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Occupational Injury, Employees' Compensation Act and the Work of Legal Mediation in India

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Abstract

This paper interrogates the role of formal legislation in ensuring workers' access to employment injury compensation. Through an analysis of the Employees' Compensation Act (ECA) and its jurisprudential history we highlight how the Act accomplishes inclusivity of informal workers and ensures them access to justice. Its eligibility criteria identify workers through forms of labour rather than firm size, enable labour officials to conduct proceedings with less rigid rules than Civil Courts, and allow them wide jurisdictional powers. We also show how despite its broad framing the Act has seen poor uptake by informal workers owing to the need for documentary evidence that the latter often are unable to gather due to the nature of their employment. Further, we discuss how to bridge the gap between law and practice by studying the experiences and practices of the Legal Education and Aid Cell (LEAD) of a workers' rights organisation in document generation, counselling and mediation. It is argued that the gap is bound to grow further with labour law reform over-simplifying workers' protections on the one hand and employers increasingly opting for contractual, temporal employment relationships with their workers on the other.

Keywords: Employment Compensation Act, occupational safety and health, legal aid, informal employment, worker protection, injury, India, access to justice

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Case discussion at LEAD centre

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Introduction

News headlines frequently remind us of risks at work in the world today. Factory fires, mine blasts, accidents at construction sites, crush injuries on assembly lines and exposure to carcinogenic chemicals and toxic fumes impact workers' lives and health. Millions of those who undertake hazardous work have no documentary evidence of their work and injury and hence fall outside the realm of the state's occupational health and safety policies. This is not to say that these policies in themselves do enough to prevent or compensate for accidents. Their application remains at best uneven (Li 2017; Pang 2019). Furthermore, the riskiest forms of work are often undertaken by 'migrants' – domestic or international – who lack the local know-how to engage with state lawyers, doctors and police, lack access to trade unions and may also not possess the documentary right to work (Saxton and Stuesse 2018). These predicaments pose multiple social, legal and moral questions about both prevention, care and compensation for these workers.

In the early 20th century, in responding to organized labour action, the Indian state put in place several pro-labour legislations (Agarwala 2018). Of them, the Workmen's Compensation Act of 1923 (formerly called) was meant to make employers monetarily liable for workplace injuries. Laws from this period were framed around the needs of specific worker groups like factory labour, mine workers or port workers. From the mid-1990s, India's economic growth-oriented structural reforms caused widespread agrarian distress and accelerated rural-urban migration. During the same period, factory closures in urban areas were causing rapid informalisation of work. The processes were drastically transforming the shape and needs of the Indian labour market. By the mid-2000s, over 90 per cent of India's working population was estimated to work 'informally' – either in completely unregulated sectors or through temporary or no contracts in regulated sectors (NCEUS 2008). Most of them are rural-urban migrants – who circulate seasonally, annually or move permanently (Srivastava 2020). Injuries and health crises are common, and studies show how migrants tend to return to villages for treatment, rest and recovery (Mezzadri 2016; Ramamurthy 2020). In case of a serious illness, trauma or injury, the return to the village may be long-term or permanent. A large proportion of the workforce in India does not have any legal mechanisms to seek state redressal if they experience work-related injuries.

In light of the growing informalisation of the Indian labour market (Kapoor and Krishnapriya 2019), there are widespread demands for the expansion of the scope of Indian labour law (Routh 2011). However, in a contrary vein, the Indian state has over the last few years opted to slim down the entire labour law infrastructure into four labour codes on wages, occupational safety, industrial relations and social security. Critics argue that the overhaul has been motivated by the desire to formalize the informal sector, making it amenable to investment and business-friendliness (Nagaraj and Kapoor 2022). While still not brought into force, the detailed impact of the codes remains to be examined. Yet initial textual analysis of the codes reveals an over-simplification of labour protections at the detriment of those with complex, undocumented, multiple, and uncertain employment relationships and exposure to widespread workplace risks of injury and harm that characterize the informal sector in India today (Working People's Charter 2020).

Against the background of intense flux in both the Indian labour market and labour law architecture, improving informal and migrant workers' accessibility to employment injury compensation seems like a fraught issue. Access to state services in India has already been widely examined as being difficult to access directly. They are routinely mediated through NGOs, big men, brokers, community leaders, private contractors and experts (Bornstein and Sharma 2016; Ramanath 2016; S. Srivastava 2012). These actors and their practices help make the claims of the informal workers, the migrants and the poor, legible to the state by legitimizing them. They attempt to translate the societal and communal norms of regulation that anchor informal worlds into legally legible terms (Gidwani 2013; Harriss-White 2010; Mehrotra and Parpiani 2022; Parpiani 2021). This mediation work has limits for the real legitimacy of work to take root, there is a need for closer integration of the informal norms of work with the laws themselves (Routh 2021).

Workers' interface with labour legislations is even more fraught when it comes to accessing safe working conditions and accident compensation. Workplace injuries go largely unreported in informal work conditions and compensation claims, if made, are often unsuccessful (Saxton and Stuesse 2018). In the case of migrant workers, both international and intra-national, these claims are doubly difficult due to documentary requirements that often render them ineligible (Hamid and Tutt 2019; Jayaram and Jain 2021). Since the burden to prove injury is related to the work site, work material or process lies on the workers themselves and is often contested by employers and unproven (Cross 2010). Industrial accidents, as seen from the state and capital's perspective, result from 'misadventure, mistakes or individual negligence by production workers' (Stewart and Nite 2017). Most workers thus operate with the presumption of 'anticipating harm' (Knox and Harvey 2011) and developing both precautionary and recuperative strategies. These are both individual and collectively defined patterns of work, wherein each worker walks a 'tight-rope' in the level of risk they are able to expose themselves and their co-workers to, while ensuring continued work and wages (Baarts 2009; Cross 2010).

