, 1923 is the present governing law concerning compensation; however, the Government intends to replace it with the newly devised Social Security Code, 2020. The new Code is an amalgamation of 9 Acts and is inclusive of the Employee’s Compensation Act, 1923 along with several changes. The new code comes with a forward-looking approach that is in line with the 21<sup>st</sup> century and seeks to overhaul the archaic laws to not only provide impetus to a more uniform law but also more adequate protection and legal remedy which may also prove beneficial for various business establishments.*

*The term “Act” in this paper refers to the Employee’s Compensation Act, 1923 while the term “Code” alludes to the Code on Social Security, 2020. This paper in the first place entails the significance of the concept of compensation. Secondly, it provides an analysis of significant provisions related to compensation in both the Act and the Code. Thirdly, it provides for a detailed comparison of compensation-related provisions in the Act and the Code, in which not only the major differences between the two have been reflected but also the newly inserted provisions in the Code have been unveiled. Lastly, this paper along with a conclusion provides for few recommendations keeping in mind the present scenario of our country and the impact the new code may bring after its implementation.”*

### **I. INTRODUCTION:**

Compensation literally means something that is done or given to make up for any damage, trouble etc.<sup>1</sup> In any society, some sort of assurance is necessary to guard the employee against certain risks to which he is exposed due to his employment and which he can’t provide for by

<sup>1</sup>Compensation, MERRIAM-WEBSTER (June 14, 2021, 6: 45 PM), <https://www.merriam-webster.com/dictionary/compensation>.

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his own capacity or resources. This assurance comes in form of compensation; it's a guarantee against the risks of employment. Employee's Compensation Act, 1923 is one of the earliest Acts enacted to provide compensation to the employees. In the case of *Danjee vs. Maung Hia Seen*,<sup>2</sup> the principle governing compensation was laid down. It was held that the purpose of Employee's Compensation Act is not to provide for solatium to the employee, but to make good the actual loss suffered by him.

Now the Code on Social Security, 2020 has been drafted, which once enacted, would deal with the Employer's liability to pay Compensation. Section 2(15) of the Code on Social Security doesn't define compensation with much precision and states that, “*Compensation means compensation as provided under chapter VII*”. It can be inferred from the Code that compensation refers to making good to loss suffered by the employee in form of personal injury that has arisen out of and in the course of employment and has resulted either in death or total disablement or partial disablement for specified time period.

Also, compensation under labour law is not similar to damages in Torts as the defence of “volenti non-fit injuria” or “contributory negligence” or “inevitable accident” or “negligence of co-workers” which is available in any proceedings in Torts is not available in a proceeding for Compensation<sup>3</sup>. Further, in the case of *Raj Kumar vs. Ajay Kumar*,<sup>4</sup> it was held that the primary objective of paying damages is to make good the actual loss suffered due to any wrong that has been done, to the extent money can do, in a just, rational and fair manner. The Court or the Tribunal is required to evaluate the damages objectively and eliminate with deliberation any kind of assumption or fancy, however some sort of speculation related to the nature of disability and its consequences, is unavoidable. It was also held that a person is to be compensated for the physical injury as well as the loss which he suffered due to such injury. It implies that the person is to be compensated for his inability to lead a normal life

<sup>2</sup>AIR 1939 Rangoon, 369 (India).

<sup>3</sup>SURYA NARAYAN MISHRA, LABOUR AND INDUSTRIAL LAWS 418 (29<sup>th</sup> ed. 2019).

<sup>4</sup>(2011) 1 S.C.C. 343 (India).

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and to enjoy such normal amenities that he used to enjoy had that injury not taken place, and also on the basis of loss in his earning capacity.

## **II. EMPLOYEE’S COMPENSATION ACT, 1923: A SYNOPSIS:**

The Workmen’s Compensation Act, 1923 with the amendment made in 2009 came to be known as the Employee’s Compensation Act, 1923.<sup>5</sup> Modeled on British pattern, the very basic objective of this Act is to make provisions for payment of adequate compensation by employers to its employees against the hazards of employment to which an employee is exposed.<sup>6</sup> It extends to the whole of India including the (*then State of Jammu and Kashmir, now it’s a Union Territory*).<sup>7</sup> However, an employee will not get benefit under this Act if he avails benefit under the Employees State Insurance Act, 1948.<sup>8</sup> Time and again amendments have been made to this Act, the most recent one being that of January 03, 2020 by which the Central Government enhanced the wage limit for calculation of compensation under the Act from Rs. 8000 to Rs. 15, 000 per month.<sup>9</sup>

Section 3 of the Act lays down certain requisites to make an employer liable for compensation. Firstly, the employee in all probability must have sustained a personal injury. Personal injury not only refers to bodily injury but also takes into consideration psychological injury or abnormal mental conditions. In the case of *Indian News Chronicle vs. Mrs. Lazarus*,<sup>10</sup> an employee died of pneumonia due to frequent movement from heating room to a cooling plant as part of his duty. It was held that it was not physical injury but strain caused due to change in temperature that resulted in the death. Personal injury was held to be far

<sup>5</sup>*The Workmen’s Compensation (Amendment) Bill, 2009*, PRE-LEGISLATIVE RESEARCH (May10,2021, 9:30 AM), <https://prsindia.org/billtrack/the-workmen-s-compensation-amendment-bill-2009>.

