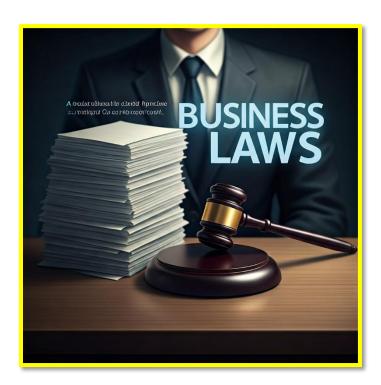


Uttarakhand Open University, Haldwani

BBA(N)-405

School of Management Studies and Commerce



Business Laws

Business Laws



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Module-1: Corporate Law Lecture - 01

Concept, Definition and Features of Company

Hello, good afternoon. Welcome to the session on business law for managers. This is the first module, lecture 1, which will cover concept, definition and features of company.

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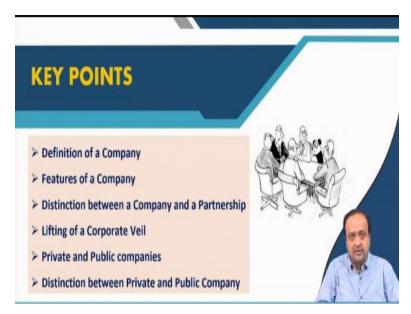
BUSINESS LAW FOR MANAGERS

Introduction

To frame a law that enables companies to achieve global competitiveness in a fast changing economy, the Government had taken up a fresh exercise for a comprehensive revision of the Companies Act, 1956, albeit through a consultative process. The Companies Act has introduced new concepts supporting enhanced disclosure, accountability, better board governance, better facilitation of business and so on. Before going to discuss on corporate law, it is important to learn about company and its various issues.

Basically, we would be dealing with Companies Act and how it unfold before the business communities and what was the need for this Companies Act. What brought about this Companies Act when there were different forms of other organizations prevalent. What was the need of the business? Any requirement need or formation of another form of organization comes only out of business needs.

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The key points which we need to cover basically would be definition of a company, the features, the distinction between a company and other forms of organization. Well, the most paramount importance of a company form of organization is very thin but very solid facade which is created by law which we call in corporate parlance and corporate legal used word is corporate veil.

Then of course, the two forms of companies most widely talked of is the private and the public, controlled and the partially controlled. I would not say uncontrolled, partially controlled and the distinction between them. And host of other things, but the key points are like this.

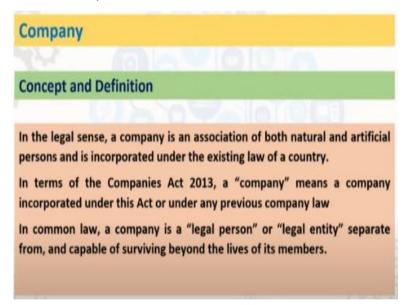
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Concept and Definition The word 'company' is derived from the Latin word Com Panis (Com means 'With or together' and Panis means 'Bread'), and it originally referred to an association of persons who took their meals together. In popular parlance, a company denotes an association of like minded persons formed for the purpose of carrying on some business or undertaking

The company definition the concept, you know they all comes from something or the other. You ask any word under the sun, they have got something to do with some initial thought process by which it has come. So initial thought process from a word called Latin word, most of the words are coming from all Latin words. So the company is also no exception.

Com means with or together and sharing bread Panis is originally referred to an association of persons who took their meals together. So very concept is an association or togetherness, likeness of mind, objective, purpose, philosophy and finally leading to some return therefore you can take your meals. So that is the purpose of an association of like-minded persons carrying of some business or undertaking.

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Very important concept in a company is a separate legal entity, we go on saying that. I have been into this for years and I also think this is something which I have heard during my time as student and I think all of you would be hearing and for generations as long as company exists, this concept would be there as a separate legal entity.

And that is the boneyard that is the very purpose that is the very edifice, that is the structure that is the pyramid of a company form of organization. It is a legal separate legal entity. Now what is what do you mean by separate legal entity? All these we will discuss in our next slides as we go forward.

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Company

Features

Basic features of the Company includes-

Corporate personality

A company incorporated under the Act is vested with a corporate personality so it bears its own name, acts under name, has a seal of its own and its assets are separate and distinct from those of its members.

Company as an artificial person

A Company is an artificial person created by law. It is not a human being but it acts through human beings.

The basic features would be a corporate personality. Personality meaning any company under the sun is known by the company. By the name of that company signifies, say for example if I take the name of a company like ITC Limited, Exide Limited, Bata Limited, Hindustan Lever Limited, the company is known by its name.

It has got a personality, it has got a brand, it has got an understanding, it has got a visibility. The owners, the management may come may go but that brand, that entity remains. That is the personality of a company. Yes, it is an artificial person. It is not a human being. It cannot vote in elections. Barring that, it has got all the features of an artificial person, of a person.

It has got a birth, it has got a birth certificate, we call that Certificate of Incorporation. It has got a growth, development. It has got expansion diversifications. And finally, like human beings, death is inevitable. Perhaps, for companies also mergers are also kind of deaths. Amalgamations are also kind of deaths and liquidation of course is a permanent death.

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I already discussed it is not a citizen in that voting exercise it does not come into. But yes, a company can be a member of another company. It can buy the shares of another company. So that extent it has got an identity, it has got a separate position everywhere. Yes, it has got nationality. Yes, it has got residence. Indian company, resident in India registered in India.

Indian company, but having its wholly owned subsidiaries outside, branches outside, all these are possible.

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Features Limited liability The company, being a separate person, is the owner of its assets and bound by its liabilities. The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him. Perpetual succession: An incorporated company never dies, except when it is wound up as per law. Perpetual succession, means that the membership of a company may keep changing from time to time, but that shall not affect its continuity.

Another very cardinal principle in a company form of organization, why it has become so popular. It has become so popular because of the concept of limited liability. Liability of the owners of the company or the promoters of the company are limited. By the word limited we mean their personal assets, their personal wealth, their wealth of their kith and kin are never considered assets of the company.

So the company may run into risks, there may be huge losses, but the personal assets of the promoters or the owners are never touched barring exceptional circumstances. Exceptional circumstances mean circumstances which would require a further introspection, investigation and what we call as I explained in the first slide or second one that corporate veil.

That corporate veil gets lifted, then only that happens. But that is an exceptional situation. That is not at all a situation which is desirable or something which is at all should happen, but it happens, exceptional cases happen. But other than that, for business, for business losses, none of the promoters, owners are personally responsible.

It is only to the extent of the shares they have invested in that company that share value goes down and the market cap of an organization meaning the total number of shares, the price that is being traded of the shares in the market, we call it the market cap. The market cap of the organization goes down to the extent the promoters take a hit, the owners take a hit.

That is a liability. Barring that, there is no liability. But if it is a sole proprietorship organization, it is a partnership organization, in that case, your entire personal wealth is exposed to that risk. It can be attached, it can be taken away, it can be mortgaged, it can be sold to realize the dues.

So the liability concept is another, limited liability concept is another very important aspect for which the company form of organization has become so popular, not only popular has become very sustainable. We passed the act in 1956. The English Companies Act is 1913. Even much before that the concept was there. In 2013 we redrafted, remodeled, everything we did about the Companies Act.

We never touched this concept. Can the liability be extended? Can we do something with the liability? No one dared to touch because that is the whole you know strength

of that form of organization. Then the other thing is perpetual succession meaning it goes on. As I said companies may come, companies may, I mean members may come members may go. Directors may come directors may go.

But company goes on forever. There is no death of a company just because the members have gone or the owners have gone or the promoters have gone or the shareholders have gone. The company has a perpetual succession.

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to a company.

Features Separate property A company being a legal person and entirely distinct from its members, is capable of owning, enjoying and disposing of property in its own name. Transferability of shares The capital of a company is divided into parts, called shares. The shares are said to be movable property and, subject to certain conditions, freely transferable, so that no shareholder is permanently or necessarily wedded

It is a separate property. It holds its all its properties in its own name. If there is any plant and machinery, if there is any factory building, if there is any land, we do not say it is x's land and y's land. It is that company's land, registered in the name of the company. All the assets are registered in the name of the company is the sole custodian holder of assets of that company.

No one else, no individual, no promoter, no owner holds any property of any company. There are misconception. We take names, individual's names for companies, x's company, y's company, z's company. Yes, we say so because they are the largest shareholder. But by that process, they do not become the owner of the assets of the company. The assets belong to the company.

Transferability of shares is another concept where anyone is free to trade in the shares, can sell the shares, another and other person can buy the shares. So the shareholders changes every moment. Why I say every moment because today we live

in the age of scripless trading. Earlier we had trading of physical shares. Now we do not have trading of physical shares. It is scripless trading.

You do not trade on any physical certificate. So anytime the trades can take place during the day. So a particular company on a particular day does not know who are the owners of that company on that particular day. Others may come, the shares may hold, next day they may sell. So freely transferable shares. Why it is done, to give liquidity to the market.

There is a purpose behind it why it works like this. Enough of funds are raised in the market because of this transferability of shares. We call it liquidity of shares. Are the shares liquid? Are the shares tradable? Are the shares available in the market?

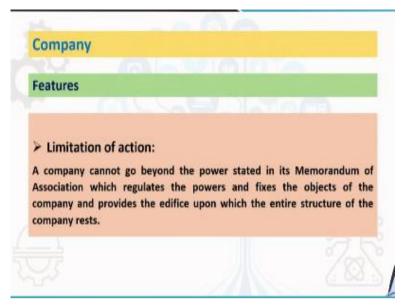
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Company can be sued, a case can be filed against the company. Normally when you file a case against the company, you file it also against the board of directors and management of the company. But specifically against the company you have to file a case. You just cannot file a case against the directors. You have to make it mandatorily for the company plus the directors.

Or you can file only against the company if you want. Then of course the board of directors will come and represent, they will be responsible. But in the name of the company, XYZ Limited versus this. So always in the name of the company. Contractual rights, all contractual rights are in the name of the company.

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This is something we will discuss more in detail when we go to the Memorandum and Association, Articles Association the two solid documents without which a company cannot be formed. The Memorandum of Association, we call the doctrine of constructive notice. Why it is called doctrine of constructive notice?

Because we tell the outside world when you enter into a company with any transaction of a company with any kind of contractual agreement with the company, please look into the Memorandum of Association of that company because that contains the most important documents or criteria based on which that particular company has been formed. Every company has its own Memorandum of Association.

Own meaning, what will be the contents of that Memoranda of Association. But the broadly the items are the same. And you cannot go beyond the Memorandum of Association. For example, the Memorandum of Association contains one of the clauses called the objective clause. What is the purpose for which that particular company is formed?

If the company is formed for generation of power, then that company cannot very next day go for generation of paper just because the business of paper is become very exciting. There is a process.

If the very next day the company goes for generation of paper or even now why next day, even after one year it goes, but the Memorandum of Association contains only generation of electricity power, then that whatever business it is doing, it becomes ultra vires, we say beyond the powers. Again, a Latin word, ultra vires, beyond the powers. So it regulates. It gives the powers with which a company can work.

That is called the Memorandum of Association. Very important for any outside person who is dealing with a company to check the Memorandum of Association. All bankers before giving loan to the company looks at the Memorandum of Association to find out what is it contains.

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Company

Features

> Separate management:

The members do not have effective and intimate control over its working and they elect their representatives as Directors on the Board of Directors of the company to conduct corporate functions through managerial personnel employed by them.

Voluntary association for profit:

A company is a voluntary association for profit. It is formed for the accomplishment of some stated goals and whatsoever profit is gained is divided among its shareholders or saved for the future expansion of the company.

It has a separate management. A company is just like three circles. First circle is the company and the circle next to that company is the owner and another circle is the management. There is no intervening area between the owners and the management and owners and the company; company and the management and company and the owners. There is no common area, shaded area, common shaded area.

The common shaded area is there among the management and the owners. Three circles, one circle distinct, not crisscrossing, or no common area with the other two circles. And the other two circles are one is ownership, the other is management. So companies separate. Now when I am talking of ownership and management, these two circles have a common shaded area where the owners and the management are the same.

Why this common area? This common area when the owners become part of the

board of directors of a company. Therefore, we have a particular person as the

chairman or a managing director of a particular company, who holds the majority

shares. So here the shares, who is the owners of the company, who are the

shareholders are the owners of the company, they become a part of the board of

directors, so they become a part of the management.

So separation of ownership and management is definitely there in a corporate form of

organization with an exclusion, that there is a common area. But largely separate.

Those who are the owners of the company are not the companies are the management

of the company. When you go to board of directors and ownership, this thing further

will unfold.

Yes, it is a voluntary association of profit. But again, for profit, it is not for charity.

We sometimes confuse that whether it is for charity. Yes, there are organizations

which are for charity. NGOs are there for charity. But a company end of the day, its

purpose is also to meet one of the stakeholder's interests which is shareholders. And

shareholder's primary interest is to get return on the investment.

And now return on the investment comes only in the form of profit. So a company

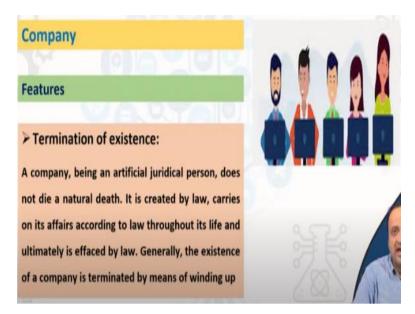
form is created for making profits as well. Profit is not a bad word, profiteering is a

bad word. Profit is the return that the shareholders would get by investment in the

shares of a company. And therefore, it is not something for charity.

