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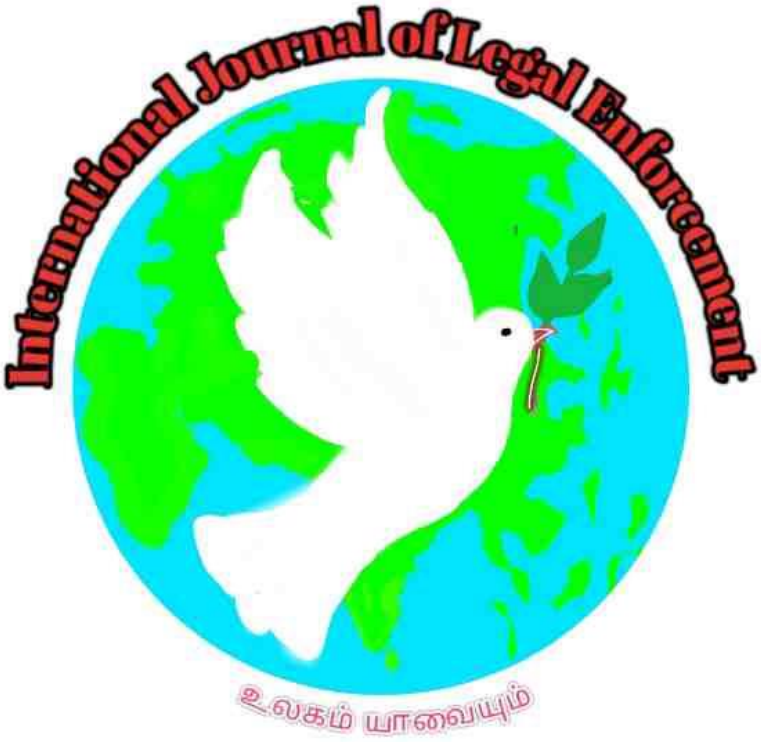


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# Article on

# "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT": COMPARATIVE ANALYSIS OF INDIA AND UNITED KINGDOM

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*The Employees Compensation Act, 1923 ensures employer's liability towards the employees. The concept of employer's liability to compensate his/her employees in case of injuries or any damages caused to them which is either arising in the employment or arising out of the employment. The liability of the employer rises in two cases i.e. either "arising in" and "arsing out" of the employment, the difference between these two terms has been laid down courts through various precedents. But, the diligence arises when employee is eligible to claim compensation both in torts and employments acts, but was this preference upheld by the court?*

*In the present article, the author shall portray the difference between the concept of arising in and arising out through judicial precedents and also shall analyse comparatively with the Jurisdiction of United Kingdom. The article focuses majorly on (1) the concept of preferential compensation in India and UK, (2) The scope of exceptions to employer's liability in India and UK, and (3) The applicability of the concept insurance triggers and policy limits in India.*

**Keywords**: *Preferential Compensation, Policy Limits, Employer's Liability, Compensation .*

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## INTRODUCTION

The employees are insured and compensated for the expenses; injuries incurred during the course of his employment around the world. Now days the safety of the employees are a primary concern for the employers, considering the increased use to technology and machineries which may cause any accidents or hazards thereby causing injuries to the employees. Therefore, owing to the foreseeability of accidents during the employment the government of India has enacted the "*Employees Compensation Act, 1923*" to provide for the compensation for any injuries suffered by the employees in an accident by the employers. The act imposes an obligation to compensate to the workers for the injuries suffered from the "*accidents arising out of and in the course of employment*" by the employer.

Further, in the jurisdiction of United Kingdom, the "*Employers' Liability (Compulsory Insurance) Act, 1969*" empowers a mandate obligation on employers to ascertain the employees with an Employers' Liability Insurance Policy which needs to be approved by an authorised insurer. Further, the employer is liable to compensate only during the period of insurance.[1] Also, the policy should be adhered by both the employer's and employee to determine the application of the employer's liability.