<sup>6</sup>*Employees Compensation Act*, INDIA FILINGS (May10, 2021, 10 AM), <https://www.indiafilings.com/learn/employees-compensation-act/>.

<sup>7</sup>Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970, No. 51, Acts of Parliament, 1970(India).

<sup>8</sup>Employee’s Compensation Act, 1923, No. 8, Acts of Parliament, 1923 (India), §10B (3).

<sup>9</sup>AZB & Partners, *Employee’s Compensation Act, 1923*, MONDAQ (May11, 1:10 PM), <https://www.mondaq.com/india/employee-benefits-compensation/886368/employee39s-compensation-act-1923>.

<sup>10</sup>AIR 1951 Punj. 102 (India).

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more than physical injury in this case. It is also important to note here that an employer can also be held liable in cases of diseases arising out of occupation.

Secondly, the injury caused must be the result of an accident. An accident can be taken to mean any unexpected event or happening that was brought about by an act that was not anticipated from beforehand.<sup>11</sup> Un-expectation is the main characteristic of it. In the case of ***Sungarbai vs. Ordinance Factory***,<sup>12</sup> it was contended that accident is not only an external event but can also happen internally to a person and in such case ‘accident’ and ‘injury’ shall be deemed to coincide such as in case of heart failure. In ***Bai Shakri vs. New Manekchowk Mills Co.***,<sup>13</sup> it was stated that a series of little accidents giving unidentifiable results and happening cumulatively giving final injury taken together constitute an accident under this section.

Thirdly, the accident caused must have “arisen out of and in the course of employment” of the employee. As regards this, it was laid down in the case of ***Ravuri Kotayya vs. Dasari Nagavardhanamma***,<sup>14</sup> that employee must have been performing his duties and his duties must have required him to be present there and most importantly, there must have been some causal connection between the act which led to the accident and his duties and such act should not have been a remote one. In ***Sri Jayaram Motor Service vs. Pitchammal***,<sup>15</sup> it was contended that a causal relationship was established between the death of the employee and his employment when the employee who was a watchmen died post 90 minutes after returning from work as a result of strain that arose out of employment during the period of work. Under the “*Doctrine of Notional Extension*” as well which was first talked of in the

<sup>11</sup>Piyali Sengupta, *Personal Injury Under Employees Compensation Act, 1923–Judicial Interpretation*, MANUPATRA (May 17, 11 AM), <http://docs.manupatra.in/newslines/articles/upload/6807ba7a-13f4-4cb6-9345-bf4d1086dc6b.pdf>.

<sup>12</sup>1976 MPLJ 356(India).

<sup>13</sup>AIR 1961 Guj. 34(India).

<sup>14</sup>AIR 1962 AP 42(India).

<sup>15</sup>1982 (45) FLR 254(India).

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case of Saurashtra Salt Manufacturing Co. vs. Bai Vala Raju<sup>16</sup>, the employer can be held liable for the employee is said to be in the course of employment even if he has not reached or left the employer’s premises and is using a certain conveyance to and from the place of work. However, in this case the defence of this doctrine was not given.

***Section 3 of the Act also states the conditions when an employer won’t be held liable to pay compensation and it can be summed up as follows;***

- I. Where the injury caused does not lead to total or partial disablement for more than three days,
- II. Where the accident causing the injury, which did not lead to death or permanent total disablement, was because of the employee-
  - a) Being under the influence of drink or drugs,
  - b) Being disobedient as regards the rules explicitly framed for his protection,
  - c) Was expressing disregard or deliberately removing the safety device provided specifically for his security.

It was contended in the case of R B Moondra & Co. vs. Mst. Bhanwari,<sup>17</sup> that death due to any of the reasons stated from (a) to (c) cannot be pleaded while claiming compensation. In the case Devidayal Ralyaram vs. Secretary of State,<sup>18</sup> it was stated that when the employee in the course of his duty does an act which he was not supposed to do and which calls for extra danger, the employer cannot be held liable for the same. It is one of those cases in which the “*Doctrine of Added Peril*” was put forth which simply professes that an employer cannot be held liable if his employee while doing a work of the employer, engages himself in some other act which he is not required to do in the course of his employment and such an act involves extra danger.<sup>19</sup>

<sup>16</sup>AIR 1958 SC 881(India).

<sup>17</sup>AIR 1970 Raj. 111 (India).

<sup>18</sup>AIR 1937 Sind 288(India).

<sup>19</sup>*supra* note 6, at 3.