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Termination of existence. Yes, there are various forms of termination of existence as I told you. Like human beings, death is inevitable companies perhaps liquidation, absorption, amalgamation are also kinds of termination. But if you ask for straight termination, it happens only when there is a winding up by the order of the court. You have done something beyond the regulations.

You have violated law, you have breached law. Your management your board of directors have done something which is not acceptable as per the law. In that case, court would give you an order for winding up. The other is voluntary winding up. When you say the business is no longer profitable.

And we feel that we are done with and there is no other way we can further explore, the only way is the net worth of the company is going to go down, why not stop now, distribute the profits, whatever is there, get back to the shareholders, pay off all the debts and have a closing down of the company. It has happened in many cases.

It has happened in many cases, even in private companies, it has happened and in public limited companies though rare but has happened.

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Company

Features

Incorporated association

Artificial person

Separate legal entity

The facts of the famous Salomon's case were as follows:

Salomon carried on business as a leather merchant. He sold his business for a sum 30,000 to a company formed by him along with his wife, a daughter and four sons. The purchase

consideration was satisfied by allotment of 20,000 shares of 1

each and issue of

This little bit we have already touched upon but one particular case without which

perhaps no law and separate legal entity or corporate law can end up any discussion is

the famous Salomon versus Salomon case. Here Salomon was a person who started a

sole proprietorship business in which he was the main sole proprietor and he was

running his leather marching business quite well.

But he thought of expanding. So he converted into a company and you can only

convert into company when you separate yourself from that company. It is a separate

legal entity and you bring in shareholders. So he brought his daughter and four sons

and wife as shareholders, added shares.

So here is a company which is some X Company Limited in which the majority

shareholders was Salomon and some of them were his relations. So that was the

company form, mostly we call it a closely held private company. We normally called

it a closely held private company. Now that company is fine. You know it helps to run

business, separation of liability.

Salomon will not be hold good or his assets will not be attached if the company runs

into risk. Exactly that happens.

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Company

Features

Debentures worth 10,000 secured by floating charge on the company's assets in favour of Mr. Salomon. All the other shareholders subscribed for one share of \$1 each. Mr. Salomon was also the managing director of the Company. The company almost immediately ran into difficulties and eventually became insolvent and winding up commenced. At the time of winding up, the total assets of the company amounted to \$6,050; its liabilities were \$10,000 secured by the debentures issued to Mr. Salomon and \$8,000 owing to unsecured trade creditors. The unsecured sundry creditors claimed the whole of the company's assets, viz. \$6,050 on the ground that the company was a mere alias or agent for Salomon.

But before that what Salomon did? Salomon also raised money in the form of debentures. Debentures are nothing but kind of loan instruments, which has a fixed rate of interest. All debenture holders are basically lenders. So he creates a charge, floating charge means a kind of mortgage. There are two types of things, one is mortgage and hypothecation.

Mortgage is on immovable property, hypothecation is on movable properties. Here he created a floating charge, most likely it will be a kind of a hypothecation on the company's assets, maybe on stocks on both dates he created a mortgage and on that basis 10,000 worth of debentures were allotted to him. So company mortgaged and he contributed 10,000 rupees and he got a certificate of debenture holders.

So he had the assets of the company mortgaged against it and he had a certificate saying that yes, these assets are mortgaged to you to secure 10,000 rupees or 10,000 whatever will be the currency that you have given to the company. So company had a loan. Loan from whom, from a lender. Lender is who, Salomon. Salomon is also the owner along with the relations.

Company after that went into business difficulties. Business difficulty means losses. Losses means what I say after some time, they will say enough is enough, let us not continue with the business, business is not doing well. So we will liquidate. The moment you go for liquidation, what happens is you need to pay off the debts.

Debts means the dues. To pay off the debts the hierarchy is very simple. First you pay the dues of the workers, employees, provident fund, gratuity etc. Then you go ahead and pay for all the secured debts. Secured means secured against the assets of the company. Then you pay the unsecured debts, those which are not secured. Then you go for the payment of the equity shareholders or the shareholders of the company.

There are two types of shareholders. One is called the preference shareholders, other is called the equity shareholders. Now normally the preference shareholders are paid first, and then the equity shareholders are faced. Now in this case, there is one more party.

Other than this the business they did Salomon did while the company was formed, he did business for some time and then the company ran into difficulties. When he did business, he did business on credit. So he took materials, did not pay, he will pay after say 10 days, 15 days, 30 days depending upon the agreement. We call it business on credit basis.

Very much prevalent; 60 days credit, 30 days credit. So when the company ran into liquidation these were these creditors. They were also at the time of this 10,000 was secured by debentures and there were creditors who were also looking at this amount which was owed to them at that point of time, 8000. So 10,000 secured debentures, 8000 to the unsecured creditors.

When the company ran into liquidation, the assets were only 6050. So here is a position, the company went into loss. And after going into loss, the asset showed that it has got assets of only rupees 6050. Forget the denomination, pound, dollar, rupees let us forget. 6050 is an amount which is lying to the credit to be distributed. To whom?

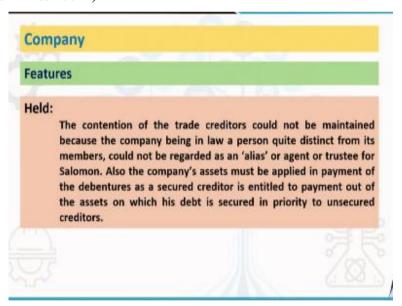
The claimants were first the secured ones, the secured debenture holders. Debenture holders were secured. So they have to be paid first because assets were mortgaged. Then the unsecured which was the trade creditors of 8000. And finally, if anything is left that would go to Salomon as shareholder. This will be the order.

Now the creditors came and said no it cannot be the order because here is a peculiar situation. Here Salomon is the secured debenture holder. The Salomon is an owner, he is holding the shares, he is also the debenture holder. So Salomon and the debenture holders are the same. Therefore, entire money of 6050 should come to the in settlement of the trade creditors. 8000 was their due so entire 6050 will come to them.

However, Salomon debated. Solomon said no, as a secure debenture holder I have the claim. I have got 10,000, 6050 should come to me. So matter went to the English court. The decision of the English court was very fantastic. I mean, which is recorded everywhere. The court said that Salomon and the company are different.

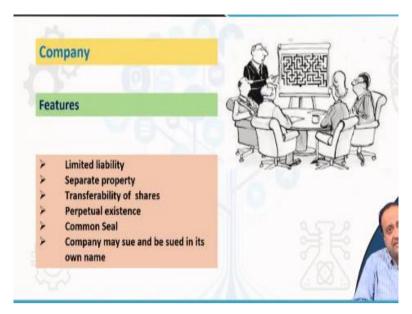
A company is a separate legal entity. So when the company has taken a date and issued a certificate to Salomon that the debenture holders that this amount is due to him as debenture holder, secure debenture holder, then you cannot say that the Solomon and the company are the same. They are separate legal entities. So Salomon's due should come first before the trade creditors.

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The decision was like this. So this is a good case to understand how strict interpretation of law takes place, when it comes after separate legal entity.

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There are other features which more or less limited liability, separate property, transferability of shares, perpetual existence all we have covered. Common seal is actually the signature of the company. We buy seal we mean wherever the company wants to put its signature, he will put the seal and the beauty of the seal is once the seal is put it will be taken as evidence in the court, yes, the company has signed.

But the seal has to be authenticated by a board resolution that it has been passed the resolution of the board. That is very important. Unless it is done, the seal does not have its sanctity.

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Distinctions are in the context of Agreement, Procedure Registration Separate legal existence Perpetual existence Liability of a partner is unlimited The number of partners cannot exceed ten in the case of banking business and twenty in non-banking business. Cannot transfer his share in the partnership without the consent of all the other partners. The capital of a partnership is limited, as the number of partners are either ten or twenty.

A company and a partnership is different basically for the following points; agreement, registration, perpetual existence, we all explained this. Number of partners

cannot exceed 10. In case of members there is no restriction, n number of members can take place in a public limited company. In a private limited company, the restriction is 50.

Transfer of ownership can take place so many times in a partnership form that cannot happen. If it happens a new set of partners will come, a new partnership deed would be required for that.

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Scope of business partnership. Scope of business and partnership is limited because again the concept is liability. Nobody wants to take huge liability, huge risks. So it keeps its business you know totally under control and therefore cannot expand much. And that is why the company form of organization has become so sustainable.

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Lifting of the Corporate Veil

Following are some such cases

- > For the protection of revenue
- Where the company is acting as agent of the shareholders
- Where a company has been formed by certain persons to avoid their own valid contractual obligation
- Where a company has been formed for some fraudulent purpose or is a 'sham'
- Where a company formed is against public interest or public policy.
- Where the number of members falls below the statutory minimum
- Where prospectus includes a fraudulent misrepresentation
- Investigation into related companies
- For investigation of ownership of a company
- Where in the course of winding up of a company

This is important for the purpose to understand that when the rarest of rare cases, when the corporate veil is lifted and the promoters and the owners of the company are held personally liable for certain you know malpractices in a company, it is all malpractices, not business losses. Losses which happened because of some malpractices. Some contractual violation deliberately done.

Some fraudulent purpose the company has been run, public interest a company has been run. When you create the company for a bubble. When there has been siphoning of funds from the company to some other company deliberately done by the promoters. It has happened in the recent past. Kingfisher is one of the cases. The famous Satyam case is one of the cases.

Satyam Maytas case. I am not saying for a second or a minute that it is not happening now. Maybe many of the cases it is happening. But things are becoming tighter. Regulators are becoming day by day more robust in unearthing and finding out this kind of malpractices.

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Lot of references are there of the books, which I have taken clue of but basically I always believe in one thing, the personal experience that I have for more than 30 years now helps me to you know not get influenced by books, but come out more from my experience that I have seen. Thank you.

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Module-1: Corporate Law

Lecture - 02 Various Types of Companies and Their Memberships

Hello, good afternoon. We start with the model 1 lecture 2 on various types of companies and their memberships.

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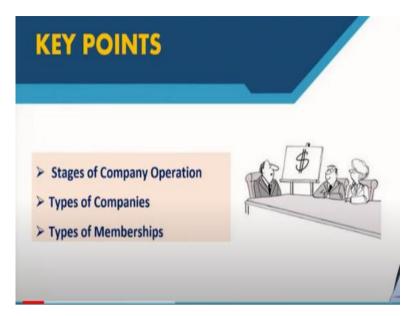
BUSINESS LAW FOR MANAGERS

> Introduction

There are various stages of company formation starting from promotion to commencement. Accordingly, every person who are agreed in writing to become a part of the company and holds a share is considered as the member of the company. In this lecture session all these will be discussed in details.

Now companies are of different types; private, public, one-man company is a new concept. Then we have joint stock companies. So, companies are of different nature and also evolving. A one-man company is a unique concept which is just evolved, we have to see how it happens. And many times, it is seen that the need of the business determines what kind of company is required as of now.

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We will take also the stages of company formation, operation and the types of companies as well as the types of members, what kind of members we can have; preference members, equity shareholders, then again convertible preference shares, convertible share warrant holders, equity share warrant holders.

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Now many times the question comes how do I form a quickly a company? Basically, today company formation is not a big job. Outermost if you have mindset that I know my purpose of creating the company, these are my people who will be my association of persons with whom I will form the company.

This will be the name of the company which is very important to have the name first also because every company will be known by its name. And the initial capital you want to invoice in the company. Based on which you have to prepare two documents which is called the Memorandum of Association and the Articles of Association.

And then the company can generally be formed. But problem is not on formation, sustaining the company. Many companies have been formed. In India we had a plethora of cases where the registrar of companies the controller, the controller of companies is called the registrar of companies. And there are as many states as many registrars of companies.

For example, bigger states like Maharashtra has two register of companies, two controller of companies. Now these controllers of companies found out that there is more than few lakes of companies which are defunct, created but not become operational. So, these all these companies had to be one fine morning a decision has to be taken and they were all deleted from the name.

They all companies, defunct companies were deleted. So, these companies are no longer hold any good. So, formation of company can be something which is not that complicated, but retention and sustenance is very important based on which the strength of formation determines how the company will take off and run. Is it for a casual nature, overnight type of business or it is something which will be sustainable.

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Certain important concepts are very important which are required to be absolutely understood at the very beginning is what is the purpose of creating this company?

What is that we need to do, we call it the objective of the company. Then next question is whether it will be held by few people or we want the public to be involved also depending on which the shape will take place, whether it will be a private company or a public company.

Most of the companies initially are formed as a private company. And then after few years when the business is more or less settles down, then you go for inviting offers from the public to subscribe, then it becomes a public company. And you hear the words again and again coming IPO, initial public offer. Then the first time a company is making a public issue we call it the IPO.

Now that IPO makes that company a private company into a public company. It is better that you test the waters first and then you go for a public. But the moment you invite public you bring in accountability. You have to give return to them. So, unless you are sure that your business is something which is which can give return it is better to keep it closed door and see how well it can be further organized and then only go for a public issue, convert that company into a public company.

So, contents, form is very important. Articles of Association is another important aspect which has to be taken care of. Perhaps memorandum and articles are the two important aspects. The purpose, the contents, the objective, the name, all these forms the part of the Memorandum of Association. Articles of Association, we call doctrine of indoor management.

Two very good examples are there. One, Memorandum of Association is called the doctrine of constructive notice. Articles of Association is called the doctrine of indoor management. By indoor management means what? Anything inside the company which is happening is actually articulated in the Articles of Association like how the company will appoint its directors or how the company will invite shares from the public.