The concept of employer's liability arose from the phrase "*arising out of and in the course of the employment*" mentioned under Section 3 of the Employment Compensation Act. The words, "arising out" and "arising in" are interpreted differently by the judiciary; still, both the words are interconnected to each other. The scope of '*arising out of employment*' was defined in *Oriental Fire and General Insurance Company Limited v. Sunderbai Ramji*[2] as the "*direct and proximate nexus with employment*" Further, in the case *Lancashire and Yorkshire Railway Co. v. Highley*[3], the court opined the three principles to justify the concept of "arising out of the employment" which provided for the injuries suffered to the worker is not sufficed within the limits of the nature of his employment. The judiciary variedly interpreted the term "in the course of the employment" in *General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes*[4] as the injuries suffered to the worker

[1] Shailesh Malde et al., Employers' Liability Insurance (Report presented to the Institute of Actuaries) (1990), https://www.actuaries.org.uk/system/files/documents/pdf/employer.pdf (last visited Feb 26, 2021).
[2] *Oriental Fire and General Insurance Company Limited v. Sunderbai Ramji*, (1917) A.C. 352
[3] *Lancashire and Yorkshire Railway Co. v. Highley*, (1999) III LLJ 265 Guj
[4] *General Manager, B. E. S. T. Undertaking, Bombay v. Mrs. Agnes*, AIR 1964 SC 193

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in the course of work he is entitled or employed to. In India, the employer's liability arises when the injuries suffered by the employee either "in the course of employment or out of the course of employment". Further, in the United Kingdom, the concept of "arising out of" is not construed strictly in the insurance policy and renders to be excluded as opined in the case of *British Waterways v Royal & Sun Alliance Insurance Plc*[5].

Moreover, the consideration of 'preferential compensation' provided to the workers is taken in to the consideration as the employees are eligible to claim the benefits of injuries cause by the accidents under the concept of vicarious liability in tort law. Thus, in Indian context the ideology of 'preferential compensation' was not justified as the court in *A Trehan v. Associated Electrical Agencies*[6], held that the employee cannot claim for compensation under any other law or tort law in force, if he is entitled to receive compensation of the employment injury in Employees Compensation Act. Further, in United Kingdom, the employee is not denied of his rights claim damages under tort law, if he can establish the liability of employer under tort law for the damages suffered by him. Thus, the laws in United Kingdom doesn't bar in claiming benefits from two laws and employer cannot claim this as an exception of providing compensation to employee under the concept of employer's liability.

The concept of insurance policy and policy limits are sustained within the limits of United Kingdom as the consideration of mandate approved policy by the employer to claim benefits is provided in United Kingdom and the employee can claim benefits during the policy has provided in *Bolton v MBC Mutual Insurance Ltd*[7], thus, the concept of employer's liability if litigious in United Kingdom whereas in India, the employees' are entitled to benefits under the act if any injuries suffered by him owing to exceptions applied.

## RESEARCH OBJECTIVES

- *General Objective*

The study shall generally catechize the main objective i.e. to catechize the concept of employer's liability and the scope of 'arising out' and 'arising in' in the employment.

[5] *British Waterways v Royal & Sun Alliance Insurance Plc*, [2012] EWHC 460 (Comm).
[6] *A Trehan v. Associated Electrical Agencies*, 1996-II-LLJ-721
[7] *Bolton v MBC Mutual Insurance Ltd*, [2006] 1 Weekly Law Reports (WLR) 1492

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- *Specific Objectives*

The "following mentioned are the specific objective of this present research study wherein the author shall analyse each objective in normative and conceptual manner"-

i. To analyse and analogize the concept of employer's lability between the jurisdiction of India and United Kingdom.
ii. To scrutinize the concept and difference between "arising out" and "arising in" the course of employment w.r.t judicial interpretation.
iii. To analyse and differentiate between the scope of exceptions to the employer's liability under the "*Employees Compensation Act 1923*" in India and "*Employers' Liability (Compulsory Insurance) Act 1969*" in UK.

## RESEARCH QUESTIONS

The "present research study undertaken by the author attempts to trace and find out answers to the following research questions in a conceptual and normative manner as follows":

i. Whether the employees can claim benefit under both the employers' liability scheme and tort law for the injuries occurred?
ii. Whether the concept of 'policy limits' and 'insurance triggers' towards the compensation to employee's prevail in India or United Kingdom?