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***Section 4 of the Act alludes to the sum the employee will be entitled in form of compensation and its calculation can be summed up as follows;***

- i. On account of death- 50% of monthly wages \* Relevant Factor / Rs. 1, 20,000 (whichever is more).
- ii. On event of Permanent Total Disablement- 60% of monthly wages \* Relevant Factor / Rs. 1, 40,000 (whichever is more).
- iii. In Permanent Partial Disablement – 60% of monthly wages \* Relevant Factor; It can vary in accordance with loss of earning capacity and also if the injury is not enlisted in the schedule provided.
- iv. In Temporary Disablement (Payable half-monthly) – 25% of monthly wages; It can vary in accordance with sub-section (2) of the said section which allows for certain deductions.

Distribution of compensation amongst the dependants of the deceased can be made only through a commissioner and not directly.<sup>20</sup> After making the required deductions of which the Act permits, it is apportioned among the dependants of the deceased. The commissioner has got the discretion as regards the apportionment of compensation among dependants of the deceased employee. Also, there is an exception that if a woman or a person under legal disability receives the said compensation then the amount must necessarily under the direction of the commissioner be dealt only in the manner that is beneficial for such woman or the legally disabled. The commissioner however cannot vary an order without any appropriate cause. Section 12 of the Act is also a very significant section as it not only talks of an employer’s liability (referred to as the principal in the said section) but also a Contractor’s liability of compensation in case of employee’s hired by the contractor, where the employer has engaged a contractor. The Act even expressly mentions that a sub-contractor may have to indemnify his contractor if he has to recompense either an employer

<sup>20</sup>K Pravitha, *A detail Study of liability of employer and right of workmen under workmen compensation act*, 120 IJPAM 415, 423-424 (2018).

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or an employee.<sup>21</sup> Lastly, the Act provides for a Commissioner whose chief function is to resolve disputes related to compensation.<sup>22</sup>

### **III. CODE ON SOCIAL SECURITY, 2020: A SYNOPSIS OF COMPENSATION-RELATED PROVISIONS:**

Social Security connotes to a security furnished by a society to appropriate organizations against certain risks to which its members are exposed.<sup>23</sup> The overall idea behind the notion of Social Security is that the citizen who has contributed or is likely to contribute to his country’s welfare should be given protection against certain risks such as sickness, maternity, old age, death etc., to which he is exposed either in working life or as a consequence of it.<sup>24</sup> ILO through its conventions and recommendations has extended the range of Social Security and has given an added dimension to its growth and development globally. ILO’s recommendation in 1944 on Income Security, Medical Care and Social Security, and The Social Security (Minimum Standard) Convention adopted in 1952 embodies the principles and common standard on Social Security.<sup>25</sup> The Code on Social Security, 2020 to a great extent is in line with these principles. It is an amalgamation of 9 Acts relating to Social Security. The aim of the Code is to provide social security to all the employees and workers notwithstanding whether employed in the organized, unorganized or any other sector with regard to matters associated with or incidental to social security<sup>26</sup>.

***Provisions related to Employer’s liability for compensation, Amount of compensation and Distribution of compensation in the Code is to a large extent similar to that of the Act and***

<sup>21</sup>SURYA NARAYAN MISHRA, LABOUR AND INDUSTRIAL LAWS 416 (29th ed. 2019).

<sup>22</sup>Employee’s Compensation Act, 1923, No. 8, Acts of Parliament, 1923(India), §19.

<sup>23</sup>Shivangi S, *Social Security*, ECONOMIC DISCUSSION, (June 19, 2021, 11:39 AM) <https://www.economicdiscussion.net/welfare-economics/social-security/32327>.

<sup>24</sup>*Ibid.*

<sup>25</sup>*Up to date ILO Social Security Conventions and Recommendations*, INTERNATIONAL LABOUR ORGANISATION (June 20, 2021, 9:17 AM), [https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS\\_205339/lang--en/index.htm](https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205339/lang--en/index.htm).

<sup>26</sup>The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India).

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*has already been discussed in the previous chapter. Any changes brought in these provisions with respect to the Code have been discussed in the upcoming chapter. This chapter basically deals with provisions related to the newly introduced “Competent Authority”.*

According to Section 2(16) of the Code, “Competent authority means any authority appointed under Section 58 for the purposes of chapter V or notified for the purposes of chapter VI or appointed under Section 91 for the purpose of Chapter VII, as the case may be, as competent authority by appropriate government or the State Government.” Chapter VII of the Code is the respective chapter that deals with employee’s compensation.

Section 90 of the Code provides that during any proceedings under chapter VII, if any question arises with respect to liability of any person to pay compensation (which includes any question related to the injured person being an employee or not) or with respect to amount or duration of compensation (which includes any question related to nature or extent of disablement), then such question, in default of an agreement, shall be settled by a competent authority. In addition, as per sub-section (2), no civil court shall have the power to resolve any issue or deal with any question that is required to be processed by a competent authority under chapter VII.

***With respect to the appointment of a competent authority, Section 91 provides that the State Government may appoint any person to be a competent authority that is or has been;***

- i. A member of State Judicial Service for a period not less than five years, or
- ii. An advocate for not less than five years, or
- iii. A Gazetted officer for not less than five years possessing educational qualifications and experience in personnel management, human resources development, industrial relations and legal affairs or such other experience and qualification as prescribed by the appropriate Government.

