

## EMPLOYER'S LIABILITY FOR INDUSTRIAL INJURIES: A CRITICAL ANALYSIS FROM THE EMPLOYEES' COMPENSATION ACT, 1923 TO THE CODE ON SOCIAL SECURITY, 2020

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### I. Abstract

The statutory framework guaranteeing compensation for employment-related injuries constitutes a crucial pillar of India's social welfare architecture. While the Employees' Compensation Act, 1923 originally established a regime of strict employer liability, this framework has now been comprehensively subsumed and modernized by the Code on Social Security, 2020. This paper undertakes a critical examination of employer liability under Chapter VII of the new Code, contrasting it with the historical 1923 legislation. It explores the enduring judicial interpretation of phrases such as "arising out of" and "in the course of" employment, the statutory codification of the notional extension doctrine regarding commuting accidents, and the treatment of occupational diseases. Furthermore, the study evaluates whether the updated compensation mechanisms adequately address the socio-economic realities of contemporary employment, particularly the gig economy. The paper concludes that while the 2020 Code significantly broadens employee protection, proactive regulatory updates and robust implementation strategies remain essential for ensuring meaningful financial security.

**KEYWORDS:** Code on Social Security, 2020, Employer's Liability, Industrial Injuries, Strict Liability, Arising out of Employment, Doctrine of Notional Extension, Gig and Platform Workers, Occupational Diseases

### II. Introduction

The constant acceleration of industrial, technological, and digital operations exposes the workforce to a growing array of occupational hazards. Historically, under the doctrine of *laissez-faire*, employees seeking damages for workplace accidents were forced to navigate complex common law tort principles. Under this archaic regime, employer defenses such as contributory negligence, common employment, and the voluntary assumption of risk (*volenti non fit injuria*) routinely derailed legitimate claims.<sup>938</sup> To rectify this power imbalance, the Employees' Compensation Act, 1923, was enacted. It

represented a watershed moment in Indian labor law, shifting the financial burden of industrial accidents from individual workers to the employer via a strict liability model.

However, as India transitioned into a highly digitized 21st-century economy, the fragmented nature of legacy labor laws proved inadequate. Recognizing the need to consolidate and expand these laws, the Indian legislature enacted the Code on Social Security, 2020 (hereinafter "the Code"). By amalgamating nine central labor laws—including the 1923 Act—the Code modernizes the compensation regime. Crucially, it extends welfare nets beyond traditional industrial workers to encompass unorganized, gig, and platform workers,

<sup>938</sup> *Pratap Narain Singh Deo v. Srinivas Sabata*, (1976) 1 S.C.C. 289 (India).

marking a paradigm shift in Indian labor jurisprudence.

### III. Research Methodology

This paper primarily employs a **doctrinal research methodology**. The study relies on a systematic and analytical examination of primary legal sources, focusing heavily on the statutory texts of the repealed Employees' Compensation Act, 1923, and the newly enacted Code on Social Security, 2020. Secondary sources have been extensively utilized to contextualize the legal provisions; these include landmark judicial pronouncements from the Supreme Court of India, authoritative academic commentaries, and contemporary journal articles reviewing the new labor codes. The research adopts a comparative approach, juxtaposing the historical liability framework against the consolidated provisions to evaluate the evolution, efficacy, and contemporary adequacy of employer liability in India.

### IV. Literature Review

To ground this study in contemporary legal discourse, it is essential to examine scholarly perspectives surrounding the transition to the Code on Social Security, 2020:

- 1. Prioritization of Worker Welfare:** Chidambaram Ramesh argues that the legislative intent behind the new Code explicitly prioritizes workers' statutory dues, even in the face of corporate insolvency. This literature highlights how the Code elevates the statutory importance of worker compensation, aligning labor welfare with modern financial recovery mechanisms.<sup>939</sup>
- 2. The Shift from Fragmented to Universal Coverage:** Dr. Ashwini V. Kulkarni critically assesses the journey of codification, emphasizing that the Code successfully shifts India's welfare paradigm from a narrow, outdated approach to a universally inclusive

mechanism capable of covering the unorganized sector.<sup>940</sup> However, she cautions that practical realities—such as administrative bottlenecks—pose significant hurdles to its successful implementation.