What kind of shares will be allowed by that company to be offered to the shareholders? There are different kinds of shares. All shares are not equity shareholders. Preference shares whether can be given? What kind of issues can be

made? Whether it can be rights issue, bonus issue? Bonus issue means free shares. Rights issue means to the existing equity shareholders.

Or private placement of shares, to few people. All these are guided in the Articles of Association. If it is not there in the Articles of Association, if you do, if the company does something, which is not there in the Articles of Association, just like Memorandum of Association, it also becomes wrong, it becomes ultra vires. Now what is to be done for that reason? For that reason, what is to be done is you have to change the Articles of Association.

You have to alter the Articles of Association. That again is a procedural aspect. It needs a lot of approvals, then only you can do it. But without that you cannot change anything which is written in the Articles of Association. Therefore, while drafting the Articles of Association, it has to be very carefully understood.

That it is something which will be taken care of and that will help the company to run if after what it happens if the company is doing something which is not there in the articles, then the Articles of Association needs to be amended immediately or else all the actions will be disqualified, will not be considered as valid actions.

There are instances in the past where the companies have done something which is not there in the Articles of Association or Articles of Association has mentioned x and they have done x + 1. In that case, the action taken by the company was considered as illegal, ultra vires, again beyond the powers. So important to check the Articles of Association before. For example, appointment of a nominee director.

Nominee director means a director appointed by the financial institutions in the board. Many financial institutions while giving loans to the company insist that our nominee from their side will be there in the board of directors to check their interest, to protect their interest, so that the loan does not become an NPA. So that the company does not go into some kind of business on which they have no control.

To protect that they want to appoint a nominee. The concept is called nominee director, very common, even now. Now if the Articles of Association does not contain

a provision that the lenders can appoint nominee director, then no company can appoint a nominee director. Then in that case, the Articles of Association needs to be altered to accommodate the appointment of nominee director.

So, it is a job of the compliance officer, the team, the legal persons who are there, the management to ensure that they are not doing anything, which is beyond the powers of the Articles of Association. Prospectus is an important concept in a company form of organization.

And as I was talking of IPO, no IPO can be floated unless and until a prospectus is presented to the equity shareholders duly signed and undertaken by the owners or the management of the company, saying that this is what the company is going to do or this is how the company is going to perform in the coming years. IPO is based on the prospectus.

The prospectus contains all that it requires for an investor to know before investing in a company. For example, it will like to know why the company was formed. Who are the promoters of the company? What about these promoters in other businesses? Suppose these promoters are also in tea business, in paper business, in cement business, in any other, leather business.

So, when it comes with an IPO of a leather business, they would like to know what have you done as a promoter in all the other businesses you are doing? Are you doing well? Are you in a position to give return to the shareholders? Are your shareholders satisfied with you? So based on which there is a kind of performance appraisal of the promoters which is done in the prospectus.

Moreover, they would also like to know the kind of business you are doing. What are the chances of you are doing well? How do you foresee the future? What are the threats perceptions you have got? A prospectus is a big thick document. Once you go through the prospectus in detail, all financial analyst go through the prospectus and then they recommend to the investors the mutual fund analyst go through the prospectus in detail.

It is like you know containing a total documentary on the company. It is a very important document to read about a company when it comes to the prospectus. And more importantly, whatever you are writing in the prospectus, your directors, your management, your owners are responsible for that. And there can be even a criminal breach if there is any violation of the prospectus.

If you have mentioned something in the prospectus about the company, which is going to do and actually while you are giving this, you are aware of it is not the case, if it can be proved later on, you are can be even criminally prosecuted. There are various instances where misleading prospectus has led the promoters to jail. So, prospectus is a very important document.

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Now shares are of as I told you shares are of different types. But basically, there are two types of shares, one is called the equity shares and the preference shares. Little bit on the equity shares, equity shareholders are the shareholders who are the true risk takers. Now if I lose the shares normally people always mean the equity shareholders. The concept of preference shareholders are usually dying away.

Because preference shareholders are very, you know I would say averse to taking risk. They do not take the risk in the company. They invest in the shares of the company; they have a fixed rate of dividend. If there is a profit, that rate of dividend they are going to get. Whether equity shareholders gets any dividend or not it is the material, preference shareholders will get their rate of dividend, number one.

Number two, when the company goes into liquidation, as I told you earlier also, we discussed this point, that the payment pattern is first you make the payment to the secured creditors, then to the unsecured creditors, then you make the payment to the preference shareholders and then to the equity share holders.

So, after paying the preference shareholders if anything is left then only it goes to the equity shareholders. So, preference shareholders in a beneficial holding but it is not something which is very you know common nowadays. You hardly find a company coming out with preference shareholders. Equity shareholders is a call of the day.

Now issue of shares at par at premium and discount is simple to understand that when you are having a share value or a face value of rupees 10, mostly Indian companies share value par value of the share is rupees 10. Of course, some companies are having rupee one, rupees two. Some are even now having rupees 100. But on an average if you see out of 10, 9 of them would be rupees 10.

So at least 8 of them would be to rupees 10. So, when I am saying that rupees 10 is the per value of shares, and if in an IPO you issue shares at 200 rupees, then the premium actually becomes 190. But if you issue shares at 9 rupees the discount is 1. So, it all depends what is the market demand. There are specialist persons in the market who are called merchant bankers.

They actually help you to determine what is the demand of the shares in the market? How many people are eager to buy your shares and whether at this price they will come or not. It is a specialized job. Crores and crores of rupees are being invested depending upon the judgment of the merchant bankers, whether will go at a premium of how much rupees.

Some issues succeed. Few issues fail also because the merchant bankers totally misread the minds of the investors. Investors never revealed their mind to them. So, they came out with a high premium. They backed out. They could not raise the money from the market. So, it has happened. This is a specialist job. Bonus shares is free

shares where you get, you know it is a kind of dividend, instead of cash payout you pay shares.

Dividend is a part of the profit which the company earns, gives to the equity shareholders and the preference shareholders. Distribution of profits we call dividend. And distribution of profits can also take place in the form of bonus shares, where you are not paying anything in cash, but you are giving extra share. Say every shareholder is given one rupee share at no cost.

So, he becomes a shareholder of one extra share without any cost. That is called a bonus share. In India bonus shares are not very common, though bonus shares actually helps the company because it does not have to pay cash, but it reduces the earning per share. The total number of shares goes up. Therefore, the EPS, the earning per share goes down without any benefit really.

So not very common. As a good gesture, maybe in 10, 15, 20 companies, somebody having a Golden Jubilee or Diamond Jubilee, that company sometimes gives a bonus share, something of a totally a kind of, you know gratitude to the shareholders. Rights shares is when we are doing it on a certain entitlement basis. It is given only to the existing shareholders and it is given at a certain ratio.

It depends, it can be one share for every 10 shares held, it can be one share for every 5 shares held, it can be one share for 2 shares held, like that. Even one for one is common. But not without any price, it will have definitely a price. But normally that price is below the market price. If the market price of the shares is 200 rupees, a right share may be issued at 150 rupees. Why?

Because it is being given to the existing shareholders, it is not going to the public. And existing shareholders would be given some you know return, so that they buy at a price lower than the price they could have bought from the market. If I can buy the shares at 200 rupees in the market, why should I buy the shares again as right shares if the company gives at say 190 or 180 rupees.

So, they would look at a price of minimum difference of 50 rupees, 150 rupees. So, they can still buy and see that okay per share I have made a profit of maybe 30 rupees. So that is what we call right shares.

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This is generally an allotment procedure. You know allotment of shares definition. Allotment of shares is only when a person becomes a shareholder. Initially he applies for the shares. Application of the shares does not guarantee that he will become a member of the company. Only when a decision is taken about allotment of the shares, then only he becomes a member of the company.

So, allotment of shares actually gives the right to be a member of the company. Definition of a member. A member has all the rights to participate in the company's meetings which are for the shareholders. There is a saying that what is the difference between a shareholder and a member? Well, there is thin difference between a shareholder and a member.

Loosely we all say all shareholders are members and all members are shareholders. But that is not the case. Case is, all members are shareholders, but all shareholders are not members. All members are shareholders but all shareholders are not members. Why? Because only the registered shareholders are members.

Shareholders who have got their shares registered with the company, registered means their name has been entered in the register of members book of the company, they become the members of the company. In today's scenario, perhaps it is right because

you know it is scripless trading demat shares, so you buy the shares.

You do not have to verify the signature; you do not have to verify the stamp duty.

Automatically you become a member. But still, till that is done, you remain a

shareholder and does not become a member. So that is the difference between a

shareholder and a member. Yes, by subscribing modes of acquiring membership is

buying from the shares, my share market.

That is one of the modes, very common mode of becoming members. Sometimes

loans are converted into shares. If I cannot pay you the loan, there can be a provision

in the loan agreement that it will be converted into shares at a price prevalent at that

particular point of time at a discount or at a whatever be some rate 80% of that rate.

So, you get a membership by conversion of loans into shares.

You also can get you know become member by issuance of share warrants. Share

warrants means giving you future rights to become shareholders. Right now, you pay

this much. At a certain point of time, maybe 18 months or 12 months, you can

become the shareholder by paying the balance money. That is also how you can

become a member of the company.

And subscribing to the Memorandum of Association is an initial one. You cannot

subscribe every time to the Memorandum of Association. Only once you can do. But

this can happen again and again converting loan into shares or subscribing shares

from the market can happen again and again. But subscribing to the Memorandum of

Association can only happen once and that is the first time when you become a

member.

There will require seven subscribers to the Memorandum of Association. Seven

subscribers to the Articles of Association. Those seven subscribers actually are called

the initial, the first members of the company. By agreement and registration also that

can happen. As I told you contractual agreements in case of loans that conversion can

takes place from loans to shares.

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Private and Public Company

Distinction in term of the following

- 1. Minimum number of members.
- 2. Maximum number of members.
- 3. Right to transfer shares is restricted.
- 4. Issue a prospectus.
- 5. Who can commence business immediately.
- 6. Statutory meeting
- 7. Directors of a private company are not required to retire by rotation.

Private and public company has a lot of distinctive features. Its features can be of maximum members as I told you maximum number of members. There is no limitation on a public company. While the private company it is 50. Right to transfer is restricted in a private company. It is freely transferable in public company. Prospectus is not required in a private company.

There is no public issue because they are closely held company. It does not invite shares from the public. So, construct of prospectus is not there. But in a public company prospectus is there. By a private company, you would require only one certificate that is called the certificate of incorporation. We also call the certificate of birth or birth certificate of a company which is contained in the Memorandum of Association.

Whereas a public company does not require only a certificate of incorporation, it also requires one or more certificate called the certificate of commencement of business. However, from the Companies Act 2013, they have done away with the certificate of commencement of business. So, companies even now can start only with the certificate of incorporation.

Statutory meeting is required in case of a public company. However, in private company, it is not required. Directors not required to retire at all in case of a private company, but in public company, they have to retire by rotation after a certain number

of years, which is normally three years depending upon what is written in the Articles of Association.

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Distinction Between Private and Public Company

Distinction in term of

- 8. The number of directors in a private company may be increased to any extent without the permission of the Central Government, but in case of a public company if the number of directors is to be more than twelve then the approval of the Central Government is necessary.
- Two members have to be personally present to form the quorum in a private company but in a public company this number is five members.
- 10. No restrictions on managerial remuneration.

The number of members or directors may be increased to any extent without the permission of central government. However, in case of a public company, it is restricted to 12. And beyond that, it has to have the approval of Central Government, which very rarely comes. Because Central Government wants to think that what we will do more than 12 directors, if they cannot manage with 12, they will not be able to manage even with 15.

The quorum is also only two. Quorum is the minimum number of members present to form a quorum in case of a private company and a public company which is again different. There is no restriction on managerial remuneration in a private company. You can pay any remuneration. However, in a public company managerial remuneration is restricted to 5% of the net profits of the company.

So, you cannot pay more than 5% of the net profits of the company in case of a public company. So basically, the private company is a concept which is more of a partnership company, partnership firm, which has been converted into a private limited company for the sake of only separation of you know responsibility or liability of the promoter so that my personal assets are not being held responsible.

That is the reason why it is done, that my personal assets are not attached. Therefore,

if you see, a private company more or less runs like a partnership firm. Every decision

is taken by few persons. No restrictions nowhere. N number of directors. Any amount

of money you can pay as managers, managing director to your own people. So private

company is like that.

However, it does not matter because a private company does not take money from the

public. It runs on his own money. However, public means public money if I say

public money, I mean public money from the share market. But from the banks it does

take money. For that example, even a sole proprietorship takes money from the bank.

A partnership firm also takes money from the bank.

But again, when banks lend money to a private company and to a bank and to a

partnership firm or a sole proprietorship firm, there is a difference. The bank looks

much rigidly with lot of scanners in case of a private limited company. Because they

know the promoters are not personally responsible.

So, if they can show this as a business risk, then bank will not be able to recover their

money from their personal assets, it will go for a toss. It has happened in the past. The

promoters of a private companies have shown that this is a business risks, so you

cannot take my lavish properties. You cannot take my personal assets. Whatever is

there in the business, you take your mortgage, no problem.

I mortgaged that asset to you. But my personal assets you cannot touch. So private

limited companies are not that easy for them to raise money from the banks, I mean

take loans from the banks.