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Also, by virtue of sub-section (3), for the purpose of deciding any matter referred to the competent authority under chapter VII, he may choose one or more persons having special knowledge relevant to such matter to assist him in holding the inquiry.

***Further with respect to the venue of the proceedings under Chapter VII, according to Section 92, the matter shall be done by or before the competent authority for the area in which;***

- i. The accident, which resulted in the injury, took place or
- ii. The employee or in case of the deceased employee, the dependant claiming the compensation ordinarily resides, or
- iii. The employer has his registered office.

Besides if the employee is the master of a ship or is a seaman or if he happens to be the captain or a crew member of an aircraft or is employed in a motor vehicle or a company, and meets with an accident outside India then such case may be processed by a competent authority for the region in which the owner or the agent of such ship, aircraft or motor vehicle inhabits or carries on his business or the registered office of the company is situated<sup>27</sup>.

Section 92 (2) provides that if a competent authority other than the one with whom money is deposited for distribution of compensation, deals with a matter under chapter VII then the former may ask for transfer of any record or money left over with the latter for appropriate disposal of the matter. Further as per sub-section (3) if a competent authority is of the opinion that any matter related to any proceedings pending before him can be dealt more expediently by any other competent authority then he may order to transfer such matter either for report or for disposal, to the other competent authority, and if he does so then he shall transmit all the relevant documents to such other competent authority for the disposal of such matter, further if the matter is transferred for disposal then he shall also transmit any amount leftover with him or directed by him for the advantage of any party to the proceedings, in the manner

<sup>27</sup> The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India), §92.

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prescribed by Central Government. It is also provided under sub-section (6) that “*the State Government may transfer any matter from any competent authority appointed by it to any other competent authority appointed by it.*”

***With respect to power and procedure of the competent authority, Section 95 provides that the competent authority shall have all the powers of Civil Court under the Code of Civil Procedure, 1908 for the purpose of;***

- i. Taking evidence on oath,
- ii. Enforcing the attendance of witness,
- iii. Compelling the production of documents and material objects.

Also, *the competent authority shall be deemed to be a civil court for all the purposes of Section 195 and of chapter XXVI of the Code of Criminal Procedure, 1973.*

Moreover, the competent authority has got the power to submit any question of law for the decision of High Court and if he does so, then he shall decide the question in conformity with the decision of High Court<sup>28</sup>.

Apart from these, Section 99 provides the provision for appeal against the order of competent authority. ***According to the Section, an appeal can be made to the High Court, against following orders of a competent authority under Chapter VII;***

- i. An order calling for compensation as lump-sum either via redemption of half-monthly payment or by not allowing for a claim in full or part of a lump sum;
- ii. An order that refuses to permit redemption of a half-monthly payment;
- iii. An order apportioning interests or damages under section 77, which relates to compensation being due and damages in case of default;

<sup>28</sup> The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India), §98.

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- iv. An order rendering for distribution of compensation among the dependant of the deceased or dismissing any claim of any person who alleges himself to be such dependant;
- v. An order that allows or disallows any claim for the amount of an indemnity under provisions of sub-section (2) of section 85, which relates to contracting;
- vi. An order disentitling registration of a memorandum of agreement or calling for registration of same subject to certain conditions.

Further, an appeal can’t be made against any order unless a substantial question of law is involved in the appeal and the amount in dispute in the appeal is not less than Rs.10, 000 or any higher amount as specified by the Central Government<sup>29</sup>. The section further provides that the period of limitation for appeal is 60 days from the date of passing of order<sup>30</sup>. It also provides that the provision of Section 5 of the Limitation Act, 1963 shall be applicable to the appeal under this section<sup>31</sup>.

## **IV. COMPARATIVE ANALYSIS OF EMPLOYEE’S COMPENSATION ACT, 1923 AND THE CODE ON SOCIAL SECURITY, 2020:**

### **IV.I DIFFERENCES IN DEFINITIONS:**

**IV.I.I.** One of the most prominent changes can be observed in the definition of the term “Employee”. The Code in comparison to the Act has introduced a broader and more comprehensive definition of the term employee. **Section 2(1)(dd) of the Act defines an employee as a person who is;**

- i. A railway servant (as defined under section 2(34) of Railways’ Act, 1989) who is not permanently employed in any administrative district or sub-divisional office of

<sup>29</sup> The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India), §99.

<sup>30</sup> The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India), §99 (2).

<sup>31</sup> The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India), §99 (3).

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railway and is also not employed in any capacity as specified under Second Schedule, which provides for the list of persons covered under the ambit of employee;

- ii. A master, seaman or any other crew member of a ship,
- iii. A captain or any other member of crew of an aircraft,
- iv. Employed as driver, helper, mechanic, cleaner or in any other capacity in relation with a motor vehicle,
- v. Recruited by a company to work abroad,  
And who is employed outside India in any capacity as specified in schedule II and the ship, aircraft or motor vehicle or company, according to the case is registered in India.
- vi. Employed in any capacity as specified in schedule II.