Approach and Methodology

In such a work culture, where workers have absorbed a large part of the responsibility of workplace risk, what role could formal legislation for accident compensation play? In this paper, we take the particular case of informal manufacturing and construction workers and their challenges in accessing the Employees' Compensation Act (ECA) in India. We address the question in three ways. First through an analysis of the legislation and its jurisprudential history, we show how the ambit of the ECA is much wider and encompasses not only post-accident compensation payments but also incentivizing safe working conditions by shifting responsibility of worksite safety away from workers to contractors and employers. Informal workers' challenges in accessing the ECA are primarily due to a 'crisis in implementation' (Mathur 2012) and tedious procedural requirements that disincentivise

workers to opt for legal recourse, allowing for employers' complacency to go unchallenged and unsafe working conditions to continue.

Secondly, we consider it important to study ECA itself given its potential for extending safe working environments for informal workers. However, many of its meritorious elements may not be retained in the Social Security Code, 2020 which has subsumed ECA within it. Though the official rationale of introducing the labour codes has been a simplification of the currently prevailing 40 legislations, most scholars believe that the codes dilute the existing protections (Working People's Charter 2020).

Thirdly, to substantiate the challenges that workers encounter while interfacing with labour jurisprudence and illustrate the working of a worker-centric model of mediation and legal activism, we examine the practices and discourses of lawyers and paralegals associated with the Legal Education and Aid Cell (LEAD) of a workers' rights NGO, Aajeevika Bureau (AB). AB and LEAD work with informal workers in the construction and manufacturing sectors in India and have recovered workers' wages through mediation between workers, contractors and employers (Jayaram and Jain 2021). Using legal awareness and local consciousness-building through workers' sector-based collectives, workers are assisted to creatively bypass procedural challenges. Some examples include self-certification of documentation of their work relationship with contractors/employers, accessing medical records in a timely fashion and involving local criminal justice officials like the police to attest for workers' injury at the worksite.

With labour law going through structural changes, the case of ECA and LEAD, we argue, indicates both the challenges of the law and its possible remedies through mediation practices. We critique a top-down understanding of labour legislation that often precludes the complexities within which workers decide not to file legal claims (Pang 2019). We offer a grounded perspective on how and why workers refuse to claim compensation and how their decisions could be mediated and translated into legal remedies and procedural changes. Drawing from and contributing to new writing at the intersections of labour activism, anthropology and compensation law (Castillo 2018; Stuesse 2018), we draw attention to studying local processes of claim-making, points of conflict and possible forms of resolution in compensation-seeking by informal workers.

The research for this paper was undertaken between July and December 2021. While the legal review was conducted through discursive secondary research on judgements on the ECA, primary interviews were conducted through telephonic calls with lawyers and paralegals. The authors also draw from their own experiences working with the NGO where the first and second authors were employed as lawyers and the third author as a researcher.

The paper is divided into three sections. In the first section, we lay out the prevailing work culture in the informal manufacturing and construction sectors in India and the pervasiveness of workplace risk. We explore the existing understandings of how workers cope with injuries and why they may not prefer to opt for legal compensation claims. In the second section, we discuss the merits of the ECA and the scope it may provide for the inclusion of claims by informal workers. We focus specifically on how courts have interpreted the law and sought to enhance accessibility and simplify procedures to incentivize claim-making. By shifting the burden from workers to prove liability and assuming workplace risk as a liability of employers, the Act provides a robust basis for incentivizing workers to file more claims and demand safer work sites. In the last section, we discuss the experiences of LEAD and lawyers in connecting informal workers to the ECA and its possible benefits. The conclusion offers pathways for new research on workplace injury and labour law in India and the world.

The Pervasiveness of Workplace Risk

Risk is widely understood as a feature of the contemporary moment, emitting from multiple sources like shifts in global capital, grand developmental projects and schemes and ecological change (Ong 2007; Tsing 2015, 2016). Research has shifted in recent years from the characterisation and definition of risk to a better understanding of how different sources of risk are managed, mitigated and lived with (Birtchnell 2011; Guinness 2019). In the context of workplace risk, a series of infrastructural collapses and factory fires in the 2000s in South Asia (particularly in Bangladesh, Nepal and India) led to global media attention on the unsafe conditions of manufacturing worksites, infamously known as 'sweatshops'. The safety audits and CSR initiatives that followed have been largely superficial, limited to export-oriented supply chains and to the provisioning of safety gear without investigating the informal employment relationships that create unsafe work conditions (Prentice et al. 2018). Compensation when paid has largely been dispensed on humanitarian grounds due to pressure from NGOs rather than as a form of remedial justice by making employers more accountable for providing safe working conditions (Sumon, Shifa, and Gulrukh 2017). Employers have little incentive to invest in workplace safety in an uncertain market of their goods, and in some cases there is no legal requirement to do so.

While the physical precariousness of worksite buildings is indeed a serious issue, the unsafe conditions inside also warrant the same attention. Electrocutions, amputations, cuts, burns, exhaustion, and dehydration are everyday features of the contemporary production process (Agrasar and Safe in India 2015; Prentice and De Neve 2017; Subramanian and Patel 2021). Furthermore, while there are a number of studies outlining risk in big factories and construction sites (Cross 2010; 2012; Kofti 2016; Prentice 2008), much production and construction work occurs through subcontracting at smaller and less visible sites where everyday risk also goes unstudied. The pervasiveness of worksite risk on the one hand and subcontracting through a deregulated labour law architecture on the other leave workers with few formal mechanisms for claiming safer work conditions or compensation for injuries.