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Various types of companies, government companies, foreign companies. Government companies, where the government hold more than 51% shares. Foreign companies where foreign companies means those companies in which nonresident Indians, foreign companies, they hold more than 51% shares. Holding and subsidiary companies is a good concept which says that one company holds another company either by way of shares or by way of control of the directors.

So, supposing A company holds more than 50% shares of B company then B becomes a subsidiary of A. Now B holds more than 50% shares of C company then C also effectively becomes a subsidiary of A through chain holding. We call it chain subsidiary. C becomes step down subsidiary of A. And C becomes first subsidiary of B. So, this is also a kind of you know holding subsidiary relationship.

Now associate companies and joint ventures. Normally associate companies are companies in which common directors have interest or you hold more than 20% shares of that company, promoters are holding more than 20% shares of the same company. Then those were considered as associate companies.

Joint venture is again a kind of partnership between two companies in which the share is distributed maybe in any ratio 51, 49, 60, 40. It all depends how they do it. These are new concepts of investment companies, producer companies, Nidhi companies. One-man company is something very interesting which has come up off late.

It has not taken shape really but going forward if really industry grows and the way it is going today and more and more key persons come into business and they think that I will have the pride of calling it my company. The greatest pride of calling some company my company, it comes from one-man company. You can say, clearly say x's company.

Today you cannot say really x's company though you know is x's company, but a one-man company gives you that you know self- esteem or right.

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Concept of Some Companies

Government Company

Section 617 defines a Government Company as any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government Company.

Government company we have defined.

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Concept of Some Companies

Foreign Companies

Foreign Company is clearly laid down under Section 2 Sub-section 42 of the Companies Act 2013 (New). A foreign company is any company or body corporate incorporated outside India which -

- has a place of business in India whether by itself or through an agent, physically or through electronic mode, and
- conducts any business activity in India in any other manner.

Here, 'a place of business' means premises where there is a physical or visible indication that the company may be contacted there.

Foreign company is same thing. You have placed a business outside India. That will be considered and your holding pattern also will define it is a foreign company.

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Concept of Some Companies

Holding and Subsidiary Companies

> Holding Company

Holding company is a company having controlling power or majority of voting powers of another company (subsidiary as referred above). Holding company is also called as parent company.

Subsidiary Company

It is a company in which other company controls the composition of its Board of Directors or its more than 50% of voting powers. In case, where 100% voting powers are held by single holding company, the subsidiary is known as Wholly Owned Subsidiary (WOS) of the holding.

Holding, subsidiary companies we have covered.

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Concept of Some Companies

Associate and Joint Venture Company

Associate Company

An associate company, in its broadest sense, is a corporation in which a parent company possesses an ownership stake.

Joint Venture Company

Joint venture company is a business arrangement in which two or more companies combine resources on a project or service.

Associate companies covered. Ownership stake as I told you, more than 20% will have associate and relationship and the relationship is through board of directors. If more than 50% of the board of directors of another company is controlled by this company. Supposing there are 10 directors in X company and 6 directors is in Y company, then Y company becomes an associate of X company.

Common directorship association, more than 50%. Or chairman of X company and Chairman of the Y company are the same. So, the chairman of a board is a very superior powerful body, authority, overriding authority. In that case, these two companies also can be considered as associate company.

Though there are a certain further limitation in that only by chairmanship common may not consider them associate company unless there are other criteria to be looked into depending upon the shareholding pattern of the two companies. But definitely this will be also considered prima facie or primarily as an associate company.

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Investment Companies are created basically in the form of trust. Investing pooled capital of investors in financial securities. Again, these are normally seen to be closed companies, closed closely held private limited companies. Trusts are normally converted into investment companies. Trusts have been under a lot of scanners in India, because the beneficiary of the trust are sometimes not traceable.

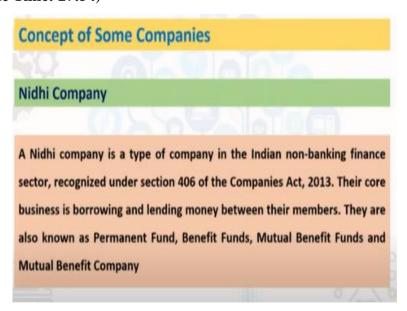
Income tax authorities had lot of investigations on trust. Now this investment companies have come to do away with all those loopholes of a trust company. But still investment companies are under lot of scanners of the RBI.

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This is a new concept of farmer cooperatives to function as a corporate entity. Has not really taken off yet in India mainly because the concept is little doubtful that says that, you are keeping the concept of a separate legal entity at the same time you are giving the touch of some kind of a you know arbitrary unilaterally action which can be taken. So, it is more of a partnership between companies. Has not been quite effective in Indian concept, though it has been I think in place almost for 5, 6 years now.

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Nidhi company has been there for long. Again, a kind of trust company. Benefits mutual funds and under lot of investigations. Because you see what happens in these kind of cases, numerous transactions takes place. And non-banking financial companies, financial companies are guided by Reserve Bank of India strictly but non-banking financial companies they get this kind of an exemption from RBI scanner.

Therefore, many times it happens that transactions are not being monitored. Nowadays of course, there is a separate body which is looking into this Nidhi companies and borrowing companies. They are requiring registration separately for that. And these companies normally again operate in closely held types, all other manifestations of trusts.

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As I told dormant companies are there in India and these inactive operate though the word is but dormant company is an excellent opportunity to start a company for future project. Basically, it does not have to file any returns. It does not have to come up with anything. But it remains a company in the books. Name is dormant company, but they are they have a kind of existence.

Mostly it is called unseen companies. Requirement of filing Annual reports and all those years have made them non-compliant, but these companies are still existing. And in India, the dormant companies needs to be further scrutinized. And there had been a case as I told you, RBI has been looking into this defunct companies.

No, I am saying the dormant company is equal to defunct, but dormant company only leads to defunct companies. So, they needs to be further scrutinized. Many companies are dormant right now because of there can be intellectual property rights. There can be other, you know confidentiality agreements, which they have done. But filing and all has to be done.

You cannot say that I have not even filed my returns. That is something which is absolutely required and if they do not file returns for consecutive few years, then from dormant company they will become a defunct company.

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One-man company is something which is going to take off and I am very hopeful that one person company this company would see much more encouragement from the government to create. And they are facing difficulty in raising finance. They are facing difficulty in getting loans and from quarters.

Because the concept has though been formed has not been really encouraged so much to give that protection to these companies. Banks are also very reluctant to give loans to one-man companies.

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Membership in Company

Who Can Become a Member

- The position of a minor as a member of a company is follows as:
- As a minor is wholly incompetent to enter into a contract [Mohiri Bibi v. Dharmodas Ghose, (1903) 30 Cal. 539 (P.C.)], an agreement by a minor to take shares is void and hence, he cannot be a member of a company.
- If shares are allotted to a minor in response to his application and his name entered on the Register of members, in ignorance of the fact of minority, the company can repudiate the allotment and remove his name from the Register on coming to know of the minority of the member. The company must repay all money received from his in respect of the allotted shares.

Anyone can become a member, but the following are the exceptions. A minor cannot be a member because a minor cannot contract. Anybody who cannot contract cannot become a member. We know a minor's contract is void ab initio right from the beginning. A foreign company can be a member. A company can be a member, but a firm cannot be a member.

Why a firm cannot be a member because firm is not a legal entity. But partners in a partnership firm can be a member. A sole proprietor can be a member.

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Membership in Company

Who Can Become a Member

- The minor can also repudiate the allotment during his minority and he shall be returned the amount he paid towards the allotment of shares.
- Company
- A partnership firm cannot be registered as a member in the register of members of a company.
- A foreigner

A partnership firm as I explained cannot be registered as a member. A foreigner can jolly well be a member of Indian company.

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Some of the references that we have taken in preparing this.

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CONCLUSION

In this lecture session discussion has been made on stages of company operation, types of companies, types of memberships. The learners may have good lessons from this part of lecture.

We have covered more or less the stages of company operation, types of companies, types of memberships. Thank you so much.

Business Law for Managers Name of Faculty- Mr. Kaushik Mukherjee Vinod Gupta School of Management IIT Kharagpur

Module-1: Corporate Law

Lecture - 03 Meetings of a Company and Memorandum of Associations

Good afternoon. Today we have to cover we are covering lecture 3, Meetings of a Company and Memorandum of Association.

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BUSINESS LAW FOR MANAGERS

Meetings in every company have vital role to play. It is considered as the blood for a company to operate in its desired direction. Considering the fact discussion has been made in details about different meetings in a company

As a company is an association of persons, and one of the most important aspects of a company form of organization is decision making by a democratic way and their meetings are very important. Meetings of whom? Basically, meetings take place at every level, starting from the junior most level to senior level to higher grades to general managers to different hierarchies.

But what we are going to cover in our business law is meetings at the highest level, which is the meetings of the board of directors. We are not talking of meetings of the various hierarchies, other than the board of directors. We all know those meetings that take place. Now board of directors are the persons who are at the helm of affairs of the company. They are the persons who have been appointed by the shareholders to run the company.

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KEY POINTS

- Various Meetings of a Company
- > Essentials of a Valid Meeting/Quorum
- Board of Directors
- Memorandum of Associations

Now when they hold a meeting, there are various purposes for which these meetings are held. But the name for that meeting remains the same, the board name. For example, any meeting of the board of directors is called a board of directors meeting. We call it a board meeting loosely. Now law has stated how many meetings shall take place in a year, minimum.

Maximum has not been prescribed because if you want you can have a board meeting every month. But what we find that the board of directors of a company, then the persons who are appointed by the owners to run the company these persons they have in turn have appointed senior management to run the company on a daily basis who are the employees of the company.

The board of directors are not the employees of the company, barring one person who acts as a link between the employees and the board of directors who is the managing director of the company. So, the Board of Directors since not being the employees of the company, they are not supposed to meet every day to interfere in the affairs of the company. They are going to give a broad overview.

They are going to understand the performance of the company and create the strategic framework. And then every time take stock of the performance, do a performance appraisal, course correction, ensure compliance, governance and allow the company to progress, not interfere. It is a kind of strategic monitoring. That is the board of directors' job.

So how many times minimum the company has also the see, the law has also understood this. And therefore, the law has said the minimum number of times you should meet is once in every three months. So once in calendar, once in every three months, three months here is a calendar year. You must meet and have a meeting of the board of directors.

We will see other meetings of the directors as we progress. But this is a very important concept of how many meetings have a board of directors and why the board of directors meet, board meeting as we call it. And there is one more meeting which is equally important, which is called the shareholders meeting. And that happens only once in a year, we call the Annual General Meeting.

Broad framework is annual general meeting, one. The name suggests it is annual. And then we have board meeting which is minimum four. And then there are a plethora of other meetings which the board of directors meet. And with the new amendments coming in more and more meetings are statutorily required to be held, statutorily required. Earlier it was not there. We will see to it.

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There are four types of meetings held in a company in general. These are shareholders meeting. All these four are shareholders meeting. We are not going to the board meeting. Shareholders meeting first, for any company only once is statutory meeting,

only once in a lifetime when the company is formed. Within six months from the formation, you have to have one statutory meeting.

What is the purpose of this meeting? In that meeting, you appoint the first auditors, you open the bank account, you regularize the appointment of the first directors, broadly these three. Then the annual general meeting, which happens only once in a year and of the shareholders, meeting of most important type. Why, because the shareholders are the owners of the company, who only once in a year take stock of the company.

Stock of the performance of the company, the management of the company, the board of directors of the company also, extraordinary general meetings. The name suggests what it is, extraordinary. For any extraordinary purpose, if you need the approval of the shareholders, then hold this meeting. Because in any case you are holding once in a year. Why do again want to hold one more year, extraordinary.

Meaning something beyond ordinary. What can be the reason? It can be a reason where the shareholder's approval is required, where the managing director of the company's remuneration or for that matter, something to do with the company's diversification, companies want a different line of business.

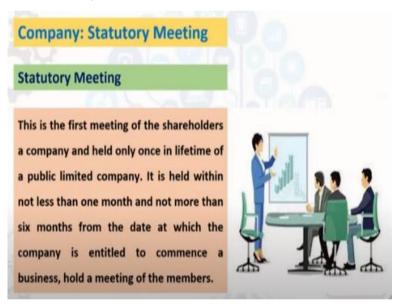
Or for the matter, if there is some loan which is to be approved, which is much beyond the scope approved by the Board of Directors, immediate required. So that may be the reason of that. So urgent, some urgent matter which cannot be deferred till the Annual General Meeting. When does the Annual General Meeting take place? Normally, the Annual General Meeting takes place within six months from the close of the financial year.

All financial year ends at now for all Indian companies 31st March. Within six months with 30 September, you must have the Annual General Meeting. So, some urgent matter comes up in the month of February, which you cannot wait till six months from the end of the financial year. So, it is not that you have to do in the sixth month, you can do it in the third month.

Third month also means March, April, May, June, but you are happening in February. February to June, you cannot wait for June. So, you need an extraordinary general meeting. Class meetings. Sometimes creditors find that the company is not doing well. Lot of NPAs, lot of dues are going up, their dues are not being paid.

So, creditors can hold a meeting and take the company to book or file a case against a company for winding up, creditors winding up meetings can take place. Class meeting of shareholders, minority shareholders. They feel they are deprived. They feel the majority shareholders are doing oppression and mismanagement. They can call a class meeting.

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This is the first meeting as I explained of the company once in a lifetime, six months within.

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Company: Requisites of a Valid Meeting

Requisites

A meeting can be considered as valid if the requirements as noted below

are satisfied:

The meeting must be convened duly by proper authority.

o Proper notice must be served in the prescribed manner.