## RESEARCH METHODOLOGY

The author in order to scrutinize the key objectives and research questions in the research article has opted for qualitative method with the "collaboration of secondary sources". The secondary sources data are supported doctrinal method of research. The citation style opted in present research article is Harvard Bluebook 20th Citation method. The data sources and methods of data analysis are discussed herein-

*i. Data Sources*

The author has collected the data from "secondary sources like books, articles, journals" etc. and has also collected from online data and gathered information from

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Kingston article on "Arising out of and in Course of Employment"[8], Richard Lewis note on Employers' Liability and Workers' Compensation: England and Wales[9] etc.

*ii. Methods of Data Analysis*

The method employed in analysing the study is normative, conceptual method and theoretical in nature wherein the qualitative data was analysed incorporated with conceptual study of legislations, doctrine, working documents, articles, etc. and all the information was re-collected and compiled in a systematic order.

*iii. The study area*

In the study, the author has defined within a particular limit wherein ideas and legislations pertaining to the employer's liability are restricted to the jurisdiction of India and United Kingdom.

## LITERATURE REVIEW

The study has reviewed five research articles dealing with judiciary contributions in determining the concept of "arising out and in the course of the employment" and the concept pf preferential compensation between the jurisdictions of India and UK comparatively, which has helped the researcher in finding the lacunae in the present study and has assisted in providing relevant information to complete the study. The below mentioned articles are being reviewed by the author which are related to the theme of the research.

*Personal Injury under Employees Compensation Act, 1923- Judicial Interpretation: Piyali Sengupta*[10]

The present article discusses the concept of the personal injury and accident and the difference thereon under "*Section 3 of the Employees Compensation Act, 1923*" with the help of Judicial Interpretation in determining the interpretation of the word 'personal injury' and 'accident' and also correlating it with the concept of "arising in and arising out of the course

[8] George A. Kingston, *"Arising out of and in Course of Employment"*, 4 The Virginia Law Register , 804 (1919).
[9] Richard Lewis, *Employers' Liability and Worker's Compensation: England and Wales*, SSRN Electronic Journal, 137 - 202 (2010).
[10] Piyali Sengupta, Personal Injury Under Employees Compensaton Act,1923- Judicial Interpretation (Manupatra 1), http://docs.manupatra.in/newsline/articles/upload/6807ba7a-13f4-4cb6-9345-bf4d1086dc6b.pdf.

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of employment". The author of the article has discussed the interpretation of the Courts in varies case laws including *Regional Director, ESI Corporation v Francis De Costa*[11], *Shakuntala Chandrakant Shresthi v Prabhakar Maruti Garval*[12] wherein the line of difference between injury and accident was drawn.

*A Detail Study of Liability of Employer and Right of Workmen Under Workmen Compensation*: K. Pravitha and Mrs. Girija Anil[13]

This paper presents the liability of employer in providing the compensation to the employee under the Employment Compensation Act. The article also discusses at large the rights of the employee, the conditions and situations wherein he can avail the benefits of the scheme namely the Employer's Liability to Compensate and the exceptions as to when the employer is not liable to pay the compensation.

*Judicial interpretation of the expression "arising out of and in the course of employment"*: Shreya PrabhuDesai[14]

This article discusses the Employment Compensation Act at large and encapsulates the Employer's liability scheme with the help of judicial interpretation in determining the two concepts wherein the employee can avail the compensation i.e. "accident arises in the course of the employment" and "accident arising in the course of the employment". The article also determines the extent, scope and tests to determine the difference between these two concepts with the help the precedents.