A large majority of those engaged in manufacturing and construction work in India are migrant workers who either commute daily or migrate seasonally or permanently for work. The category of migrant labour, however, does not capture the complex range of circulations and multilocality that the Indian labour market demands of its workers. Migration of work seldom occurs in clearly defined trajectories and entails workers going back and forth between multiple spaces and sectors of work for several decades of their working life (Gidwani and Ramamurthy 2018). Workers, particularly women workers, may also enter and exit the paid workforce in accordance with burdens of familial or socially reproductive work and often exit paid work prematurely due to exhaustion or retrenchment (Mezzadri and Majumder 2020). Furthermore, familial obligations not only form the rationale for continued engagement in dangerous work but also absorb the cost of injuries when they occur. 'Employers can pay their workforces significantly less for considerable periods as workers' "homes" reabsorb them during lean seasons, leisure and non-work time, collective or individual health emergencies (never socialised by employers), or following retrenchment, exhaustion or final withdrawal from industrial labour' (Mezzadri 2020: 159). In other words, the work performed by 'homes' subsidises not only wages but also payments for accident compensation, retrenchment compensation and pension payments.

The work culture of modern manufacturing and construction spatially transcends the worksite – its calculations of piece rate, risks and relationships – in a 'stretched' labour geography (van Schendel 2006) which encompasses both paid and unpaid work performed in rural homes. The risks taken in one worksite are then seen as recompensated by work performed in another by the worker or another

family member. The removal of risk as associated with the physical worksite implies that it gets unhinged from establishments or employers, and instead embedded as just one of the many breaks and circulations that characterise migrant life and work. And the return is closely associated with the need for guaranteeing work and income. Workers do not file for compensation as they are keen on continuity of employment and are reluctant to antagonize employers or contractors on whom they are dependent for work. Many are known to continue working on sites or for employers and contractors where they have previously been injured. If they return to the village for periods of recovery, they do so after arriving at tacit agreements with their employers, about returning to the work where they may have fallen sick or injured. Compensation claims are thus rarely made and if they are, tend to be settled through oral negotiations rather than through courts. The amount paid out also is limited and much lower than the legally mandated compensation sums, generally covering medical expenses alone.

Employees' Compensation Act: Scope, Limitations and Challenges for Informal Workers

In India, multiple estimates have sought to ascertain the proportion of those working without formal contracts or in unregulated sectors of employment. All these groups clubbed together as 'informal workers' form more than 90 per cent of the working population (NCEUS 2009). This high estimate in effect renders the category and the binary with the 'formal' largely redundant. It is the dominant reality rather than a lack or absence of formal relations, i.e. not as an exception to the norm. Informal is the way that India works. India's labour law architecture encompasses both phases and spaces of enshrining labour rights as well as of labour control and exploitation (Agarwala 2019). Studies on the implementation of a range of developmental schemes and legislations have shown how physical documents and paperwork form the basis of legal governance in India and how these diverge from the realities of regulating everyday life (Bear and Mathur 2015; Mathur 2012).

ECA forms part of the labour legislation that the postcolonial Indian state chose to retain on its books[1]. The first recorded public demand for a law for employees' compensation arose from workers in Bombay in 1884. The issue captured the popular imagination of Indian workers by the 1920s, and a series of strikes across the country compelled the colonial state to seek inputs from the provincial governments about the desirability of a legislation imposing such liability on employers (62nd Law Commission Report 1974). Formulated during this period of heightened demand for social protection, the legislation introduced a system of workers' insurance which squarely places liability of workplace risk on the employer. Usually, demanding damages for injury under tort law or civil law burdens the claimant to prove that the other party breached their legal responsibility. In contrast, the ECA and other employment compensation legislations across the world are based on the fundamental legal premise that the burden of proof for fault does not lie upon the worker so long as they suffer an injury in the course of their employment. The employer cannot disclaim their liability for such injuries by claiming contributory negligence, or *volenti non-fit injuria* (voluntary assumption of risk).

The ECA changed the basis of the claim from negligence to accident, with minimum legal formality and prompt payment of benefits, introducing the strict liability principle and making compensation a matter of right for the worker. Compensation falls due as soon as liability is incurred (Section 3 [1]), even in the case where the employer contests liability (Section 4A [2]). Delayed or defaulted payments incur penalties (up to 50 per cent of the sum due) and penal interest of 12 per cent

per annum (Section 4A [3]). The employer's liability cannot be excluded or diminished by contract (Section 17). This liability is also imposed on the principal employer, in cases where the workers are employed through a contractor or sub-contractor (Section 12)[2]. It prioritises the right of the worker to claim compensation by deeming a direct employer-employee relationship of the worker with the principal employer[3]. Provisions have also been made to safeguard the worker's right to compensation against declaration of insolvency by the employer under the Companies Act by prioritising it over all other debts during winding-up (Section 14). Four features of the ECA are currently less well-known, under-utilized and at risk of being impaired under the Labour Codes simplification exercise.

Discretionary powers to the Commissioner

While deciding on an application, the Commissioner can investigate questions of the quantum or duration of the compensation as well as whether the affected worker qualifies for it all, going to the very root of the liability (Section 19[1]). Moreover, the proceedings before the Commissioner are in the nature of an inquiry and not a trial, enabling the Commissioner to determine the rules of procedure and recording of evidence. The inquiry and settlement have to be concluded within a period of three months (Section 25A). In this manner, the Act provides a machinery for speedy settlement alternative to the conventional civil court system. The Act also vests discretion on the Commissioner in respect of apportionment of the compensation. Though this might result in unpredictable and unfair outcomes for multiple dependents.

While the employer is free to settle a matter of compensation out-of-court, they are obliged to record such a settlement before the Labour Commissioner, satisfying the Commissioner of its genuineness and fairness. Such a registered agreement then becomes enforceable (Section 28[2]). However, failure to register the agreement does not take away the employer's liability to pay compensation (Section 29).

Appeal against the order of the Commissioner, including an order awarding compensation, interest or penalty, apportionment of compensation, and refusal of registration can only be filed if a substantial question of law is involved (Section 30 [1]). Moreover, the appeal must be filed within 60 days and only once the awarded amount has been deposited with the Commissioner. The Indian Supreme Court recently reiterated its understanding that the Labour Commissioner is the apex authority for determining questions of compensation, barring appeals arising from their court unless they include a 'substantial question of law'. Judicial pronouncements involving the ECA often emphasise its nature as a 'social welfare legislation', therefore interpreting it liberally to pre-empt the possibility of workers being deprived of their rights due to legal technicalities[4].