Whereas according to the Code the term “employee” means any person employed on wages by an establishment, either directly or through a contract, to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied, and also includes a person declared to be employed by the appropriate Government, but does not include any member of the Armed Forces of the Union<sup>32</sup>. The code takes into consideration the persons employed through contractor.

With reference to the Compensation part, both the Act as well as the Code, under the ambit of the term employee includes any person employed in the employment that is of the nature mentioned in the Second Schedule of the Act and the Code respectively. However, in Second Schedule of the Code an addition has been made and “person employed as sales promotion employee” has been included under the ambit of employee. Also, under the Code the Central or the State Government, by notification, may add to the Second Schedule any other person or class of persons.

<sup>32</sup>The Code on Social Security, 2020, No. 36, Acts of Parliament, 2020 (India), §2(26).

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**IV.I.II** Another change can be observed in the definition of the term Employer. The Code defines the term employer in far wider sense than what has been defined in the Act.

**According to Section 2 (1)(e) of the Act, Employer includes;**

- i. Anybody of persons whether incorporated or not,
- ii. Managing agent of an employer,
- iii. Legal representative of a deceased employee,
- iv. Where the person with whom the employee has entered into contract of service or apprenticeship, temporarily lent on hire the services of an employee to another person, then such other person while the employee is working for him.

The new definition not only incorporates some of the aspects of older definition but has also included several other aspects under the umbrella of the term. **As per Section 2(27) of the Code, the Employer is;**

- i. A person who employs, either directly or through any person, or on his behalf, or on behalf of any person, one or more employees in his establishment;
- ii. Where the establishment is carried on by any department of the Central Government or the State Government-
  - a. The authorities specified by the head of such department, in this behalf, or
  - b. Where no authority is specified as such, the head of the department;
- iii. Where an establishment is carried on by a local authority, the chief executive of that authority.

**And it does include;**

- i. In case of a factory, the occupier of the factory;
- ii. In case of mine, the owner of the mine or agent or manager having requisite qualification under the law, appointed by owner or agent of the mine;
- iii. In case of any other establishment, the person or the authority having ultimate control over the affair of the establishment and where the said affairs are interested to manager or managing director, such manager or managing director;
- iv. Contractor;



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- v. Legal representative of the deceased employer.

**IV.I.III** The most important change has been brought about in the definition of “wages”. Previously there were different definitions of the term in different Acts, however now an attempt has been made toward unification of the definition of the term wage and with that the Code on Social Security has adopted the definition of the term in line with the definition provided in Code on Wages 2019<sup>33</sup>. Several exclusion and inclusions have been made in the new definition. As per section 2(88) of the Code, the term wage means all sorts of remuneration, whether by salary or allowances or otherwise, which could be expressed or is capable of being expressed in terms of money, and is payable to an employed person in respect of his employment or in lieu the of work done in such employment, on fulfillment of the terms of employment, whether express or implied. ***It includes;***

- i. Basic pay;
- ii. Dearness allowance;
- iii. Retaining allowance.

***Under the said section following are excluded from the ambit of wages;***

- a. Any bonus which is to be paid under any prevailing law, and which does not form the part of remuneration payable under the conditions of employment;
- b. The worth of any house accommodation or of the supply of light, water, medical attention or other facility or of any service which is excluded from computation of wages through a general or special order of the appropriate Government;
- c. Any contribution by the employer toward any pension or provident fund, and the interest that accrued thereon;
- d. Any conveyance allowance or any travelling concession;
- e. Any sum paid to the employee to discharge any special expenses accrued on him by means of the nature of his employment;

<sup>33</sup>Seema Jhingan, Swasti Ray & Ankit Sahoo, *India: Part II - Labour Laws: The Code of Social Security 2020*, MONDAQ (June 21, 2021, 7:27 PM), <https://www.mondaq.com/india/employee-benefits-compensation/996996/part-ii--labour-laws-the-code-of-social-security-2020>.

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- f. House rent allowance;
- g. Remuneration which is to be paid under any award or settlement between the parties on order of a court or tribunal;
- h. Any overtime allowance;
- i. Any Commission that is to be paid to the employee;
- j. Any gratuity which is to be paid on the account of termination of employment;
- k. Any retrenchment compensation or retirement benefit which is payable to the employee or any ex-gratia payment made to the employee on termination of employment under any existing law.

Proviso to the section stipulates that in case any of the exclusions under sub-clauses (a) to (i) exceeds 50% of the wages or any other such percent notified by the Central Government, the amount in excess shall form part of the wages of the employees and also if the employer provides any remuneration in kind to the employee in view of the whole or part of the wages payable to him and value of such remuneration does not exceed 15% of the total wages payable to him then it shall form the part of wages of such employee.