*Employers' Liability and Workers' Compensation: England and Wales*: Richard Lewis[15]

The present article discussed the concept of Employer's Liability in the jurisdiction of United Kingdom and also questions the system of policy limits in availing the benefits of compensation by the employee. The article discusses as to how the notion of Employer's

[11] *Regional Director, ESI Corporation v Francis De Costa,* 8 (1997) 1 LLJ 34
[12] *Shakuntala Chandrakant Shresthi v Prabhakar Maruti Garval,* AIR 2007 SC 248
[13] GIRIJA ANIL et al., *A Detail Study Of Liability Of Employer And Right Of Workmen Under Workmen Compensation Act*, 120 International Journal of Pure and Applied Mathematics , 415-430 (2018), https://acadpubl.eu/hub/2018-120-5/5/428.pdf.
[14] Shreya Prabhudesai, Judicial interpretation of the expression "arising out of and in the course of employment" (GRKARELAWLIBRARY), http://www.grkarelawlibrary.yolasite.com/resources/SM-Jul14Lab-3-Shreya.pdf.
[15] Richard Lewis, *Employers' Liability and Worker's Compensation: England and Wales*, SSRN Electronic Journal, 137 - 202 (2010).

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liability is different and more litigious in United Kingdom than Indian because of the sustenance of prevalent concept of preferential transaction in UK.

"*Arising out of and in Course of Employment"*: George A. Kingston[16]

The author in the present article discussed the concept of "Arising out of and in Course of Employment" in varied jurisdictions including UK, India, US, Texas, Virginia and has postulated the difference of the said concept in varied jurisdictions by considering the interpretations of the different courts.

The above review related to the concept of the "arising out and in the course of employment" in the jurisdictions of India and UK ascertains the following gaps such as-

i. The validity of preferential compensation scheme in United Kingdom and India.
ii. The scope of policy limits in claiming the benefits of employment compensation.
iii. The conceptual difference between "arising in" and "arising out" in India and United Kingdom i.e.

## DISCUSSION

### LIABILITY OF EMPLOYER IN INDIA

The subject of personal injury of an employee is covered under "*Section 3(1) of the Employees Compensation Act 1923*" the same provides that "*if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation*." As per this provision, "*an employee who dies or suffers partial or total disablement for more than 3 days or permanent total disablement due to accident is entitled to get compensation from employer*." However, before making a successful claim of compensation under Section 3(1), an employee needs to prove certain conditions which have been listed hereinafter-

i. Employee should have sustained some personal injury:

If an employee during the course of performing his duties at the establishment has by an accident suffered any kind of personal injury (the same can be either physical or

[16] George A. Kingston, *"Arising out of and in Course of Employment"*, 4 The Virginia Law Register, 804 (1919).

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psychological), then the liability to compensate such an employee will fall upon the employer. The provisions of the Act have not defined the term 'personal injury' under the same. Personal injury can however, be said to be "an injury caused to a person's physique, intellect or reputation due to a person's negligence, remissness or illegitimate conduct." A landmark judgement on this subject is the case of *Indian News Chronicle v. Mrs. Lazarus*[17]. The Court in its judgement discussed the issue of "personal injury" happened to an employee working under an establishment and defined its scope and held that if the death of the workman was because of a "*personal injury and that a physical injury occurred at workplace includes a personal injury then the employer is liable to pay the compensation*".

ii. Personal injury should have occurred due to an accident:

An employee to avail the compensation, he/she must prove that the personal injuries in question have been caused due to an accident occurring during the execution of his indispensable duties.

iii. The accident should have occurred due to and during the employee's course of employment:

Under this provision the most essential requirement to be proved by the employee for availing the compensation is to prove that the accident causing the personal injury in question has arisen during "the course of employment or out of the employment", respectively. The sole fact that an employee has suffered the accident does not suffice.

Under this provision it is of equal significance for an employee to demonstrate that the accident causing the personal injury in question has resulted during the course or out of the employment. Since there may be a situation where the injury to an employee has not resulted during the course of employment, an employee is not entitled to compensation from the employer on the sole basis that an accident has occurred to that employee. The burden of proving that such personal injury has been caused during or out of the course of employment in this situation lies only upon the employee and not the employer. It is the employee that has to prove his case in front of the adjudicating authority.