Calculation of the quantum of compensation

In principle, compensation is based on the extent of injury and the loss of earning potential. The Act covers a wide range of occupational injuries and diseases, classifying them into four categories based on their impact on the worker for computing the quantum of compensation. Workers' compensation is calculated through a formula that accounts for the extent of their injury, and the predicted loss of earning potential. The quantum of compensation is directly proportional to the extent of injury and inversely related to the age of the worker. The Act assumes that workers will enjoy a productive life until 65 years of age and, therefore, offers a sliding multiplier (diminishing with age) to calculate the compensation package.

Workers who die as a result of their occupational injury or disease are entitled to compensation calculated as per an age-based factor. This amount is calculated by multiplying 50 per cent of the workers' monthly wage with the factor enlisted against their age in Schedule IV to the Act, and a funeral expense of Rs. 5,000. Workers facing total disablement are entitled to compensation

calculated by multiplying 60 per cent of their monthly wage with the relevant age factor in Schedule IV. Part I of Schedule I lists the injuries to be treated as total disablement. Workers facing partial disablement are compensated in proportion to the loss of earning capacity. Part II of Schedule I enlists injuries alongside the presumed loss of earning capacity. If the injury is not listed in Part II, the worker is required to acquire a disability certificate indicating the degree of loss of earning capacity suffered. Workers who face temporary disablement are entitled to half-monthly payments of 25 per cent of their monthly wage till they recover completely and resume work.

Inclusivity of legal protection

Coverage under the Act is granted to workers whose professions are mentioned in Schedule II of the Act. Coverage is, therefore, exclusive – and not universal. The imagination of 'worker' in the Act is sufficiently broad and focuses on several informal forms of employment[5]. While the broader Act does not use a numeric threshold to include and exclude persons, some professions in the Schedule, such as certain mining operations, plantations, buildings, etc. do make use of such a limit and exclude smaller workplaces. Several forms of women's work are invisible in the legal imagination of employment, and that holds for this Act too – some significant sectors of female employment such as domestic work, casual sanitation work and home-based work are not included.

Another category of workers that the Act does not apply to is agricultural labourers. Though certain particular tasks may be covered under Schedule II of the Act they remain excluded as a broad occupational category (62nd Report of the Law Commission). The examples are 18 (employed on any estate which is maintained for the purpose of growing cardamom cinchona, coffee, rubber or tea), 29 (employed in horticultural operations, forestry, bee-keeping or farming by tractors or other contrivances driven by steam or other mechanical power or by electricity), 41 (employed in the cultivation of land or rearing and maintenance of live-stock or forest operations or fishing), 44 (employed in spraying and dusting of insecticides or pesticides in agricultural operations or plantations), and 45 (employed in mechanised harvesting and threshing operations).

The Act initially excluded workers whose employment was casual in nature or those casually engaged by the employer for any purpose other than the employer's trade or business. The 134th Law Commission Report also recommended the extension of the definition of 'workman' under section 2(1)(n) to casual workers. It termed the exclusion inconsistent with social justice principles contained in the Directive Principles of State Policy. This was eventually expanded by the 2000 amendment to include within the Act's ambit a casual worker, who meets with an accident during the course of their employment, which may not be connected with the employer's ordinary trade or business.

It also excluded workers whose monthly wages exceeded Rs. 1000 even if the nature of occupation fell within the ambit of Schedule II. While the wage ceiling was deleted by the 1984 amendment, a condition was added whereby for the purpose of calculating the quantum of compensation, monthly wages were deemed to be Rs.1000, regardless of the actual monthly wage. The 134th Report of the Law Commission (1989) found this "artificial pegging of the compensation by linking it to the deemed wage of Rs.1000" prima facie unjust and recommended its deletion. This wage ceiling was, however, eventually removed with the 2009 amendment.

Further, a close perusal of the entries under Schedule II would reveal that the Act seeks to cover only such employments where confronting hazards is routine in the course of the employment, and not occasional, such as for employment in an administrative or managerial capacity. The removal of this distinction based on the duration of contact with hazard was recommended as far back as 1974 at the 62nd Report of the Law Commission (1974) to make the Act more future-relevant and expansive.

Judicial activism and claim-making made easier

The liberal interpretation of ECA provisions by the judiciary has sought to make procedures for compensation claims more accessible to workers. This has resulted in three significant shifts. Firstly, courts allow third parties such as a trade union or an advocate to make the claim on behalf of the worker, to ease the burden of the worker. This was incorporated in the legislation through sections 22 and 24. While the 62nd Report of the Law Commission (1974) recommended incorporating the right to legal aid for every worker, by providing for the appointment of a prosecutor in every Commissioner's court and advocate in case of appeal proceedings before a High Court, these recommendations were not adopted legislatively.

Earlier, the worker was required to serve a notice of accident on the employer by hand-delivery or registered post at the workplace or the residence of the employer (Section 10 [2]). The 62nd Report of the Law Commission (1974) recommended making this requirement less onerous for the worker by making it voluntary and amending it to an "intimation", and instead mandating a statement from the employer[6]. Courts have taken a lenient view on this requirement, dispensing with it where the employer already knew about the accident from another source[7], and giving the provision 'purposive or functional interpretation' such that it does not affect the worker's substantive right to compensation[8].

Lastly, the final compensation awarded excludes ex-gratia payments. As employers often offer up-front payments to workers or their families informally, these payments are not considered legal compensation and thus do not preclude workers from filing compensation claims.