**IV.I.IV** Further the Act defines disablement under two heads, namely Partial Disablement under section 2(1)(g) and Total Disablement under section 2(1)(l). **Whereas the Code has made a more distinctive division and it defines disablement under the following three heads:**

- i. Permanent partial disablement- According to section 2(55), Permanent partial disablement is a disablement of permanent nature; it reduces the earning capacity of an employee in every employment which he was capable of pursuing at the time of accident which resulted in the disablement.
- ii. Permanent total disablement- According to section 2(56), Permanent total disablement is a disablement of a permanent nature which completely incapacitates an employee for every work which he was capable of doing at the time of the accident that resulted in the disablement.

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- iii. Temporary disablement- According to section 2(83), Temporary disablement refers to a condition resulting from an employment injury which calls for medical treatment and it leaves an employee temporarily incapable of doing the work which he was able to do before or at the time of injury.

**IV.I.V** Apart from these above-mentioned changes in the definitions, few more changes have been made in certain definitions. For example, in the definition of “Dependant”, in the Code under section 2(24)(b), it has been specified that the son or daughter has to be “legitimate or adopted”, this requirement was not there in the Act. Apart from this under section 2(24)(c)(viii) of the Code, the requirement of “paternal” grandparent under the Act has been removed and in the Code only “grandparent” term is used, which implies that both maternal and paternal grandparents have been included.

## **IV.II DIFFERENCES IN COMPENSATION-RELATED PROVISIONS:**

**IV.II.I** Amount of compensation is the sum of money that is given to the employee as compensation in proportion to the injury caused to the employee<sup>34</sup>. A very major change has been brought in this regard. As per the Act<sup>35</sup>, in cases that lead to death from injury, “*an amount equal to fifty percent of the monthly wages of the deceased employee multiplied by the relevant factor or an amount of one lakh and twenty thousand rupees, whichever is more*” is the considered amount of compensation. In the Code, that one lakh and twenty thousand rupees has been as per section 76(1)(a) substituted by “*an amount as may be notified by the central government from time to time*”. Similarly, per the Act<sup>36</sup> in cases of permanent total disablement arising out of injury, “*an amount equal to sixty percent of the monthly wages of the injured employee multiplied by the relevant factor or an amount of one lakh and forty*

<sup>34</sup>Calvin Mabaso, *Impacts of compensation and benefits on job satisfaction*, RJB, Mar. 2017, at 80, 80.

<sup>35</sup> Employee’s Compensation Act, 1923. No. 8, Acts of Parliament, 1923 (India), §4(1) (a).

<sup>36</sup>Employee’s Compensation Act, 1923, No. 8, Acts of Parliament, 1923 (India), §4(1) (b).

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thousand rupees, whichever is more” is the provided amount. As per section 76(1)(b) of the Code, that one lakh and forty thousand rupees has been replaced by “an amount as may be notified by the central government from time to time. “This vital change stands beneficial for an employee as it can lead to enhancement of the sum of compensation that one can receive as the central government can unquestionably do so.

**IV.II.II** A key change with respect to amount of funeral expenses has also been given effect. The Act under section 4(4) provides that an additional amount of “two thousand and five hundred rupees” in case of demise of an employee has to be submitted to the commissioner so that it can be paid to the eldest surviving dependant of the concerned employee to incur the funeral expenses of the employee and in case the employee does not have such a dependant then to the person who bore the actual funeral expenditure. Contrary to this, section 76(7) of the Code provides that such an additional amount to be submitted to the competent authority should “not be less than fifteen thousand rupees or such amount as may be prescribed by the state government.” Therefore, there has been an increment of not less than 500% which seems more adequate considering the socio-economic conditions at present times.

**IV.II.III** Another change can be observed with respect to damages or penalty in case of default in payment of compensation. Damages if liquidated are pre-estimated considering the loss incurred while in penalty the amount fixed is above the actual loss incurred<sup>37</sup>. Section 4A of the Act provides for penalty in case of default while on the other hand section 77 of the Code provides for damages in case of default. Though there is not much difference between penalty and damages<sup>38</sup>, this change is a kind of positive specification brought about by the Code. When an employer defaults in paying compensation that is due in one month time, section 77(3) (a) of Code says “employer shall, in addition to the amount of the arrears, pay

<sup>37</sup> Yasmin Barber, *Penalty clause v Liquidated damages*, GANNONS SOLICITORS (June 1, 2021, 4 PM), <https://www.gannons.co.uk/insights/penalty-clause-vs-liquidated-damages/>.

<sup>38</sup> *Ibid.*

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interest at such rate as may be prescribed by the central government” while in the Act<sup>39</sup>, the rate is fixed at simple interest of 12% per annum and in no case it should exceed “*maximum of the lending rates of any scheduled bank as may be prescribed by the central government.*” It can be inferred thereon that an uncertain limit set up by the Act to regulate the rate of interest no longer exists.