A quorum must be present

A chairperson should be there to preside over.

Minutes of the proceedings must be kept

These are the prerequisites of that meeting. Any meeting will require a quorum. What is a quorum? Quorum means the minimum number of directors which are required to be present in an Annual General Meeting or in a general meeting. Normally, for any

meeting it is 5 members physically present.

Now of late in September 2013 onwards, Companies Act 2013 has made it to 30

members physically present.

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Company: General Meeting

Annual General Meeting

An annual general meeting (AGM) is the yearly gathering of a company's interested shareholders. At an annual general meeting (AGM), directors of

the company present the company's financial performance and

shareholders vote on the issues at hand.

As per companies Act (2013), Annual General Meeting is held to have an

interaction between the management and the shareholders of the

company.

Annual General Meeting.

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Company: General Meeting Annual General Meeting Certain Typical Issues in Respect of AGM Extra- ordinary General Meeting (EGM) Matters Relating to General Meetings Quorum for Meeting Voting (Ascertaining the Sense of the House) Passing of resolutions by postal ballot

Now in an Annual General Meeting, four items are mandatory, which are discussed and these four items are of paramount importance for a company from ownership angle, from ownership control angle. We call normally these four items as adda, ADDA. The first A is adoption of annual accounts. Annual accounts gets adopted. Second, director's appointment reappointment.

Appointment and reappointment of directors take place in that meeting. Declaration of dividend. If dividend is to be declared, then the shareholders have to take a decision in Annual General Meeting the dividend needs to be declared. That is called declaration of dividend. And the last A is the appointment reappointment of auditors.

So ADDA are the four items which are mandatory covered in an Annual General Meeting. Anything over and above this which is covered falls under special business. There are two types of businesses, ordinary business and special business. Ordinary business contains ADDA; adoption of annual accounts, directors' appointment reappointment, declaration of dividend, and then appointment reappointment of auditors.

Anything over and above this like increase or change of name of the company or for example increasing the borrowing powers mortgaging the assets of the company, change of registered office, change of object clause, all these will come under special business. Now there is another concept which has come in is postal ballot.

And more in COVID situation postal ballot has seen, I mean a big rise where you do not have to call an Extraordinary General Meeting. EGM is to be called. Now EGM is not required to be called. You sent postal ballot to all the shareholders, let them vote. Now it is followed by email, e-voting. So, you get an ISI the particular code, EVM number.

And they will give you a timeline within this date to this date this voting module will be open. And they are given certain details based on which they will log in and cast their vote. So do not have to travel, do not have to go anywhere. You can be anywhere in the country and outside also. You have to just log in and cast your vote. So that is another form of voting which is taking place, doing away with EGM.

But AGM is a must, it cannot be done by postal ballot. It has to be done physically. In COVID, there was relaxation. Even this year there is a relaxation. Last two years there are relaxations. Otherwise, Annual General Meeting is a physical meeting, must, no way you can do away with.

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Company: General Meeting

Procedure of Holding Annual General Meeting

The company must give a clear 21 days' notice to its members for calling the AGM mentioning the place, the date and day of the meeting, the hour and agenda at which the meeting is scheduled. A company should send the notice of the AGM to:

All members of the company including their legal representative of a deceased member and assignee of an insolvent member.

The statutory auditor(s) of the company.

The persons who are present in an Annual General Meeting, the statutory auditors of the company, the persons who have audited the accounts. They will be questioned; their accounts will be questioned. The accounts will be discussed. The owners, the shareholders raise questions of the accounts of the company, the performance of the company. The directors of the company have to be present.

Their appointment reappointment is being considered. The auditor's appointment

reappointment is being considered. Adoption of financial statements and accounts.

Debtor's report and auditor's report. Auditor's report is read out and auditors report is

questioned by the owners. Many times, it happens the auditors have to qualify in that

report stating that in that we have gone through the report.

However, these are the anomalies. We call it a qualified report. Audit reports can be a

qualified report. If it is a qualified report, it affects the accounting of the company, it

affects the image of the company. The shareholders are very conscious, very alert on

qualified audit reports. Immediately the qualified audit report would have adverse

impact on the share price of the company.

The market cap will go down. So, no company would like to have an account which is

qualified. So, they will try to abide by whatever recommendation the statutory

auditors give. Even after that if we find that auditor's report is qualified then the

shareholders will may not pass those accounts. They may give it back to the

management to rectify the accounts in line with the auditor's comments.

Supposing the auditors write in the comments that there is a provision of 5 crores

which is made against some dues which is not, I mean, the company cannot have

these dues, these dues are not realizable. If the auditor writes that 5 crores is not

realizable according to their belief. However, the management has taken it as a

provision and increase the profit.

In that case, the Board of Directors might say you take the suggestion, reduce the

profit, revise the accounts and come back to us. It has happened in the past. So, this

kind of decisions are taken in the meeting of the shareholders in Annual General

Meeting. Special businesses in anything over and above this is treated as special

business.

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Company: General Meeting

Annual General Meeting: Quorum

In the case of a private company, two members present at the meeting shall be the quorum for the AGM. For a public company, the quorum is:

- Five members present at the meeting if the number of members is within one thousand.
- Fifteen members present at the meeting if the number of members is more than one thousand but within five thousand.
- Thirty members present at the meeting if the number of members is more than five thousand.

30 members now is the present which is required if it is more than 5000, number of members is more than 5000. For large companies 30 members are now, quorum is now 30 members for Annual General Meeting. Earlier it was 5 members. Now 5 members is there if the member number is less than 1000. But most of the companies you see big companies have their members more than 1 lakh.

Most of the big company's number of members is more than 1 lakh. So, 30 members have to be physically present to form the quorum.

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Now coming to the board meeting. Board of Directors meeting is one of the most primary important meetings for any company and lot of top management heads get rolled in board meetings because of the kind of performance appraisal they do. A strong board means a strong corporate governance. A strong board means a strong discipline and always good for the shareholders, but not an interfering board.

The difference between a strong board and an interfering board. The board should be someone who should give direction, ensure compliance, who have a broader strategy, but not go for day-to-day monitoring. Then the board does not function, neither the company can function.

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The structure as follows. The chairman. The chairman is the big boss of the Board of Directors. He is the one who chairs the board meeting. He can be appointed by the board to be the chairman for all meetings. He can be appointed by the shareholders to be the chairman of all meetings, of board meetings. Normally we have seen the chairman is the largest shareholder.

The largest shareholder becomes the chairman of most companies because he does not want to lose the totally the control of management. So that is the case in most Indian companies. Managing Director is normally a person who acts as the link between the company and the Board of Directors. He is the chief boss of the company. He is the supremo uno one.

He is nobody above him in the organization in the corporate as far as the management of the corporate goes. However, when he sits in the board, he just becomes a member of the board, which is chaired by the chairman. So, he wears two jackets as the CEO of the organization and as a director of the company. So, two together he becomes the

managing director. Who is an executive director?

Somebody who is a member of the board, at the same time he is an employee of the

company, but he is reporting to the Managing Director as an employee of the

company. In the board, he is sitting as a member of the board like the Managing

Director. However, in the organization, he is reporting to the Managing Director.

Supposing the finance head becomes a member of the board?

Supposing the marketing head becomes a member of the board? In that case, that

person will be recorded as an executive director. Non-executive director, who is not

an employee of the board, but he is a member of the board, he is a non-executive

director. A non-executive director actually will be now divided into two, independent

director and non-independent director and there are other designations also normally

directors like.

Or some companies have shareholders directors. The shareholders of the company,

they have got somebody to represent them. So that is called a shareholder. Many

banks have shareholders directors, employee directors, workmen directors. Now we

have another constant called women director. Every public limited company must

have a women director.

And diversity, inclusion, a good concept brought in by Securities and Exchange Board

of India to have a women director.

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These are closely held private companies and nonprofit companies were family members rule the board. So here you do not find really much of a governance. It is more of a control. There is no separation of ownership and management.

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Responsibility of the Board of Directors. Elect the CEO. Compensation arrangement of the top officials. Making the annual budget. Setting rules and governance and policies. Not only setting, ensuring. Responsibility for performance.

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Memorandum of Association (MOA) Basic Features Memorandum of Association is accessible to the public and it describes the following: Name of the company Registered address of the company Name of shareholders Distribution of shares

Members of Association is accessible to the public, Memorandum of Association and it contains those five clauses; name of the company, registered office of the company, objective of the company very purpose why the company is formed, the liability of the company, and the capital structure of the company. These are the basic five.

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Name, registered office, objective, liability, capital clause.

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Memorandum of Association (MOA)

Name Clause

The Company must have its name to establish its identity.

- It is free to choose any name but it must not be undesirable or it should not be identical to the name of the existing company.
- . The name should not be prohibited one.
- The name of the company must end with the word 'limited' as the liability is limited up to the extent of their shares.
- In the case of private limited company the word 'private limited' to be used as the last word of the name

Name clause. The company can have any name bearing the names, which are already prevalent. Certain names are not allowed, like the India is best company or company number one. All those things which give a wrong impression to the investors are not allowed to be given. So, you need to have an approval of the name from the registrar of companies which is a controller of companies.

From him you have to have confirmation as regards the availability of the name.

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Memorandum of Association (MOA)

Registered office clause

- This clause is important as it says the residence for the purpose of the communication with the company.
- Every company must have a registered office from the day it starts its business or within 30 days of getting the Certificate of Incorporation, whichever is earlier.
- Memorandum of Association must state the name of the State in which the registered office of the company is situated.
- It determines the jurisdiction of the company and also mentions the place where all the records of company are maintained.

Registered office of the company is a very important place because the Annual General Meeting has to be held at a place city, town, or village where the registered office of the company is situated. Annual General Meeting cannot be held anywhere you want.

If your registered office is in Bhagalpur or your registered office is in Cochin, if your registered office is in Shillong, the Annual General Meeting has to be held in the city, town or village, where the registered office of the company is situated. And again, registered office is a place where if we do not find any other address a letter addressed to the registered office is enough, will be considered as compliance.

So, a company may have lot of regional offices, branch offices or different place for corporate office, but registered office is what is considered by law as the place where you can issue your notice, legal notice or any notice for that matter, and that will be considered as proper serving or proper communication.

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Objective clause also is important to understand there are main objectives, subsidiary objectives and other objectives. Main objectives are most important. If your objective is to as I always give this example is to produce power and you go for paper without having to change the object laws, then you are doing something which is totally illegal.

Whatever investment you have made, whatever you have done, if it is challenged in law, you will not get any realization because you have done a business beyond your power given by the board of directors or by the shareholders to you. So, you cannot overrule what is mentioned in the objective laws of the Memorandum of Association. Many companies do little bit of trading other than doing manufacturing.

On raw materials they do some trading. They buy extra raw materials and those raw

materials are not required. So, they sell it to competition. Sometimes companies do it.

You know buying huge quantities give you advantage of economies of scale. So, you

buy and you store, your huge tanks you store and then little bit of the amount which

becomes excess, you know this will become excess, you sell at a price to other

competition. Competition also is happy because he cannot buy in bulk quantities. So,

he buys in small quantities.

It is a win-win proposition no doubt and it is a business proposition also. But does it is

it allowed in the Memorandum of Association? Can you do trading? If you are not,

then if you have done it, and it is brought into the notice, you can be even issued a

show cause notice for this. The profit may be one crore, two crores whatever it is, but

liability come in huge numbers.

First the image of the company over and above. So very important to understand what

I am allowed as per the objective clause to do.

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Memorandum of Association (MOA)

Liability Clause

The liability of the members is limited to the extent of the value of shares

purchased by them. In a case if a shareholder has to pay the unpaid amount

on the share investment, he can be compelled to pay to the extent of

unpaid amount on the shares, nothing more

Liability is limited. Limited to the number of shares you have subscribed. Liability is

not unlimited in a company form of organization. A Memorandum of Association also

contains that.

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Memorandum of Association (MOA)

Capital Clause

Amount of share capital with which the company is to be registered and its

division into shares of a fixed amount must be stated in the Memorandum

of Association of a company limited by shares.

The authorized capital should be mentioned

A company is not authorised to issue above authorized capital

Capital, there are various types of capital. Authorized capital, issued and subscribed

capital, paid up capital. Authorized capital is the capital that is allowed to be issued by

you at any particular point of time, you cannot go beyond that. Who allows that? The

shareholders allow that by passing a resolution. If 100 is authorized capital then

issued and subscribed, you may have issued only 80.

Subscribed maybe 80 or maybe 70. And then out of 70 only paid up maybe 60. So,

there may be a case of 100 authorized, 80 subscribed, 80 issued, 70 subscribed and 60

paid up. 100, 80, 70, 60. So different forms of capital then. However, for accounting

angle what is important is to consider what is paid up and what has been subscribed.

What is issued is immaterial, what is authorized is also immaterial.

Authorized is totally immaterial, because they is nothing to do because I have issued

out of 100 only 80. Though I have issued 80, people have shown interest for only 70.

So, 10 goes to for toss. So, 10 is my subscribed capital. 10 is what to be allotted, they

have entered into an agreement, out of which he has paid only 60 which is a paid-up

capital. So, 10 has to be paid again. 60 realized and 10 to be paid.

So, what is important for the company is the subscribed capital and the paid-up

capital. Issued capital and authorized capital are only for knowledge's sake.

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Memorandum of Association (MOA) Association/Subscription Clause This clause contains the followings: Declaration of members Name, addresses and occupation od the subscribers Signatures attested by proper witness

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The various covers that we have taken from the books.