In case of an injury resulting in death, any amount directly paid by the employer will not be deemed as compensation (Section 8[1]). Payments in the nature of ex-gratia compensation made by the employer to a deceased worker's dependents will neither discharge the employer's liability nor reduce the quantum of total payable compensation[9]. A deposit of Rs.5000 towards funeral expenses (Section 4[4]) and any other medical expenses incurred by the employer will also not be taken as part of this compensation. Any compensation must be made by way of deposit with the Labour Commissioner (Section 8[5]), who is empowered to then apportion the compensation within ascertained dependents at his discretion. Thus, the ECA has been democratised over the years through legislative and jurisprudential reform.

Making a Case for Legal Compensation – Experiences of LEAD

In this section, we interrogate the practical difficulties informal workers face in claiming compensation for employment injuries. It attempts to chart the trajectories of claims and the legal and extra-legal pathways the workers may avail of in attempting to claim compensation for workplace injuries. The section benefits generously from interfacing with the Legal Education and Aid (LEAD) Cell in Aajeevika Bureau, which has over a decade of experience in assisting workers to make legal claims when their employment rights are violated by employers. The LEAD cell is often intimated about cases of injured or deceased workers through their paralegal volunteers, field and contact centres, the unions associated with them, and through a state-level helpline (*Labourline* in the state of Rajasthan) and a national helpline *(the India Labour Line)*.

Workers' awareness about legal protection

ECA was amended in 2017 to obligate employers to proactively inform workers about their coverage under this law verbally and in writing, either in English, Hindi or the official language of the area of employment (Section 17A). Failure to do so was made punishable with a fine (Section 18A(e)) in the law. LEAD case records show that this amendment has not had any practical effect on employer behaviour and a majority of workers are completely unaware of their rights under the legislation. It is a matter of concern that this requirement is omitted while the Act was restructured into the Code on Social Security, 2020. The provision could have been incorporated under Section 123, which lists the responsibilities of employers. The omission appears contrary in spirit to the 62nd Report of the Seventh Law Commission (1974), which recommended incarceration as a potential penalty for employers failing to display extracts of ECA prominently in workplaces.

Like many other labour legislations, ECA is inaccessible to laypersons as a result of its convoluted legal drafting. While workers can be made aware of the broader contours of the legislation, communicating how compensation is to be calculated is a complicated exercise, often leading workers and their advisors to seek far less compensation than is due. The Act enables workers to settle the amount of compensation through dialogue with their employers, provided the same is recorded before the Labour Commissioner to ensure that the settlement does not lead to underpayment or results from coercion or fraud.

In practice, although several workers do receive some form of physical document recording the arrangement reached between the parties (often in the form of an agreement on stamp paper), employers rarely submit the document to the Labour Department. Workers are unlikely to insist upon registration either for lack of awareness or for their dependence on the employer. Social relations often dominate the legal employment relationship. Litigation through registration of the claim before the labour authority occurs only in cases where the worker is content with severing the employment relationship and the social ties with the employer or the workplace.

Compensation seeking behaviour

Looking at the experience of LEAD Cell in providing legal aid at migrant sources and destinations, we observed four distinct trends in compensation-seeking behaviour among informal workers or workers without significant organisation, depending upon the nature of injury. Retirement from the workforce as early as 40 to 45 years, resulting from the accumulation of long-term body burdens and health impacts of doing arduous jobs and working in hazardous conditions does not give rise to any claims. Claims for occupational diseases begin to arise when symptoms become visible in a mass number of workers in a specific area, and when a union or civil society organisation intervene. Minor injuries as a result of routine accidents in the course of employment are ignored by employers and workers as these are assumed to be inherent in the jobs they do.

Unless accidental injuries result in temporary partial or complete disablement of the worker, typically there is no intervention by the employer. This intervention is also limited only to the bearing of medical treatment expenses out of benevolence. Often the wages for this duration of absence due to the disablement remain unpaid. In case of an accident resulting in death, however, employers are quick to hand out ex-gratia cash compensation. If the deceased worker is from certain tribes like Bhil and Gorasia, his relatives and village elders may gather at the workplace as part of *Mautana Pratha*, a custom that allows resolution of an accidental death by payment of penalty by the person who is responsible for it. Such negotiations happen outside the realm of law and the penalty gets distributed among many claimants including the family of the deceased and the council of community elders (or the *panch*).

The dynamic nature of the work of daily wagers and informal work conditions create unique challenges in applying for claims. For instance, *Naka* workers, who obtain daily work at construction sites through contractors often identify workplaces by an abbreviated name of the construction company. They may not know the details of the principal employer, site manager, and exact address of the company, which tend to get lost in the long chain of contractors. This makes identification of the parties from whom compensation is to be claimed and notice is to be serviced challenging.

Quality of evidence

Building a strong base of evidence to establish employer's negligence in cases of deaths and accidents is an enormous challenge. The legal team often has to take recourse to innovative means to gather the required evidence. The case of a daily wage construction worker from Banswara district in Rajasthan, who applied for compensation based on a claim arising out of partial disablement due to electrocution injury at a construction site in Surat illustrates this. The case primarily relied on three documents: (1) a diary entry at the local police station in Surat, (2) a discharge certificate from the hospital in Surat, and (3) disability certificate from the district hospital in Banswara. The first two documents were obtained through a right to information (RTI) application with the assistance of Aajeevika Bureau's Surat team. It took about two months for the information to come through owing to the second wave of the COVID-19 pandemic. It is important to note that the police station diary entry could be used in this case as sufficient proof of accidental injury suffered in the course of employment. Lodging of an FIR or police inquiry under section 174 of the Criminal Procedure Code (CrPC) is rare in case of injuries. However, experiences of LEAD lawyers show if the diary entry misses out on crucial information such as the description of the accident resulting in the disabling injury it may become difficult to establish the causal link of the injury with the employment.

LEAD's experience indicates that while formal claims can be strengthened by certain forms of documentary evidence, their generation is time-consuming. The registration of an FIR recording the injuries sustained by the worker at the workplace is an important legal document that places the worker at the worksite and provides evidence of the injury. Visiting government hospitals enables the registration of the FIR or the performance of the post-mortem procedure (where relevant). Further, documentation from the government hospitals holds more credibility than that from private clinics. However, such facilities may not always be geographically accessible, or workers may permit the employer to take them to private medical facilities.