[17] *Indian News Chronicle v. Mrs. Lazarus,* AIR 1961 Punj. 102

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iv. The injury to the employee should result in a partial or permanent disablement for a period in excess of three days:

The employee under this provision would be entitled to compensation from the employer if the accident in question has caused an injury to him who in turn has resulted in his partial or permanent disablement for a period exceeding three days. The terms partial or permanent disablement have been defined under the provisions of the Act[18].

v. Or if the employee has passed away due to such an accident:

Lastly, under the provisions of this section the heirs of an employee will be entitled to receive compensation from the employer if they can prove that the accident in question has caused the employee to pass away. The heirs of the employee must prove before the adjudicating authority that the passing away of the employee was due to an accident which occurred in the or out of the course of employment. If the same has been successfully proved then the employer shall be required to provide a compensation to the heirs of the employee.

## LIABILITY OF EMPLOYER IN UNITED KINGDOM

The provision of employment compensation scheme under Employers' Liability (Compulsory Insurance) Act, 1969 is entitled through a 'personal injury' caused by "accident arising out of and in the course of employment"[19].

i. "Personal Injury"

The concept pf personal injury mean that the employee in order to claim the compensation, he/she has to necessarily exhibit that the industrial accident at the workplace has occurred as not only as the proviso which has caused the injury i.e. "*causa sine qua non"* but the employer also needs to show that the injury cause has materially contributed to the employer i.e. "*causa causans"*. For example, if any employee receives a cardiac arrest, then the question in consideration would be that, whether it occurred due to some disease or it happened due to the work he was subjected to?[20]

ii. The accident "arising out of employment"

[18] The Employees' Compensation Act, 1923 § 2(g).
[19] Social Security Contributions and Benefits Act 1992 § 94 (1).
[20] Sir William Beveridge, Report on Social Insurance and Allied Services (Cmd 6404, para 81) (1942).

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The term "accident arising out of employment" means that injury caused from accident has occurred by the work. Moreover, the English Statute has provided for certain acts of accidents which are deemed to have "arise out of employment", subject to the condition that the accidents arose in "course of employment" and the employee have not contributed to it.[21]

iii. The accident "arising in the course of employment"

The nexus and correlation between the occurrence of accident and the workplace is blatant. However, difficulties can arise where the person needs to a boundary starting from the imitation of work and the ending of the work i.e., the boundary is hard to draw. This difficulty can be stipulated by the principle of "accidents arising in the course of employment"[22]. Lord Denning in *R v National Insurance Commissioner, ex parte Michael*[23] proclaimed that, "it has been worth to lawyers a King's ransom" the reason as to why he proclaimed so has been hidden in the notorious concept of "accidents arising in the course of employment" as this has led numerous litigations and the interpretation of these varied cases has added more dilemma and resulted into non-conclusive nature of the precedents.[24]

Thus, the wider meaning of the concept is the occurrence of the incident and causing of the injury at the time, place, and the activity which was being processed by the employee.

## DIFFERENCE BETWEEN "ARISING IN" AND "ARISING OUT" IN INDIA

### Concept of "Arising In"

The expression "in the course of the employment" conceptualize that the accident arising in the course of the work which the employee in entitled and subjected to. This expression is also purview by the "*Doctrine of Notional Extension*" which encapsulates the extent of the "in the course of the employment". This doctrine prescribed that employment commences from place of the employment once the employer reaches the place and ends once the employer has left the place of employment, thus, it implies the journey to and back in not counted, subject to the circumstances of a case.

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[21] Social Security Contributions and Benefits Act 1992 § 101.
[22] A.I Ogus et al., The law of social security (Butterworths/LexisNexis 5) (2002).
[23] *R v National Insurance Commissioner, ex parte Michael*, [1977] 2 (All ER) 420
[24] *Nancollas v Insurance Officer*, [1985] 1 All ER 833

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The Supreme Court viewed that if the employment ensures that the journey to the employment shall be provided and undertaken by the employer then any accident arising during the journey will be counted in the course of his employment[25].

Also, the court in *Imperial Tobacco Co. (India) Ltd V. Salona Bibi*[26], determined that if the injury has occurred due to the "*stress and strain of the journey*" thereby which has caused the death of the employee, so that would result as an "accident arising in the course of employment".