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CONCLUSION

In this lecture session, details on Annual General Meeting of the Companies, Various Meetings of a Company, Essentials of a Valid Meeting/Quorum, Board of Directors and Memorandum of Associations have been discussed along with various issues relating to Memorandum of Associations

But as I mentioned that mostly my lecture sessions, I share my experience that I have for more than 25 years now in the corporate circle and being in corporate these are certain examples which come to me and I share these things more of out of my experience. Thank you.

Business Law for Managers Name of Faculty- Mr. Kaushik Mukherjee Vinod Gupta School of Management IIT Kharagpur Module-1: Corporate Law

Lecture - 04 Corporate Social Responsibility (CSR)

Good evening. This is the module 1 lecture 4 on Corporate Social Responsibility.

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BUSINESS LAW FOR MANAGERS

Introduction

Corporate social responsibility has become a domain in business operation and reporting. Every corporation has a policy concerning CSR and produces a report detailing its activities. These are claimed to be recognized as corporate activities which socially responsible and activities which are not socially responsible. This lecture session will give a good lesion to all of us on understanding corporate social responsibility and its other issues.

Corporate Social Responsibility, the very word might bring certain ideas in mind as if the corporates need to be again made aware of their responsibility and what is the need for reintroducing this subject in business law. The purpose is clear that the corporates are not socially responsible. It is a debatable issue, but it is correct largely barring exceptions.

Now why is it so? If you ask me as a corporate law practitioner, somebody who has been into this for the last 30 years and more on research and further understanding aspect, I found this topic to be very relevant for all times to come even now because I find social responsibility of corporates sometimes gets diluted totally for the simple reason Indian corporates pay huge rate of income tax.

The corporate tax rate of Indian corporates is one of the highest. If not the highest, almost the highest if you compare with corporate tax rates in any other country. It has been to some extent brought down. However, there is a huge gap even now.

Anybody who is making profit and reducing costs, increasing contribution, taking care of all stakeholders is additionally required over and above the huge income tax that he is paying, the company is paying to take care of corporate social responsibility in a different form. He is already taking care without which a big corporate cannot sustain business.

There is no way one can be socially irresponsible and still continue for long, cannot be sustainable. At the same time, these corporates are being compelled to pay a certain percentage of their profit as CSR. And before that, all that what CSR is, why CSR is needed, what is the legal compulsion, we will all discuss all this. But to me it is still a question that can we enforce CSR on corporates or will it not backfire or has it not already started backfiring?

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It was never in the Companies Act before. Companies Act came in 1956. It was never in the Companies Act till 2013. I still remember it was in a national convention of Institute of Company Secretaries when (()) (04:28) Ministry of Corporate Affairs made an announcement. Then ordinance has been passed CSR is being made mandatory to the thunderous applause of more than 2500 company secretaries present there.

Was it required? Many would say yes absolutely required. Perhaps yes, but not in this form. If somebody is paying tax on declared profits doing business within all parameters of law following ethics code of conduct, huge tax he is already paying. And there are all years not a single year when some kind of phase has not come in, education, higher education.

People were expecting COVID phase also. Something or the other. Some phase is coming in some form and also on the corporates squarely. Over and above that a compulsion of CSR. Will it really see the light or the perspective for which it has been done. Corporates have lot of machineries to use to ensure that law is also followed at the same time the outflow unnecessarily goes up, does not unnecessarily go up.

You are forcing corporates to look at differently ways of compliance. This is not at all required. Rather we should create a business environment where social responsibility will be equal to sustainability. Today we are all talking of ESG environment, societal and governance. If we take care of environmental, societal and governance that is enough CSR itself, more than that, even more than that.

The very first thing is environment E. Then societal, that is the society largely the people related society. And then we talking of governance so that end of the day, it is followed in letter and spirit as well and not only in letter that is governance, precisely.

Whatever you say, whatever all the good talks that you make, all the speeches that you make, are literally and spiritually, what is literally are very well written, but spiritually effectively implementable are you doing it or not? That is governance. If we do that, that is enough CSR for a corporate, more than that. This 2% to me, I will explain this 2% why I am saying again and again.

This 2% compulsion of the average net profits of the company which has been compulsion on the corporates to me for a responsible corporate, which largely all are. Otherwise again I say you cannot sustain and we are seeing people are not able to sustain if they are not responsible. Make it an environment of sustainability.

And then you will see Corporate Social Responsibility actually did not have to be done it will be always followed. But let us see what the law has done. What the law has tried to do in the name of CSR.

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Corporate Social Responsibility

Section 135 of Companies Act 2013

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Now it says section 135 of the Companies Act 2013. Every company whose net worth is more than 500 crores or more. Almost all companies having some stake in the market listed companies of doing some worth, even midsize companies, even some small companies, their net worth is more than 500 crores. I am talking of companies of worth. A turnover of 1000 crore or more.

Again, that is not a very big amount. 1000 crore turnover midsize companies almost have. Net profit of rupees five crores or more. Again, net profit is something which in accounting parlance we say it is all in accounts. They are supposed to constitute a corporate social responsibility committee of the board. So, from the board, we take out a committee and name it a Corporate Social Responsibility Committee.

It is nobody else. It is a part of the board only consisting of supposing 12 directors you take out 3 directors and create a committee. And out of which one of the directors shall be an independent director. Why not all three? Let us have all three as independent directors. Good company should have all three as independent directors. Why one? Because if it is one the other two are not independent.

So, their decision would prevail upon the independent director. So, majority wins. On one hand, you create a committee on other hand you create one independent director. You make all independent or you make the chairman independent director. As you have done for another committee like Nomination and Remuneration Committee.

I do not think this has been done in the right I mean, keeping the right objective in mind, keeping one director as the independent director.

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Corporate Social Responsibility Section 135 of Companies Act 2013 (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee. (3) The Corporate Social Responsibility Committee shall,—

- (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

Now second, the board's report under Section 134. The sections are only for reference, but what does it come. Shall disclose the composition of, the Board of Directors give a report to the shareholders every year, we call it the directors report. It is important, it is important for all shareholders, institutional holders, who largely now dominate and dictate. I use the word dictate, the corporate actions today.

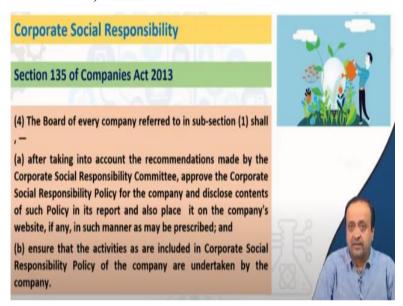
They go through this report. Now in that report, you have to give that what is that formulation and recommendation to the board the committee has done, amount of expenditure they will be incurring on the various activities that which are referred to as the activities which will tantamount to CSR. Anything and everything cannot be CSR. They mentioned very clearly these are CSR.

If you do anything else, other than that is not CSR. Corporates are told categorically 1 to 10 CSR. Anything other than that is not CSR. Therefore, they have made so many amendments time and again. When there is a prime minister's this COVID case PF

relief fund immediately comes under CSR. So, it is an enabling CSR provision. As and when something is required urgently put it under CSR.

Why because CSR has got 2% on the net profits. Corporates are bound to spend that money therefore let it be spent here. And they are also going to monitor the Corporate Social Responsibility policy of the company from time to time. So more of a monitoring body created from the same board, nothing new.

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Now the board every committee, board of every company referred to shall after taking into account the recommendations, now the board's action, approve the policy and disclose the contents of this policy in the company's website and the report. If you go to the website of every company, the more or less there is a verbatim the same thing cut and paste which has been given, this is the policy of the Corporate Social Responsibility.

Action on the ground is what is required. Policies are there for posting or hosting in the website. But what is the implementation? That is what is most important required.

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Corporate Social Responsibility

Section 135 of Companies Act 2013

(5) The Board of every company referred to in subsection (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:





Now here I come to the 2%. The board of every company referred to shall ensure that the company spend, ensure the responsibility on the board. If that tomorrow the company does not spend, the board of directors will be taken to court, can be challenged if the company does not spend 2% of the average net profits made during the three immediately preceding financial years.

So basically, a new company is exempted from it. It must have three years profit. So, it must be in existence for three years and it must have made profit for three years. So basically, there is a gap. Every company which is creating a CSR committee and disclosing its policy is not mandatory required to spend in CSR.

He is required to spend in CSR only when over and above creating the policy. He also qualifies with this provision that is in business for three years and had profit for three years. A case a company has lost in one year and profit in two years. It will still qualify because it talks of average net profit. So, a minus 10 in the first year, but a plus 20 and plus 20 in the next two years would make it 40 minus 10 30 divided by 3 10 as the average net profit.

So, it is not saying continuous three years' profit. It is saying average net profits of the company made during the three net profit, average net profit. So, there was a question that we made a loss in one year, we mean any particular company or in between one year I had made a loss. Or maybe even that case, a more striking case is the company made profit of 20 years 2020 in two years and then made a loss of 30 in the last year.

The poor company was in profit for the first two years, then is in loss currently in the last year. But unfortunately, the profits were 20 20 40, last year 35. So, it still had a five year, plus five profit, average net profit. So, three years would be five divided by three. So, he has to mandatorily spend that in spite of the fact that last year he made a whooping loss of 30 crores. Still, you have to pay a CSR, made a CSR expense.

Now again, he says, provided a company shall give preference to the local areas around it, where it operates for spending the amount earmarked for Corporate Social Responsibility activities; important. The company shall give preference to the local area areas around it where it operates. See a company when it operates in an area, in a remote village say it sets up a manufacturing unit.

Can you think of a company operating in a remote area in a manufacturing unit, where the villages maybe under 100 meters or 200 meters. In India you do not find other than in desert Thar or somewhere you do not find anywhere where people are not there within 100 to 200 meters. We have been searching for land.

In our case I personally experienced in the remotest areas in Gujarat anywhere we set up a plant we find within 200 meters there is a basmati, there is a village and there is a panchayat. The village and the panchayat will be always around you and multiple ones with multiple sarpanches. So, no corporate, no house, no industry can be set up without taking the responsibility of the villages around you.

And ensuring they have safe drinking water, safe environment, safe health, safe education, you need to build a social fabric around you. It is all the same Tata Jamshedpur model in a small very small way. Everyone does it. Every unit has to do it provided it wants to be responsible and sustainable business. Because these are the persons around the factory that creates the human bond or the human chain.

So, it invariably has to be taken care of whether you call it a social responsibility or business sustainability, it has to be taken care of. Whatever is required to be spent one has to spend. This is nothing new. The preference has always been given. Why the word preference came?

The preference came because many times it has been seen for reasons best known to many that your factory is in x place, but your CSR is being done at a place 5000 kilometers away or 10,000 kilometers away. Why? For reasons best known. Corporates have to spend 2% of the net profits of the company. Preference to be given. Why preference, why not solely?

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Corporate Social Responsibility

Section 135 of Companies Act 2013

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.

Provided further that if the company fails to spend such amount the board shall in its made clause 0 of 35 whatever reasons for not spending them. Now this is slightly gone changed. Now reasons will not do. You have to do it. Earlier it was reasons. You give the reasons why you have not done it. What will happen to the image of a company? It says I have got net profit but I have not spent.

What can be a reason? Reason can be I am going for further expansion, diversification. I am accruing funds. I am internal accruals. I need funds for internal accruals. I need funds for the expansion diversification. Therefore, I am not spending. But this is not an explanation from a responsible organization.

How can you give an explanation like that I want to spend this money for my expansion and diversification, I need funds. Again, this is something of a very you know unexplained provision in law where corporates are struggling. I have not yet

seen a corporate very few, very few, rarest of rare who has said that I am unable to do for this reason.

Somewhere or other they have to show they have done it. They have to spend. So, when they have to spend, they have to curtail somewhere. Fund cannot be multiplied like that. Incorporate fund does not generate like that. If I have to do CSR somewhere, I have to spend 2%, somewhere I do have to do a curtailment.

Because end of the day one has to survive in the business. Contribution going down, costs going up, no control on that. But CSR is fixed 2%.

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Corporate Social Responsibility Rules

Under Section 135 of the Companies Act 2013 :: Guiding Principles

CSR is the process by which an organization thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies. Thus CSR is not charity or mere donations. It is a way of conducting business, by which corporate entities visibly contribute to the social good. Socially responsible companies do not limit themselves to using resources to engage in activities that increase only their profits.

They use CSR to $\underline{integrate}$ economic, environmental and social objectives with the company's operations and growth.

Now the guiding principles, the places where I mentioned about where you can spend CSR. CSR is a process by which an organization thinks about an evolved relationship with stakeholders for the common good. These are good to listen to and hear because it is for the stakeholders. Stakeholders meaning everybody, not only the shareholders.

So, if it is all for the shareholders, if your employees are happy, if the government is getting all the dues, if your vendors are getting the payments, if your customers are happy with your products, if your research and innovation is doing good to the overall good, if your shareholders are happy with your dividend, if you are taking adequate care of the society by taking care of the people around you, your factory.

Then again additionally one of this, you do contribute to CSR to the extent possible,

but do not mandate it to 2% under any circumstances. Otherwise, your directors

would be questioned. There will be show cause notices. The jailing provision has

been removed.

Now the provision for penalty and jail which was discussed and finally because of the

corporate uproar, corporates going absolutely against this provision, the jail

provisions to the directors for non-fulfillment of 2% CSR, in spite of the fact

company complying with all laws, finally it has been removed. But there was a

discussion and it was in the policy stage before being implemented.