Securing a disability certificate from a government medical authority is another procedure that the workers are expected to perform on their own. The law puts the onus on workers or their legal representatives to procure the documentary evidence required for the claim. Experience shows that claims can be administered more smoothly when the worker is able to procure admissible evidence supporting their claim, though the Labour Commissioner provides flexibility in evidentiary and procedural matters (as discussed in an earlier section). The Labour Department does not usually assume the responsibility of collecting evidence under the Act. The LEAD cell responds to the social need by navigating the procedural barriers to make claims under the Act.

Conclusion

In this paper, we make a three-fold argument. First, we show the potential of the Employees' Compensation Act and raise concerns about its simplification into the codes. Secondly, we show how despite its broad framing, the Act has seen poor uptake by informal workers owing to the need for documentary evidence that the latter often are unable to gather. Lastly, we document LEAD's experiences and practices of document generation, counselling and mediation, to bridge the gap between law and practice. This gap is only bound to grow further with labour law reform over-simplifying workers' protections on the one hand and employers increasingly opting for contractual, temporal employment relationships with their workers on the other. Both the state and capital are shifting the burden of injury, illness and accident on the worker on an unprecedented scale.

The procedural and practical challenges faced by informal workers in accessing compensation under the law remain under-reported and unacknowledged by lawmakers. Chapter VII of the liberalised and reformed Code on Social Security, 2020 subsumes the Employees Compensation Act, 1923. Despite its reformist agenda, the contents of the ECA are adopted into the Code without any significant modification. The Code is unlikely to democratise or expand the use of the compensation law in any significant manner. Occupational health and injury norms cannot capture these twin processes, given how they tend to be focussed on narrow prescriptions of prevention (helmets, gloves, fire safety exits). Workers are exposed to harm in multiple ways, and along with better prevention, robust compensation and recovery are required. Systematic inquiries into workplace injury in an era of labour law flexibilisation are very rare. Serious and urgent attention to filling this gap is essential for accelerating challenges in workplace health and safety of the future.

A worker in conversation with a LEAD lawyer

References

Legal Judgements and Law Commission Reports

Report No. 62, Seventh Law Commission, 1974.

Fulmati Dhramdev Yadav & Anr. V. New India Assurance Co. Ltd. & Anr., CA No.4713 of 2023 (Arising out of SLP(C) No.17963 of 2019), Supreme Court of India.

Kismat Singh v Piariya Devi & Ors., FAO No.270/2011, 27.09.2018, Delhi High Court

Managing Director, SFC & Anr. v. Saif Din & Ors, (1998) IIILLJ 106 JK

Moringa Begum v. Managing Director, Hanuman Plantation Ltd., (2007) 11 SCC 616

National Insurance Company Ltd. v. Raise and Anr, 2016 (2) AICC 1502 (DB)

National Insurance Company Ltd. v. Smt. Seema Devi & Anr, in First Appeal from Order Defective No.459 of 2020, 2.11.2020, High Court of Allahabad

The Divisional Engineer, M.P. Electricity Board, Morena v. Smt. Manitoba, 1989 LAB IC 1399

B. M. Habeebullah v. Periaswamy, AIR 1977 Madras 330

The Divisional Engineer, M.P. Electricity Board, Morena v. Smt. Manitoba, 1989 LAB IC 1399

B. M. Habeebullah v. Periaswamy, AIR 1977 Madras 330

Report No. 134, Twelfth Law Commission, 1989.

Ministry of Labour and Employment, Notification dated 3 January 2020.

Journal Articles and Books

Agarwala, Rina. 2019. 'Using Legal Empowerment for Labour Rights in India.' The Journal of Development Studies 55 (3): 401–19. https://doi.org/10.1080/00220388.2018.1451631.

Agrasar and Safe in India. 2015. 'What Can Safeguard Workers? Accidents in the Automobile Industry in Gurgaon: Case Studies and Stakeholder Response.' Gurgaon: Safe in India.

Ashiagbor, Diamond, Prabha Kotiswaran, and Amanda Perry-Kessaris. 2013. 'Introduction: Moving Towards an Economic Sociology of Law.' Journal of Law and Society 40 (1): 1–6. https://doi.org/10.1111/j.1467-6478.2013.00609.x.

Baarts, Charlotte. 2009. 'Collective Individualism: The Informal and Emergent Dynamics of Practising Safety in a High risk Work Environment.' Construction Management and Economics 27 (10): 949–57. https://doi org/10.1080/01446190903147501.

Bear, Laura, and Nayanika Mathur. 2015. 'Introduction: Remaking the Public Good: A New Anthropology of Bureaucracy.' Cambridge Anthropology 33 (1): 18–34. http://dx.doi.org.ep.fjernadgang.kb.dk/10.3167/ca.2015.330103.

Birtchnell, Thomas. 2011. 'Jugaad as Systemic Risk and Disruptive Innovation in India.' Contemporary South Asia 19 (4): 357–72. https://doi.org/10.1080/09584935.2011.569702.

Breman, Jan, and Marcel van der Linden. 2014. 'Informalizing the Economy: The Return of the Social Question at a Global Level: Debate: The Return of the Social Question at a Global Level.' Development and Change 45 (5): 920–40. https://doi.org/10.1111/dech.12115.

Castillo, Carla G. 2018. 'What the Doctors Don't See: Physicians as Gatekeepers, Injured Latino Immigrants, and Workers' Compensation System' Anthropology of Work Review 39 (2): 94–104. https://doi.org/10.1111/awr.12149.

Cross, Jamie. 2010. 'Occupational Health, Risk and Science in India's Global Factories.' South Asian History & Culture 1 (2): 224–38. https://doi.org/10.1080/19472491003592912.