**Concept of "Arising Out"**

The principle of "arising out of employment" is not only restricted to the course and nature of the employment but is also applicable to the "c*onditions, obligations and incidents of employment*". So, if the employee has suffered from any of the said factors then he/she is eligible to avail the benefits of compensation from the employer considering that the injury arose from "out of employment". The court in ***Lancashire and Yorkshire Railway Co. v. Highley***[27] laid down the test to determine the "arising out of employment"- "*(1) Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment. If nay, it did not, because, what it was not part of the employment to hazard, to suffer, or to do cannot well be the cause of an accident arising out of the employment. 2) To ask if the cause of the accident was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, 3) The workman should have acted as he was acting or should have been in the position in which he was, whereby in the course of that employment he sustained injury."*

Moreover, the High Court of Gujarat has determined the scope and extent of the term "accident arising out of employment" in the case[28] wherein the labourer died due to "*hard labour and strenuous physical exertion*" at employment. Thereby, the High Court held that as the labourer has died due to the involvement of physical efficiency which in return affected

[25] ***General Manager, B. E. S. T. Undertaking, Bombay v. Mrs. Agnes,*** AIR 1964 SC 193
[26] *Imperial Tobacco Co. (India) Ltd V. Salona Bibi,* A.I.R. 1956 Cal.458
[27] **Lancashire, *supra* note 3.**
[28] *Oriental Fire and General Insurance Company Limited v. Sunderbai Ramji*, (1999) IIILLJ 265 Guj

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his health, this it can be inferred that he died due to an "accident arising out of employment" as mentioned under Section 3 of the Employees Compensation Act 1923. Thus the court determines the scope to be the relation of "*the personal injury which has direct and proximate nexus with employment*."

Also, in *Trustees Port of Bombay V. Yamunabai*[29] the court held that even though the injury was not cause due to the work at employment and if any third agent has initiated any injury at the workplace of the employer, then the employer is liable to compensate his workers because the accident and injury was caused at the time and place at which the employee were employed, as the injury was caused due to "accident arising out of his employment".

**EXCEPTIONS TO THE EMPLOYER'S LIABILITY IN INDIA**

Under the Employees Compensation Act, 1923[30], the non-liability to pay compensation by the employer arises in the cases such as-

i. The accident-causing injury to the employee, not ended in complete or partial disablement and has lasted for more than three days;

ii. When the harm so caused is directly related to but subjected to that it has not led to the death or permanent total disablement-
   - When the employee being voluntarily intoxicated at the time of employment;
   - The wilful disobedience by employee towards an order of safety or security by the employer w.r.t some work;
   - The voluntary disregard to the safety measures and guards by the employee of which was provided by the employer for the purpose of safety of employees.

iii. **Doctrine of Added Peril**

Under this, the employee has been disentitled from claiming the compensation because of the ground taken by the employer that he/she has undertaken more risk than the employee. The Doctrine of added peril is a defence of the employer in claiming the non-

[29] *Trustees Port of Bombay V. Yamunabai,* A.I.R. 1952 Bom. 382
[30] Employees Compensation Act, 1923 § 3(1).

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liability for the compensation[31]. But, the court has held that in imperative of injury arising out of employment, the said doctrine is an exception[32].

i. **Self-inflicted Injury**

The employee is not eligible to claim the compensation from the employer if he has deliberately inflicted the injuries by himself.

ii. **Contributory negligence**

In case of contributory negligence by the employee the burden of the employer decreases w.r.t to the compensation henceforth the compensation amount reduced in the event of negligence of the employee during the employment.

## EXCEPTIONS TO THE EMPLOYER'S LIABILITY IN UNITED KINGDOM

The employers in United Kingdom has been disentitled to provide relief or compensation if any injury has been occurred during travelling to and from work which is covered within employment.[33].

Moreover, in the case of an unforeseeable event or exceptional event in which the accident has happened, so in the case of such event the benefit to be paid is under question as here, the worker has to show that he was subjected to an entirely unexpected risk[34], as a result this creates a notion that the act of injury was intentional. Therefore, the deliberate act is subject to three condition including, (1) continuity; (2) length of time and (3) Particular event causing injury.