**IV.II.IV** Another alteration has been made with respect to amount of compensation that is to be deposited with the competent authority or the commissioner, as the case may be. Section 81(2) of Code as regards distribution of compensation provides “*any other sum not amounting to less than five thousand rupees which is payable as compensation may be deposited with the competent authority on behalf of the person entitled thereto.*” Whereas in the Act, under section 8(2), any amount which was not less than ten rupees was acceptable. This increment is more adequate and reasonable and provides more security to an employee.

**IV.II.V** A principal change has taken place in respect of the authorities. Such an authority has the right to decide and settle any question such as the extent of liability of any person to pay compensation, amount as well as duration of compensation, nature and extent of disablement caused etc.<sup>40</sup> Section 19 of Act gives such power to a Commissioner while the Code under section 90 gives it to a competent authority. As per the Act, under section 20(4), “*Every Commissioner shall be deemed to be a public servant within the meaning of Indian Penal Code (45 of 1860)*”, however the same does not follow for a competent authority as no reference to this has been made in the Code.

**IV.II.VI** As regards the form of application provided in section 22 and Section 93 of the Act and Code respectively, the Act talks of providing of some particulars such as statement

<sup>39</sup> Employee’s Compensation Act, 1923, No. 8, Acts of Parliament, 1923 (India), §4A.

<sup>40</sup>Saptaswara Chakraborty, *An overview of the employee’s compensation act, 1923*, LEX FORTI LEGAL NEWS NETWORK (June 3, 2021, 8:32 PM), <https://lexforti.com/legal-news/an-overview-of-the-workers-compensation-act-1923/>.

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stating circumstances under which application was made, the date of the service of notice of accident to the employer, name and addresses of parties etc. However, the Code does not specifically mention for such particulars. The key difference is regarding the time-limit in which the cases are to be disposed of. Section 93(4) of the Code provides that the time limit and the cost to be imposed “*shall be as may be prescribed by the state government*” while the Act under section 25A provides for disposal “*within three months of the date of reference.*” Therefore, the time-limit of three months has been done away which may prove favorable for a just and equitable proceeding.

**IV.II.VII** Appearances of parties at times are required to be made before the concerned authorities and parties can be represented through those people duly specified. Section 24 of Act says that “*an Inspector appointed under sub-section (1) of section 8 of the Factories Act, 1948 or under sub-section (1) of section 5 of the mines Act, 1952*” is among one such person that can represent the parties. However, on the contrary the Code provides for an Inspector-cum-facilitator appointed under sub-section (1) of section 122.

**IV.II.VIII** Another change can be observed with respect to penalty. Penalties are imposed in the case of failure or non-performance of act by any person<sup>41</sup>. It can be in monetary terms or in the form of imprisonment<sup>42</sup>. Section 18A of the Act and 133 of the Code provides for the same. The Act provides for fine “*which shall not be less than fifty thousand rupees but which may extend to one lakhs rupee.*” The same fine has been imposed whether it is for failure to send a statement to the commissioner regarding fatal accident, failure to send a report of fatal accident or serious bodily injury etc. Whereas in the Code, the penalties provided are more distinct and varies accordingly. In the Code, for not been able to send a report to the competent authority “*fine which may extend to fifty thousand rupees*” has been imposed.

<sup>41</sup>Kamya Ramanan, *Employment and Labour Law 2021*, GLOBAL LEGAL INSIGHTS (June 14, 2021, 1:02 AM), <https://www.globallegalinsights.com/practice-areas/employment-and-labour-laws-and-regulations/india>.

<sup>42</sup>*Ibid.*

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Thus, decrement in fine can be noticed in this regard in the Act and the Code. The Code additionally says that in case employer fails to provide any amount of compensation, he may be liable for fine which may extend to fifty thousand rupees. The Code also in addition says that if obstruction is caused to any Inspector-cum-facilitator or any competent authority in the proper discharge of its duties then “*imprisonment of a term which may extend to six months or with a fine which may extend to fifty thousand rupees, or with both*” will be imposed. Thus, variations in penalties can be duly observed.

#### **IV.III NEWLY INSERTED COMPENSATION-RELATED**

#### **PROVISIONS IN THE CODE ON SOCIAL SECURITY, 2020:**

**IV.III.I** The newly added provision related to “compensation in case of death or injury in plantation” has been one of the most significant insertions in the Code. Section 75 of the Code requires the employer to pay compensation if collapse of a house provided by the employer in a plantation, results in death or injury of any worker or of his family member, provided the collapse is not solely and directly credited to a fault on the part of any inhabitant of the house or to the natural calamity. Also, for the purpose of this section, ‘worker’ means a person employed in a plantation, either directly or through any agency, for hire or reward, to do any work skilled, unskilled, clerical or manual and it does include a person employed on contract for more than 60 days in a year, **also the following persons have been excluded;**

- i. Medical officer employed in the plantation;
- ii. Any person employed in plantation whose monthly wages exceeds the amount determined by appropriate Government;
- iii. Any person employed in plantation primarily in managerial or administrative capacity, regardless of his monthly wages not exceeding the determined amount;
- iv. Any person who is temporarily employed in the plantation for any work related to construction, development or maintenance of buildings, roads, bridges, drains or canals.