———. 2012. 'Technological Intimacy: Re-Engaging with Gender and Technology in the Global Factory.' Ethnography 13 (2): 119–43.

Dubal, V B. 2017. 'Wage Slave or Entrepreneur? Contesting the Dualism of Legal Worker Identities.' California Law Review 105 (1): 65–124.

Galam, Roderick G. 2019. 'Utility Manning: Young Filipino Men, Servitude and the Moral Economy of Becoming a Seafarer and Attaining Adulthood.' Work, Employment and Society 33 (4): 580–95. https://doi.org/10.1177/0950017018760182.

Gidwani, Vinay, and Priti Ramamurthy. 2018. 'Agrarian Questions of Labor in Urban India: Middle Migrants, Translocal Householding and the Intersectional Politics of Social Reproduction.' The Journal of Peasant Studies 45 (5–6): 994–1017. https://doi.org/10.1080/03066150.2018.1503172.

Glaser, Alana Lee. 2020. 'Collective Complaint: Immigrant Women Caregivers' Community, Performance, and the Limits of Labor Law in New York City.' PoLAR: Political and Legal Anthropology Review 43 (2): 195–210. https://doi.org/10.1111/plar.12377.Guinness, Patrick. 2019. 'Managing Risk in Uncertain Times.' Ethnos 0 (0): 1–12. https://doi.org/10.1080/00141844.2018.1543341.

Hamid, Wajihah, and Dylan Tutt. 2019. ''Thrown Away like a Banana Leaf': Precarity of Labour and Precarity of Place for Tamil Migrant Construction Workers in Singapore.' Construction Management and Economics 37 (9): 513–36. https://doi.org/10.1080/01446193.2019.1595075.

Jayaram, Nivedita, and Priyanka Jain. 2021. 'Protection of Wages of Seasonal, Circular Migrant Labour in India.' India Exclusion Report 2019-2020: 261–96.

Knox, Hannah, and Penny Harvey. 2011. 'Anticipating Harm: Regulation and Irregularity on a Road Construction Project in the Peruvian Andes.' Theory, Culture & Society 28 (6): 142–63. https://doi.org/10.1177/0263276411420889.

Kofti, Dimitra. 2016. 'Moral Economy of Flexible Production: Fabricating Precarity between the Conveyor Belt and the Household.' Anthropological Theory 16 (4): 433–53. https://doi.org/10.1177/1463499616679538.

Lazar, Sian. 2012. 'A Desire to Formalize Work? Comparing Trade Union Strategies in Bolivia and Argentina.' Anthropology of Work Review 33 (1): 15–24. https://doi.org/10.1111/j.1548-1417.2012.01073.x.

Loyens, Kim, and Rebecca Paraciani. 2021. 'Who Is the ('Ideal') Victim of Labor Exploitation? Two Qualitative Vignette Studies on Labor Inspectors' Discretion.' The Sociological Quarterly, October: 1–19. https://doi.org/10.1080/00380253.2021.1974321.

Mathur, Nayanika. 2012. 'Transparent-Making Documents and the Crisis of Implementation: A Rural Employment Law and Development Bureaucracy in India.' PoLAR: Political and Legal Anthropology Review 35 (2): 167–85. https://doi.org/10.1111/j.1555-2934.2012.01197.x.

Mezzadri, Alessandra. 2020. 'The Informal Labours of Social Reproduction.' Global Labour Journal 11 (2). https://doi.org/10.15173/glj.v11i2.4310.

Mezzadri, Alessandra, and Sanjita Majumder. 2020. 'Towards a Feminist Political Economy of Time: Labour Circulation, Social Reproduction & the 'Afterlife' of Cheap Labour.' Review of International Political Economy, December, 1–24. https://doi.org/10.1080/09692290.2020.1857293.

NCEUS. 2009. 'The Challenge of Employment in India An Informal Economy Perspective.' New Delhi: National Commission for Enterprises in the Unorganised Sector.

Neve, Geert De. 2008. 'Global Garment Chains, Local Labour Activism: New Challenges to Trade Union and NGO Activism in the Tiruppur Garment Cluster, South India.' Research in Economic Anthropology, 28:213–40. https://doi.org/10.1016/S0190-1281(08)28010-8.

Ong, Aihwa. 2007. Neoliberalism as Exception, Mutations in Citizenship and Sovereignty.Durham N.C: Duke University Press.

Pang, Irene. 2019. 'The Legal Construction of Precarity: Lessons from the Construction Sectors in Beijing and Delhi.' Critical Sociology 45 (4–5): 549–64. https://doi.org/10.1177/0896920518792615.

Parpiani, Maansi. 2020. 'Fighting Fires: Migrant Workers in Mumbai.' Economic and Political Weekly 55 (14): 13–15.

Parpiani, Maansi. 2021. 'Becoming Working Class: Domestic Workers and the Claim to Localness in Mumbai.' Anthropology of Work Review 42 (2): 120–30. https://doi.org/10.1111/awr.12225.

Prentice, Rebecca. 2008. 'Knowledge, Skill, and the Inculcation of the Anthropologist: Reflections on Learning to Sew in the Field.' Anthropology of Work Review 29 (3): 54–61. https://doi.org/10.1111/j.1548-1417.2008.00020.x.

Prentice, Rebecca, and Geert De Neve. 2017. Unmaking the Global Sweatshop: Health and Safety of the World's Garment Workers. Pennsylvania Studies in Human Rights. Philadelphia: University of Pennsylvania Press. https://doi.org/10.2307/j.ctv16t6ft5.

Prentice, Rebecca, Geert De Neve, Alessandra Mezzadri, and Kanchana N. Ruwanpura. 2018. 'Health and Safety in Garment Workers' Lives: Setting a New Research Agenda.' Geoforum 88: 157–60. https://doi.org/10.1016/j.geoforum.2017.11.024.