## IS 'PREFERENTIAL COMPENSATION' VALID IN INDIA?

The concept of preferential compensation would mean that claiming of compensation benefits both under tort law and under employment compensation scheme. Thus, this concept was resolved in *A. Trehan v. Associated Electrical Agencies and Anr.*[35] wherein the only

[31] *Devidayal Ralyaram v. Secretary of State*, (AIR) 1937 Sind 288
[32] *Lancashire and Yorkshire Railway Co. v. Highley*, (1917) A.C. 352
[33] Chairman Lord Pearson, Report of the Royal Commission on Civil Liability and Compensation for Personal Injury (Cmnd 7054) (1978).
[34] Fenton v *Thorley*, [1903] Appeal Cases (AC) 443
[35] *A. Trehan v. Associated Electrical Agencies and Anr., [(1996) 4 SCC 255]*

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issue before the court in this appeal was whether the appellant, who was under employment of the respondent, could claim compensation and damages from the respondent on account of the injury which he suffered during the course of employment, despite the fact that he had already claimed the benefit under the "*Employees State Insurance Act 1948*". The Supreme Court in the case observed that- *"In the background and context, we have to consider the effect of the bar created by Section 53 of the ESI Act. The bar is against receiving or recovering any compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise in respect of an employment injury."*

Thus, the court noted that that **Section 53, in very clear terms, forbids an employee who is insured under the ESI act *"from claiming compensation or damages on account of suffering an employment injury under the Workmen's Compensation Act or any other law for the time being in force or otherwise".*** Since the section uses the expression "or otherwise", it is clear that the intention of the legislature was to put an absolute bar upon the employee and therefore the effect of the section extends to even prohibiting the insured person from making a claim under tort law.

## CONCEPT OF 'POLICY LIMITS' AND 'INSURANCE TRIGGERS' IN UNITED KINGDOM

In United Kingdom there is no restriction on 'preferential compensation' thereby the employee can avail the compensation under insurance policies, tort laws and employment compensation scheme under English statute[36], but this gives rise to a dilemmatic question that, "*What triggers liability under the policy and from what date*?"[37] The answer to this interrogation lies in the three possible triggers of the insurance policy-

i. If the insurance triggers has exposed the employee;
ii. If the physical change has occurred initially, even if was not been able to discovered, and
iii. When the injury has been exposed.

[36] Employers' Liability (Compulsory Insurance) Act, 1969.
[37] Lewis, *supra* note 9.

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Now, this concept of policy limits was defeating the scheme of employees' compensation in United Kingdom thus, this concept got rejected[38]. Thus, in a case the English Court has made the "*insurer liable when injury was sustained rather than when the employee was exposed"*[39]

## CONCLUSION

The compensation to employees under the Employee's Compensation Act, 1923 has been p-pronounced as a 'social guard' to the workmen. The employer is liable to pay their employees with compensation during an occurrence of injury or any accident happened in the employment, thereby which aid the employee with some monetary relied and provides him/her with security under the employment compensation scheme. Withal, the said act has been ascribed with provision related to the employer as well thus, providing a guard to the employer in the case on his non-liability to pay the compensation. Hence the act is merely not restricted in providing benefits to the employee but is also extended w.r.t the employer. In pursuant to, this also empowers the mental restriction on both employer and employee to maintain adequate safety during the employment and at the workplace which in turns is likely to avoid the accidents. In further to, the scheme of compensation the workmen are eligible to be compensated under both the said act and the tort law under the principle of vicarious liability. But this preference wasn't justified[40] and was opposed and not applied in India[41] whereas in United Kingdom the employees can claim benefit under both schemes. Thereby, the present article has presented an "unusual comparison" w.r.t to the system of compensation to the employees.

[38] *Bolton v MBC Mutual Insurance Ltd*, [2006] 1 Weekly Law Reports (WLR) 1492
[39] *Durham v BAI (Run Off) Ltd* [2010] All ER (D) 88
[40] Chairman Lord Pearson, Report of the Royal Commission on Civil Liability and Compensation for Personal Injury (Cmnd 7054) (1978).
[41] Trehan, *supra* note 6.