So, CSR to me, actually is what is very important to understand is, can never be

sustainable unless it is seen to be something not a charity or donation. It has to be

again a sustainable, we will discuss sustainable CSR in our next slides. What is

sustainable CSR? CSR that can be sustained, that can remain, that will be imbibed in

the business.

That will go into the DNA of the business. You do not have to spell out and shout and

say CSR, CSR, CSR. CSR is automatically done as you do business. Then only CSR

will become. Donating few funds for the relief fund or some charity or some donation,

some temple building, some road building is one-time donations. Those are not

sustainable CSRs.

Now they CSR to integrate economic, environmental and social objective. That is

exactly what is called ESG. Environmental, societal, and governance. If you do that,

that is more than CSR.

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Corporate Social Responsibility Rules

Under Section 135 of the Companies Act 2013 :: Guiding Principles

In exercise of the powers conferred under clause (o) and clause (q) of subsection 3 of Section 134 read with Section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 the Central Government hereby makes the following Rules namely:

Part I - Short title and commencement :-

- These rules may be called the Corporate Social Responsibility Rules, 2013.
- 2. They shall come into force on the date of their publication in the official gazette and shall be applicable from the financial year 2014-15.

Now let us see the guiding principles, short title and commencement of the rules.

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Corporate Social Responsibility Rules

Some Important Definitions and Points from Draft Rules:

- Corporate Social Responsibility' means Corporate Social Responsibility (CSR) as defined in Section 135 of the Companies Act 2013;
- 'Net Profit' for the section 135 and these rules shall mean, net profit before tax as per books of accounts and shall not include profits arising from branches outside India.
- 2% CSR spending would be computed as 2% of the average net profits made by the company during every block of three years. For the purpose of First CSR reporting the Net Profit shall mean average of the annual net profit of the preceding three financial years ending on or before 31 March 2014.

Net Profit has been defined before tax. Again, it is not after tax, before tax. PBT we call it. You get a tax fill if CSR is an admissible expenditure. That is, it. But net profit before tax is considered as the net profit, not after tax. 2% CSR spending will be computed 2% of the net profit is made by the company during every block of 3 years. This was the initial stage. Therefore 2014 has been referred to.

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Corporate Social Responsibility Rules

Some Important Definitions and Points from Draft Rules:

- Reporting will be done on an annual basis commencing from FY 2014 -15.
- Tax treatment of CSR spend will be in accordance with the IT Act as may be notified by CBDT.
- Words and expressions used in these Rules and not defined herein but defined in the Act shall have the meaning respectively assigned to them in the Act.

Annual basis of reporting come against 2014-15, Act 2013 effective 2014-15.

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Corporate Social Responsibility Rules

PART II - Operating Provisions of the Rules

- 1. CSR activities may generally be conducted as projects or programmes (either new or ongoing) excluding activities undertaken in pursuance of the normal course of business of a company. The CSR Committee constituted under sec. 135(1), shall prepare the CSR Policy of the company which shall include the following:
- a. specify the projects and programmes that are to be undertaken.
- b. prepare a list of CSR projects/programmes which a company plans to undertake during the implementation year, specifying modalities of execution in the areas/sectors chosen and implementation schedules for the same.

Now the important thing is the CSR committee shall prepare a list of CSR projects and programs which a company plans to undertake during the year.

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Corporate Social Responsibility Rules

PART II - Operating Provisions of the Rules

- c. CSR projects/programmes of a company may also focus on integrating business models with social and environmental priorities and processes in order to create shared value.
- d. CSR Policy of the company should provide that surplus arising out of the CSR activity will not be part of business profits of a company.
- e. CSR Policy would specify that the corpus would include the following: a. 2% of the average net profits, b. any income arising there from c. surplus arising out of CSR activities.

Now again there is a guideline which has to be followed. It is saying integrating the business model with social and environmental priorities and processes in order to create shared value. This is exactly should be the purpose of CSR and then only CSR can be strategic. You have to integrate into the business model. Business should run along with CSR. CSR and business should not be separate.

Integration, that is again very important, imbibed in the business. I can give an example here of imbibed in the business. Many companies today are setting up power plants along with the business. This power plant is run from the gas which is generated from the business. Every business has some kind of you know manufacturing process. I am talking of manufacturing companies which throws some gas in the production process.

It can be a low calorific gas. Earlier when the Companies Act 2000 sorry Electricity Act 2003 was not there. No one was allowed to have captive power plants, which could have sold power to the grid, excess power. You can only consume you cannot sell the power to the grid. You have no right to sell power. 2003 Act allowed you to sell power. Sell power to the grid or to private parties.

Because power cannot be stored. There is no power bank kind of thing where electricity power can be stored and then traded. You have to sell it to the grid. Now 2003 Act allowed that. After that many companies came. And today it has become a

business model. Wherever a manufacturing process is set up, there is a power plant coming up next to it, the same company.

It is totally an investment. Whenever somebody is saying I am expanding in this area, I am setting up so much metric ton of power or whatever units of certain commodity, additionally I am setting up a power plant. Now why you are setting a power plant, your business is primarily this? I am setting a power plant, I have changed my Memorandum of Association, I have included there generation of power.

But there is a compliance part of it. But the business part of it is why I am doing it. Because law is allowing me to sell power. And I can see business opportunity. The power that I was incinerating, spending money so that it does not pollute the environment and releasing that gas in the air in spite of incineration, nobody can guarantee that all the GHG has been incinerated and nothing is going out.

Still carbon dioxide is released, GHG gases are released. So it is polluting the environment. After incineration also, incineration means burning, burning means cost. Now with the new business model, they are converting this power, this gas to power and generating a power which is called a green power. Why green power because you are not burning anything more to generate this power.

In any case what was coming out was burnt and released. So now you are getting into this power. So, when you are producing this power and selling to the grid, you are doing two things. One, you are protecting the environment by producing green power. You are stopping the emission of GHG gases by incineration. So, you are taking care of the ESG E environment.

At the same time, you are making good profit because cost of production is almost zero, because the byproduct the gas is an unintended byproduct which comes naturally. So, the raw material cost is almost zero. So, this became a good business model. Almost all companies are doing it. It is also a CSR to be. Why because you are being responsible to ensure that the environment is clean.

For that you are investing in power, in setting up the power plant. You are having a separate segment of power unit. You are recruiting power engineers. You are maintaining a separate system altogether. You are incurring expenses. May not be raw material expenses, but all other expenses, CapEx, regular salaries, maintenance, all other than the raw material cost.

So it is win-win. Business is making profit, legitimate, ethical, strategic profit at the same time environment is being taken care of. These kinds of CSRs will be sustainable. More and more such models are required where business is protected, interest is protected, stakeholders interest is protected overall. Not by one time charity, one time donation, relief funds, floods, earthquakes.

These are okay one time but cannot be sustainable. Cannot be imbibed, cannot be integrated in the business model.

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Corporate Social Responsibility Rules

PART II - Operating Provisions of the Rules

- b. The contributing company shall establish a monitoring mechanism to ensure that the allocation is spent for the intended purpose only;
- 4. A company may also conduct/implement its CSR programmes through Trusts, Societies, or Section 8 companies operating in India, which are not set up by the company itself.
- 5. Such spends may be included as part of its prescribed CSR spend only if such organizations have an established track record of at least three years in carrying on activities in related areas.

So trust, societies, companies operating in India are not set up by the company. This provision may not be required at all. Why do you want again bring in trust and societies in CSR? Whose objective is served by this? We have seen in the past how trusts have been mis-utilized. Again in the same CSR after taking so much guard, ensuring corporates to go for 2% why is it required to be through trust and societies?

Why not directly? There is a lot of debate on this point, why should CSR be done through trusts, societies?

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Corporate Social Responsibility Rules

PART II – Operating Provisions of the Rules

6. Companies may collaborate or pool resources with other companies to undertake CSR activities and any expenditure incurred on such collaborative

efforts would qualify for computing the CSR spending.

7. Only such CSR activities will be taken into consideration as are

undertaken within India.

8. Only activities which are not exclusively for the benefit of employees of

the company or their family members shall be considered as CSR activity.

9. All companies falling under the provision of Section 135 (1) of the Act shall report, in the prescribed format, the details of their CSR initiatives in

the Directors' Report and in the company's website.

CSR activities are undertaken within India, absolutely justifiable. Now there is

another question which comes only activities which are not exclusively for the benefit

of employees. Of course, if you are doing something which is a benefit of the

employees, it is not CSR. But why not exclusively for the benefit of employees?

Supposing one sets up a medicine shop within the factory and supplies free medicine

to the employees, the cost will not qualify for CSR. But the moment I open the gate

and allow the neighborhood to come and take this medicine, it will qualify for CSR.

Because it is not exclusively for the benefit of employees. Debatable, questionable.

What quantum goes to the employees and what quantum goes to the people around?

Why employees to be included in that?

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These are certain provisions in CSR which are I feel leads lot of understanding as well as further look into introspection, improvisation. First of all, the mindset has to be made clear, what do you want the corporate to do? Do you want them to really comply in letter and in spirit or only in letter? That is the same thing has to be understood.

Because corporates have and I repeat different mechanisms to comply. So it can be both in letter and not in spirit. It can be in both letter and in spirit.

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CONCLUSION

This lecture session has covered various provisions for CSR in Companies Act 2013, some important definitions and operating provisions of the rules. The learners will be able to understand these and may apply in their professional practice.

Thank you.

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Module-1: Corporate Law

Lecture - 05 Reporting and Various Activities under CSR

Good evening. We are into the lecture 5, module 1 Reporting and Various Activities under CSR.

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BUSINESS LAW FOR MANAGERS

Introduction

Reporting in a company is done through the process of compiling the information within a specific functional area and reviewing such as finance, sales, operations, inventory control or any area of the business where performance is monitored and measured.

CSR reporting decisively influences a firm's CSR ratings because CSR rating agencies utilize publicly disclosed CSR information to assess and rank a firm's CSR performance

CSR is something which is known perhaps to all even otherwise without knowing business law. You do not have to know business law to know CSR. Corporate Social Responsibility is a world buzzword, which is making rounds for the last few years. And there are strong yes and no for this, let me tell you. I have been interacting, I have been to lot of debates on this.

Being into the corporate for the last so many years, more than 30 years, I have my own views, maybe little bit influenced by the corporate side, but I try to be as independent as possible, when it comes to open topics like CSR, but largely there are very strong views. One view is yes, corporates needs to be disciplined. Other view is no, it cannot be strangled, it cannot be coerced.

It should come naturally, create environment for that. Of course, the other view is even if you create environment, corporate are creatures who are congenitally since birth indisciplined, so they need to be disciplined. So having said that, let us see what the Indian corporate law and the makers of law in India thought of CSR and where is CSR standing today.

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CSR does contain a large part of the annual reports today. Annual reports we all know are annual reporting books or status or documents of any company be it listed or non-listed. Listed meaning listed in the bourses, stock exchanges are non-listed. India has little more than 7000 listed companies today. But this provision is applicable for both listed and non-listed companies.

But I am talking of mostly listed companies because there you find the challenges galore because they have various stakeholders and the largest stakeholder is a shareholder where a private company does not have and a non-listed company does not have. Now the annual report which is a primary document for a corporate which is read by all the people, all the stakeholders, vendors, customers, largely report the government authorities, the income tax authorities.

Most importantly the institutional investors, the foreign portfolio investors, they bank on the annual report, they study on the annual report. And if you go through the annual report of any big corporate today a large chunk of the glossy, colorful pages non-statutory pages. Annual report contains both statutory documents, non-statutory

documents. So what are the statutory documents?

The statutory documents are the profit and loss account for the period, the balance

sheet for the as on a particular date that is 31st March, which is on a date and profit

and loss is for the period, 1st April to 31st March along with all explanations, notes.

Most importantly, the statutory auditors report to the members whether the accounts

are absolutely okay or not.

And then these are the accounting statutory requirements. The other statutory

requirements are non-accounting which are the directors' report, very important

where the directors give their views on the performance of the company to the owners

of the company to the shareholders.

This document is relied upon everywhere, by the income tax authorities, by Reserve

Bank of India, by government authorities, by Ministry of Corporate Affairs, by any

investigating authorities whether it is a MRTP, CCI, FEMA, FERA, ED, they all

depend on this one particular document which is audited, signed by the directors.

Onus is taken by the directors. Directors are responsible for this document is called

the annual report.

And then a specific paragraph in every directors' report today, which talks of

Directors' Responsibility Report DRR where the director says each and every thing

which is mentioned in the Annual Report statutory part we take the onus, we take the

responsibility that these are correct. Now these are the statutory part.

But the non-statutory part contains all that the company has done by showing pictures

by showing various activities the company has taken for good. And for good basically

of the society. And you will find at least few pages containing all CSR activities there.

Why it is done? Because the foreign portfolio investors, the Foreign Institutional

Investors are very particular on this. They called it the triple bottom line concept.

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Annexure-1: Format for the Annual Report on CSR

Initiatives to be Included in the Board Report by Qualifying Companies

- 1. Provide a brief outline of the Company's CSR Policy including the Statement of Intent reflecting the ethos of the company, broad areas of CSR interest and an overview of activities proposed to be undertaken.
- Indicate the web-link to the CSR Policy. The Policy should include the full list of projects/activities/programmes proposed to be undertaken by the company.
- 3. The board Report referring to any financial year initiating on or after the 1st April 2014, shall include an Annual Report on CSR.
- 4. In case of foreign company, the balance sheet filed shall contain an Annexure regarding a report on CSR

There is the concept called triple bottom line, which means a company has three types of profits. One is the profit we all know that is the profit the normal course of statutory auditors audit, the accounts prepared which is disclosed in the annual report. But the institutional investors look for other two profits, environment and society. How much you have spent on environment, how much you have spent on society?