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**IV.III.II** Another significant incorporation in the Code is that of section 74 (2) and section 74 (4). According to section 74(2), an accident or an occupational disease shall be deemed to arise out of and in course of employment even if at the time of the accident or at the time of contracting the occupational disease the employee was acting in contravention of the provision of any law applicable to him or of any order given by or on behalf of his employer or if he’s acting without the instructions of his employer, ***Provided:***

- i. Such accident or contracting of such occupational disease would have been deemed to have arisen out of and in course of employment, if the act not been done in contravention of provision of any law applicable to the employee or without the instructions of the employer.
- ii. The act is done for the purpose of and in connection with the employer's trade or business.

According to section 74 (4), if a link between the employment and the condition, time and place in which the accident of the employee happened is established, then the accident endured by the employee while travelling from his residence to the place of employment for duty or from the place of employment to his residence after performing the duty, shall be deemed to have arising out of and in course of employment. This section in a way gives effect to the Doctrine of Notional Extension.

**IV.III.III** Under the Act, the commissioner had full discretion related to apportionment of compensation to the dependants of the deceased employee<sup>43</sup>, there was no requirement as to record any reason for that matter, however a newly inserted proviso to section 81(5) of the Code requires the competent authority to record his reasons for the apportionment of compensation among dependants of the deceased employee.

**IV.III.IV** According to Section 88(5) of the Code, if the competent authority is of the opinion that dependant of the deceased employee is not in a position to engage an advocate to

<sup>43</sup> The Employee’s Compensation Act, 1923, No. 8, Acts of Parliament, 1923 (India), §8.



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file a claim for compensation then the competent authority may provide an advocate to such dependant, from the panel of advocates maintained by the State Government. There was no such provision in the Act, and it was much required.

**IV.III.V** A new proviso has been added in the Code related to medical examination of the employee. Right to compensation of an employee is suspended if an employee does not submit himself for medical examination within the required time period. Proviso to section 84(3) states that if an employee establishes before the medical practitioner that he was unable to present himself for medical examination due to the circumstances that was beyond his control and he was also unable to convey such information in writing, the medical practitioner may excuse the delay and the employee’s right to compensation shall be revived as if no suspension was made, also the medical practitioner is required to record his reasons in writing for doing so.

**IV.III.VI** Apart from all these aforementioned points, the Code focuses on the digitalization of records and returns for easier exchange of information<sup>44</sup>. For example, under section 82(5) and section 88(1) of the Code the notice can be served through electronic means.

## **V. CONCLUSION AND RECOMMENDATIONS:**

The relationship between an employer and employee can be reckoned as that of a master and servant.<sup>45</sup> The rule of vicarious liability seems to apply as far as provisions regarding compensation is concerned.<sup>46</sup> Although the Employee’s Compensation Act, 1923 is still enforce in India at present, the Government aspires to implement the Code on Social Security, 2020 as soon as possible. Taking into consideration the broad coverage that the

<sup>44</sup>Jhingan, *supra* note 32, at 12.

<sup>45</sup>Madhuri Pilania, *Employee’s Compensation Act, 1923*, I-PLEADERS INTELLIGENT LEGAL SOLUTIONS (June20, 2021, 10 PM), <https://blog.ipleaders.in/employees-compensation-act-1923-amazing-facts-to-know-about-it/>.

<sup>46</sup>*Ibid.*

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Code will bring with itself and also the major change in definitions that the Code has incorporated in itself, the most important one being the change in the definition of wages, it can be inferred that the Code may prove very beneficial for various establishments<sup>47</sup>. It is not only an exhaustive Code with far-reaching implications but it is also in accordance with the current socio-economic structure of our country. It is the need of the hour as the existing labour laws are not keeping up with the pace of our country. The researchers adhere to this fact that these current antiquated laws need to be replaced soon.

***However, the researchers seek to give few recommendations which the researchers think should be revised as far as the Code is concerned for a better footprint;***

- Changes in the amount of compensation have been brought only in cases of death and permanent total disablement. An enhancement in case of other injuries such as permanent partial disablement and temporary disablement is much required.
- A certain time-limit for disposal of cases needs to be fixed and it should not be left in the hands of the government to prescribe for, as that can lead to continuance of proceedings for a prolonged period of time.
- For the purpose of appeal, there should be appointment of an alternative body/tribunal apart from the High Court as the High Courts are already over-burdened due to pendency of cases and it is not feasible as well as reasonable to approach the High court for each and every matter. An appeal to a High Court shall only be allowed for cases involving huge costs and certain other cases of public importance.
- Certain eliminated sections of the Act such as charging compensation on assets transferred by employer, returns to compensation, contracting out, and duty of employer to inform employee of his rights etc. should be expressly included in the new Code.

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<sup>47</sup>Priyadarshini Maji, *New Labour Codes: How will they impact social security, take home salary*, FINANCIAL EXPRESS, Mar. 26, 2021, at 10.