- 3. Inclusion of the Gig Economy:** Scholarly analysis in recent law journals underscores that while the Code successfully amalgamates archaic laws like the Employees' Compensation Act, the actual mechanisms for funding and executing injury compensation for non-traditional, algorithmic-driven employees remain nebulous and require further regulatory oversight.<sup>941</sup>

### V. Legal Framework Governing Employer's Liability

#### A. Statutory Foundation under the 2020 Code

The substantive core of employer liability is now enshrined in Chapter VII, specifically Section 74, of the Code on Social Security, 2020. Section 74(1) imposes a direct statutory obligation on employers to pay compensation if an employee suffers a personal injury due to an accident arising out of and in the course of employment.<sup>942</sup> This provision preserves the foundational strict liability paradigm established in 1923, granting relief entirely independent of the employer's fault, negligence, or operational blunders.<sup>943</sup>

To successfully establish liability under the Code, three primary criteria must be proven: (1) an accident must occur, (2) it must result in personal injury or death, and (3) there must be a spatio-temporal and causal nexus with the employment. While this liability is absolute, Section 74 incorporates specific, narrow statutory defenses. An employer is absolved of liability if the injury (not resulting in death) is directly attributable to the employee being

<sup>939</sup> Chidambaram Ramesh, *The Code on Social Security, 2020: A Commentary* 142-145 (2020)

<sup>940</sup> Ashwini V. Kulkarni, *Labour Laws in India: From Fragmentation to Codification*, 12 *Indian J. Lab. L.* 45, 48-52 (2025).

<sup>941</sup> *Critical Analysis of Social Security for Gig Workers under the 2020 Code*, 9 *Christ Univ. L.J.* 112, 115-118 (2023).

<sup>942</sup> Code on Social Security, No. 36 of 2020, § 74(1) (India)

<sup>943</sup> *Id.*

under the influence of drugs or alcohol, or if the employee demonstrated a willful disobedience of explicit safety protocols.<sup>944</sup>

## VI. Interpretation of “Arising Out of and In the Course of Employment”

### A. Arising Out of Employment

The phrase “arising out of employment” dictates the necessity of a causal link between the worker’s duties and the resultant injury. Jurisprudence developed over the last century remains highly relevant for interpreting the new Code. Courts consistently maintain that employment must expose the worker to the specific peril that caused the injury.<sup>945</sup> The work duties do not need to be the exclusive or direct cause of the accident, but they must serve as a proximate or contributing factor that materialized into the hazard.<sup>946</sup>

### B. In the Course of Employment

Conversely, “in the course of employment” establishes the temporal and spatial boundaries of the employer’s liability. Traditionally, an injury sustained strictly within working hours and at a designated physical workplace satisfied this threshold. Over the decades, progressive judicial interpretation stretched this perimeter to encompass ancillary and incidental acts, provided they maintain a rational, common-sense connection to the employee’s core responsibilities.<sup>947</sup>

## VII. Doctrine of Notional Extension and Statutory Codification

Under the 1923 Act, the “doctrine of notional extension” was a critical judicial innovation used to extend employer liability beyond the physical factory gates. In landmark decisions like *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja*<sup>948</sup> and *General Manager, B.E.S.T. Undertaking v. Agnes*,<sup>949</sup> the Supreme Court

ruled that employment includes zones and times where the employee’s presence is necessitated by their job, such as specific employer-provided transport.

A paramount shift introduced by the Code on Social Security, 2020 is the explicit statutory recognition of commuting accidents. Resolving decades of interpretative ambiguity, the new framework acknowledges that injuries sustained while an employee is commuting directly to or from the workplace are legally deemed to occur “in the course of employment.” This codified protection ensures that compensation is guaranteed without forcing injured workers to endure protracted litigation to prove the notional extension of their workplace.

## VIII. Occupational Diseases

Occupational ailments, which inherently feature long latency periods and gradual onset, are addressed under Section 36, read alongside Section 74(2) of the Code. Ailments listed in the Third Schedule of the Code are legally presumed to be injuries arising out of and in the course of employment.<sup>950</sup> This statutory presumption mitigates the heavy evidentiary burden on workers, who would otherwise struggle to prove a direct causal link after years of continuous exposure to toxic elements or hazardous environments.<sup>951</sup>

## IX. Adequacy of Compensation and Emerging Challenges

While the Code on Social Security, 2020 represents a structural overhaul, the mechanisms for calculating the quantum of compensation, detailed in Section 76, remain tethered to formulaic wage-and-age multipliers.<sup>952</sup> Although the Code broadens the definition of “wages” and expands coverage to previously excluded sectors, these statutory calculations often struggle to keep pace with hyper-inflation and escalating medical costs.