Routh, Supriya. 2021. 'Examining the Legal Legitimacy of Informal Economic Activities.' Social & Legal Studies, June. 096466392110208. https://doi.org/10.1177/09646639211020817.

Sargent, Adam. 2020. 'Working against Labor: Struggles for Self in the Indian Construction Industry.' Anthropology of Work Review 41 (2): 76–85. https://doi.org/10.1111/awr.12199.

Saxton, Dvera I., and Angela Stuesse. 2018. 'Workers' Decompensation: Engaged Research with Injured Im/Migrant Workers: Anthropology of Work Review.' Anthropology of Work Review 39 (2): 65–78. https://doi.org/10.1111/awr.12147.

Schendel, Willem van. 2006. 'Stretching Labour Historiography: Pointers from South Asia.' International Review of Social History 51 (Supplement S14): 229–61. https://doi.org/10.1017/S0020859006002677.

Stewart, Paul, and Dhiraj Kumar Nite. 2017. 'From Fatalism to Mass Action to Incorporation to Neoliberal Individualism: Worker Safety on South African Mines, c .1955–2016.' Review of African Political Economy 44 (152): 252–71. https://doi.org/10.1080/03056244.2017.1342234.

Stuesse, Angela. 2018. 'When They're Done with You: Legal Violence and Structural Vulnerability among Injured Immigrant Poultry Workers: Anthropology of Work Review.' Anthropology of Work Review 39 (2): 79–93. https://doi.org/10.1111/awr.12148.

Subramanian, Reetika Revathy, and Sanjay Patel. 2021. 'Everyday Confrontations with Disaster, Danger and Death by Odia Loom Workers in Surat City.' India Exclusion Report 2019-2020:75–101.

Sumon, Mahmudul H, Nazneen Shifa, and Saydia Gulrukh. 2017. 'Discourses of Compensation and the Normalization of Negligence: The Experience of the Tazreen Factory Fire.' In Unmaking the Global Sweatshop: Health and Safety of the World's Garment Workers, edited by Rebecca Prentice and Geert De Neve, 147–72. Philadelphia: University of Pennsylvania Press.

Tsing, Anna Lowenhaupt. 2015. The Mushroom at the End of the World: On the Possibility of Life in Capitalist Ruins. Princeton, UNITED STATES: Princeton University Press.

———. 2016. 'What Is Emerging? Supply Chains and the Remaking of Asia.' The Professional Geographer 68 (2): 330–37. https://doi.org/10.1080/00330124.2015.1099186.

Working People's Charter. 2020. 'Why the New Labour Codes Leave India's Workers Even More Precariously Poised than before.' Scroll.In, 2020. https://scroll.in/article/973877/why-the-new-labour-codes-leave-workers-even-more-precariously-poised-than-before.

Zhuangt, Wenjia, and Feng Chent. 2015. ''Mediate First': The Revival of Mediation in Labour Dispute Resolution in China.' China Quarterly 222: 380–402.

Endnotes

1 Early labour legislation in India, as per Oscar Ornati (Ornati, 1955 as cited in Mitchell, Mahy and Gahan 2014) was passed in three phases. He perceives the late 19th century legislation as resulting from the accommodation of colonial interests in reducing the competitiveness of the Indian manufacturing sector and reformist movements within India. The second phase in the 1920s and 1930s originated from provincial autonomy and the stirrings of the Indian labour movement, while the third that occurred in the 1940s and 1950s included the adoption of the bulk of protective labour legislation as it stands today.

2 There are some limitations to the employer's liability. A compensable injury is a total or partial disablement suffered by the employee that exceeds three days (Section 3[1][a]) and, therefore excludes minor injuries. Section 3(1) also requires that the injury must have its origin and have a causal relationship with the employment (Managing Director, SFC & Anr. v. Saif Din & Ors, (1998) IIILLJ 106 JK). Moreover, compensation is not payable where the accident is attributable to the fault of the employee in case of any of the three circumstances: (1) influence of alcoholic drink or drugs, (2) wilful disobedience of employer's orders or rules, or (3) wilful remove or disregard of safety guard. The Law Commission's 62nd report recommended deleting these conditions to bring in line with section 51B of the Employees' State Insurance Act, 1948 which deems such circumstances also within its coverage. The exemptions under (2) and (3) have, however, been given narrow interpretation by the courts in many cases, holding the employer exonerated only where disobedience could be proved to be deliberate and not out of mere negligence by the worker (Ramrao Zingraji Shendi v. Indian Yarn Manufacturing, (1993) ILLJ 442 Bom).

3 Kismat Singh v Piariya Devi & Ors., FAO No.270/2011, 27.09.2018, Delhi High Court.

4 Fulmati Dhramdev Yadav & Anr. V. New India Assurance Co. Ltd. & Anr., CA No.4713 of 2023 (Arising out of SLP(C) No.17963 of 2019), Supreme Court of India.

5 The Schedule reveals an eclectic and specific list of work, including people who train animals, tap palm sap, work in circuses, or work in lighthouses.

6 On receipt of the notice, the employer can require such an employee to undergo a free-of-charge medical examination within three days of the service. Refusal to do so may result in suspension of the worker's right to compensation (section 11(2)). Moreover, in case of aggravation of injury after this refusal, the quantum of compensation that the worker would be entitled to will also not be adjusted (section 11(6)). In case of a fatal accident, the employer is required to file within 30 days of the direction of the Commissioner, a reply indicating whether they accede to their liability to pay compensation along with a statement of circumstances leading to the accident, and if otherwise, grounds for disclaiming their liability (section 10B).

7 National Insurance Company Ltd. v. Raise and Anr, 2016 (2) AICC 1502 (DB); section 10(1)

8 National Insurance Company Ltd. v. Smt. Seema Devi & Anr, in First Appeal from Order Defective No.459 of 2020, 2.11.2020, High Court of Allahabad.

9 The Divisional Engineer, M.P. Electricity Board, Morena v. Smt. Manitoba, 1989 LAB IC 1399.

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