<sup>944</sup> Code on Social Security, No. 36 of 2020, § 74(1)(b) (India).

<sup>945</sup> *Mackinnon Mackenzie & Co. v. Ibrahim Mahmood Issak*, A.I.R. 1970 S.C. 1906 (India).

<sup>946</sup> Id.

<sup>947</sup> *Reg'l Dir., E.S.I.C. v. Francis De Costa*, (1996) 6 S.C.C. 1 (India).

<sup>948</sup> *Saurashtra Salt Mfg. Co. v. Bai Valu Raja*, A.I.R. 1958 S.C. 881 (India).

<sup>949</sup> *Gen. Manager, B.E.S.T. Undertaking v. Agnes*, A.I.R. 1964 S.C. 193 (India).

<sup>950</sup> Code on Social Security, No. 36 of 2020, § 36, sch. III (India).

<sup>951</sup> *National Ins. Co. Ltd. v. Mubasir Ahmed*, (2007) 2 S.C.C. 349 (India).

<sup>952</sup> Code on Social Security, No. 36 of 2020, § 76 (India).

Perhaps the greatest modern challenge is applying employer liability to the gig economy. The Code legally defines gig and platform workers, mandating aggregators to contribute to a social security fund. However, because gig workers operate outside the traditional employer-employee relationship, traditional concepts of "in the course of employment" become highly blurred. If a delivery partner is logged into an app but waiting for an order and suffers an accident, determining the strict liability of the platform remains a complex gray area requiring further regulatory clarification.

**X. Critical Assessment and Strategic Suggestions** The transition to the Code on Social Security, 2020, while a monumental legislative achievement, reveals several critical gaps that require immediate attention to fulfill the promise of social justice.

**A. Critical Assessment** Firstly, the Code continues to rely on a "scheduled" approach to both industries and diseases. While Section 74 expands coverage, the administrative reliance on predefined lists inherently excludes workers in emerging or niche sectors that have not yet been "notified" by the government. This creates a two-tiered system of protection where workers in older industries are safe, but those in the vanguard of the digital and green-energy transition may lack clear statutory remedies.

Secondly, the "strict liability" framework is only as good as its enforcement. In the unorganized sector, where documentation is often non-existent and employment is transient, proving that an injury occurred "in the course of employment" remains a gargantuan task for the worker. The digital registration mandated by the Code is a step forward, but the "digital divide" in rural India may prevent the most vulnerable workers from ever entering the system. Furthermore, the compensation formulas are still based on a "wage ceiling" that may not reflect the actual earnings of high-skill technicians, leading to an effective under-compensation of skilled labor.

**B. Strategic Suggestions** To bridge these gaps, the following suggestions are proposed:

- 1. Universalization of the Notional Extension:** While the Code codifies commuting accidents, it should be further clarified to include "remote work" and "flexible work" scenarios. As "work from home" becomes a standard, injuries sustained in a home office—provided they are work-related—must be clearly brought under Section 74 to avoid a new wave of litigation.
- 2. Indexing Compensation to Inflation:** The "wage ceiling" used for calculating compensation should be automatically indexed to the Consumer Price Index (CPI). This would ensure that the quantum of relief remains meaningful in real economic terms without requiring frequent, slow-moving legislative amendments.
- 3. Mandatory Group Insurance for MSMEs:** For smaller employers (MSMEs), the financial burden of a death claim can lead to business bankruptcy, leaving the worker's family with a "paper decree" but no actual money. The government should mandate and subsidize group industrial injury insurance for all registered MSMEs to ensure the solvency of compensation funds.
- 4. Creation of a Rapid Dispute Resolution Portal:** Instead of traditional labor courts, a dedicated digital tribunal or "Ombudsman for Industrial Injuries" should be established. This body should be empowered to use medical affidavits and digital "work logs" (for gig workers) to adjudicate claims within a 90-day window, ensuring that relief reaches the injured worker when it is most needed—during the recovery period.

## XI. Conclusion

The transition from the Employees' Compensation Act, 1923 to the Code on Social



Security, 2020 marks a vital evolution in Indian labor jurisprudence. By statutorily integrating progressive judicial doctrines and expanding its jurisdictional umbrella to the unorganized and gig sectors, the Code aligns legal protections with 21st-century economic realities. For this modernized framework to achieve its true welfare mandate, continuous legislative scrutiny, periodic revision of compensation calculation schedules, and a highly adaptable approach to gig-worker injuries are imperative.