Supposing a company's net profit shows 40 crores and when it comes to environment it shows it has not spent anything. Whereas another company has spent 40 crores, has the same profit 40 crores, same. If you see accounting profit there is no change 40 and 40. But institutional investors are looking at the company saying how much you have spent on environment it comes to 0.

But the other company has spent 10 crores on environment. So immediately the institutional investor will add the 10 crores and make your profit 50 crores parallel 40 crores for this company. Similarly, for CSR. They will say how much you have spent for CSR? Suppose it has spend 5 crores and the other company has spent only 2 crores. So we will add to 2 to 40 make it 42 and this company will add 5.

So you will add another 5 here. So 30 plus 10, 40 plus 5, 45. This is how they compare the two companies. So the corporates have understood this and they have started showing CSR activities they have undertaken in the annual report. Good there is nothing wrong in that. If you do something good if you show it to the world, there is nothing wrong.

But point is are all companies doing it what they are showing, that is one thing. Second thing who is auditing that? These are non-statutory pages. This has not been audited. So many times the question still remains, are the CSR activities which have been shown are duly audited and who is auditing the same? Some action has been taken of late by the Ministry of Corporate Affairs asking for give me the detail CSR expenses done duly audited by the statutory separately.

But again, that is far from what is to be what could have been done earlier or even now what is to be done. There are still gaps in that. Now coming back to this item of CSR to be reported in the board's report, it is categorically mentioned what are to be taken into consideration. What activities they have taken, what amount they have spent in the directors' report. To that extent this matter has been addressed.

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Annexure-1: Format for the Annual Report on CSR

5. The Composition of CSR Committee

- Every company to which CSR criteria is applicable shall constitute a Corporate Social Responsibility of the Board (i.e. CSR Committee).
- o Minimum 3 or more directors must form CSR Committee.
- Among those 3 directors, at least 1 director must be an independent director.
- An unlisted public company or a private company shall have its CSR Committee without any independent director if an independent director is not required.
- In case of a foreign company, the CSR Committee shall comprise of at least 2
 persons of which one person shall be a person resident in India authorized to
 accept on behalf of the foreign company the services of notices and other
 documents.

CSR committee has to be constituted. One director must be an independent director. The question remains why not all three independent directors? The question remains why the chairman is not mentioned to be an independent director. Some leeway is given to a foreign company.

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Annexure-1: Format for the Annual Report on CSR Initiatives to be Included in the Board Report by Qualifying Companies 6. Average Net Profit of the company for last 3 financial years 7. Threshold Limit-(2% of this amount as in 4 above) 8. Details of CSR activities/projects undertaken during the year: a. total amount to be spent for the year b. amount carried forward from earlier years c. amount spent during the year as below d. amount carried forward for the year.

Average net profit has been mentioned for the last three financial years. Total amount to be spent for the year, amount carried forward from earlier years, amount spent during the year, amount carried forward for the year. Now this is important. 2% of the net profits of the company you have to spend every year. If there is a shortfall, which you have not spent, you have to keep it in a separate account for spending.

And that spend must happen within a certain period of days. It may happen before the period end 31st March you are undertaking a project, school project. But the school project would require 1.5 maybe crores but you could spend only 50 lakhs by 31st March. Spend meaning you have to show receipt, documentary evidence that you have spent which is audited or needs to be audited, at least prima facie you have to show.

Now one 50 lakhs have been shown, 0.5 crores have been shown. Now 1 crore is pending. Now 1 crore is pending for this year, it can be carried forward to next year. You have said you are spending this year, however you could not give the receipt for this year. So it cannot be shown as a spend for the next year.

You are given a timeline within so many days, six months, you can get another extension for six months, you have to spend and give that this amount has been spent. In case that has not been spent it will remain as an expenses for that year and then it will be transferred to a trust of the government. It is outside your view now.

You do not have to control. It goes to the government's benevolent or really fund kind

of thing. Similarly if you have overspent any year, you are supposed to spend say 2

crores, 2% of net profits come 2 crores. Supposing you have spent 5 crores. The

additional 3 crores now is allowed to be carried forward and adjusted in the next year.

Earlier it was not there. This is a positive development.

If for any reason a project I have undertaken and that project requires 5 crores but 2%

of the net profits makes it only 2 crores. So as a corporate I could have spent just 2

crores and kept quiet because my compliance is done. Who will give the balance 3

crores? Now it is saying okay you are undertaking a big, so every corporate was

trying to take a project within my limit.

I will not take a big project because a big project is only means bigger expenditure.

Finally, I will not get any relief. I again next year I have to spend within 2%. See the

difficulty of a corporate in a scenario like this. Please understand a corporate is not a

charitable institution, it goes on giving CSR. End of the day there are other

stakeholders whose interest also have to be met.

So the corporate says then let us take small projects. Considering all these the

ministry thought this is wrong. Let us encourage the corporates take bigger projects.

Let the corporate take a bigger project which might take two years, three years, four

years, five years. But if it spends over and above 2% in the first year itself or in the

second year, whatever extra spending goes that goes carried forward to the next year,

positive development.

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Annexure-1: Format for the Annual Report on CSR Initiatives to be Included in the Board Report by Qualifying Companies 9. In case the company has failed to spend the 2% of the Average Net Profit (INR) of the last 3 financial years, please provide the reasons for not spending the amount. 10. A Responsibility Statement, of the CSR Committee, that the CSR policy implementation and monitoring thereof is, in letter and spirit, in compliance with CSR objectives.

Now as I disclosed that if you are unable to spend 2% then you have to give a reason for not spending which hampers the image of the company in the directors' report. The directors have to say it that we are unable to spend. What can be the reason for unable to spend? You have to specify that. The good point is the jailing provision there has been removed.

At least now no promoter or owner or director will be jailed, but reasoning is there. Now reasoning also has been removed. You have to spend. If you do not spend then that amount of money you have to keep in your book as unspent amount and liability you have to look at provision or a liability. So the loss or the profit will be curtailed down and a provision has to be made, stricter provision, better than jailing.

At least you are giving him room to create a provision and do it. By forcing somebody they will be jailed if you do not do then you will not get directors to be in the board, no person of value would join a board. Today, there is a huge dearth of independent directors in corporates because of this reason.

Criminalization of non-compliance which are not related to do with any fraud or anything, even procedural noncompliance has been treated as criminal offenses. Procedural noncompliance, non-filing of returns. Like CSR expenses not complied with 2%. Non-disclosure of events. Who are to be criminally prosecuted, the directors. And therefore, directors of any repute were saying we do not want to be directors in the board.

Finally the government understood, the ministry understood, and it has been totally decriminalized now. None of these provisions contain now anything to do with criminal prosecution for noncompliance of procedural matters like this. If there is a violation of environmental laws with the violation of Air Pollution Control Act, Water Pollution Control Act, hazardous waste management rules, of course section 37 is very clear.

It was earlier, even now. The occupier of the factory, the directors, the independent directors, all can be criminally prosecuted, can be. That provision is welcome provision. That should be there, but not procedural noncompliance. A form has to be filed within 30 days. If has not been filed within 30 days, then a director will be pulled to jail for that. Can it happen? Similarly this 2% provision was there. Now it has been removed.

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Schedule VII (under Section 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies

Activities relating to:—

(i) Eradicating extreme hunger and poverty;

(ii) Promotion of education;

(iii) Promoting gender equality and empowering women;

(iv) Reducing child mortality and improving maternal health;

(v) Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;

Activities relating to. These are the activities, very broad. Eradicating extreme hunger and poverty. Can anybody make out what can be a CSR for that? These are the activities. Eradicating extreme hunger and poverty, any activity. Promotion of education. Promoting gender equality, empowering women. Reducing child mortality, improving mental health, sorry maternal health. Combating human immunodeficiency virus.

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Schedule VII (under Section 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies

- (vi) Ensuring environmental sustainability;
- (vii)Employment enhancing vocational skills;
- (viii) Social business projects;
- (ix) Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) Such other matters as may be prescribed.

So generalized social business projects. PM relief fund, of course other things are there. Such other matters as may be prescribed. Now whenever you keep it too open there are positive and negative side of it. First of all, it should not have been there. It is not required at all. Corporate should do it on their own. Create environment for that.

And even if you are doing it and keeping it such wider interpretation and open, actually it becomes lot for interpretation and discretion. When it comes to interpretation and discretion, what comes is corruption. The moment you leave things for interpretation and discretion, you are inviting corruption or unethical means. That is exactly where it needs to be introspected, redone and revisited.

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7 Deadly Sins as rightly preached by Mahatma Gandhi

Mahatma Gandhi said that seven things will destroy us. Each of these deadly sins (as noted down below) is an explicit external standard or something that is based on natural principles and laws, not on social values.

- Wealth Without Work
- Pleasure Without Conscience
- Knowledge Without Character
- Commerce (Business) Without Morality (Ethics)
- Science Without Humanity
- Religion Without Sacrifice
- Politics Without Principle



I mean, this is something which I found very interesting, old sayings that natural principles and law, be good. Be good cannot be defined. This is what you need to do. Early morning yoga, good diet. I mean there are no prescription for this. It should come from within. Value systems should be from within. For business create the environment, value system is bound to happen.

No one will be able to sustain if they do not do CSR. That should be the system. Employees will reject to work in a company which does not follow CSR. We have seen recruitments of GATs in various Management Institutes and some of the GATs which join Management Institutes when you go for interviews, I have been invited in number of cases, many things they ask.

One of the things now they are asking is how is the company faring in ESG parameters? I never thought to five years back somebody will be asking this question. Takes us back to the Mahatma Gandhi days when he talks of social good. Growth, inclusive growth. Business to take care of society. Business of business yes is to do business, but with social good.

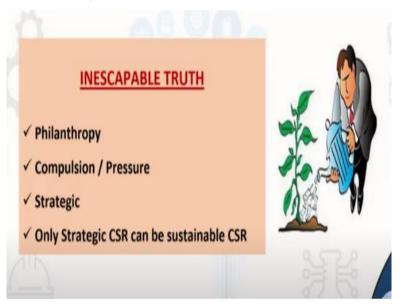
So when these young minds ask questions on ESG then corporate social responsibility would be very soon imbibed in the corporate philosophy or strategy. There is no way out. No one can, no corporate can sustain without ESG.

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Tax is another example also because you have to give some leeway to corporate social responsibility, those who are doing that 2%. Some leeway is required. Some tax relief is required extra, those who are doing corporate social responsibility. This was a talk long time going but government has not paid any heed to this. They reduce the corporate tax rate they might say for that they have reduced a corporate tax rate to some extent.

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Now what is very important and close to me is that I always say this is that CSR to be strategic has to be strategic to be sustainable. And there are three types of CSR; philanthropic, compulsion, and strategic. Philanthropy is only one way. We corporates donate, corporate does charity. Corporates are requested to do charity. Corporates are requested to contribute, one-time contributions, philanthropy.

Do and forget. Do not think of any return. Do not think of anything else. But this is a one way traffic, which time to time every corporate has done, will do. It is the need of the hour. It is the call of the time. It is the call of the nation. That COVID crisis, each and every corporate responsible have contributed, generously. And that contribution is a philanthropy.

That contribution is a call of the nation. No one will ever speak of that. That was the need that will be done. Maybe too little, could have been much more but has been done silently by responsible corporates. That is philanthropy. Compulsion and pressure. This is again something which is not desirable at all.

There was a time when some corporates in the south near the river Perrier were releasing toxic water in the river and one of the very big MNCs were doing it. And somehow they were able to manage everything. But group of people who are affected by that water filed a petition. It was before the Green Tribunal and finally that MNC with all its power, all its power could not stop the closure of that unit.

The unit was closed permanently and in that judgment, the judge quoted pollute and pay is not what is to be allowed. You pollute and you pay the damages. You cannot continue to do this. But all this happened because of a pressure of a compulsion, not there on their own. People went and filed a litigation, a petition kind of thing before the Green Tribunal.

Philanthropy is something which will happen, continue to happen, is good. Compulsion/pressure, not desirable. Should happen on own. But again, something which is going to happen cannot be stopped because there will be some cases where people will not listen. So pressure group has to work and make it happen.

But strategic is something which is going to happen and going to take basically to the next level of corporate social responsibility. Examples of those can be many. One is the very famous example, which is given everywhere perhaps, is the ITCs each of all.

The old one where ITC used to go and develop the village panchayats young folks to understand how they can immediately inform them when they are ready with their produce. They do not have to engage anybody or store their produce in the warehouses of the mahajans, the intermediaries. Kiosks were given to them, established.

Lot of money was spent by ITC to give those to them, so that when they are ready, they could inform that this much is ready for with them. I mean, they would reach the ITCs buying team directly. So what they were getting was 9 rupees if we consider that as 9 and ITC was paying 12. The intermediary was getting 3. ITC paying however the former getting 9.

Now with these kiosks, they do not have to store anywhere. ITC brought down the

price to 11. The farmer was getting 11. So farmer gained from 9 to 11. ITC gained

from 12 to 11. And the intermediary in between, undesirable entity in the whole

process was knocked down. A perfect example where the investment in the kiosks,

the extensive survey done by ITC, the learning they spread around all, the

perseverance they showed finally gave them and continued to give them returns,

sustainable.

And this is given as an example everywhere. Another organization, Apollo Tyres is

also done us wonderful strategic exercise in upliftment and development of the truck

driver community knowing fully well that this truck drivers are the greatest

advertisers of tyres.

So taking care of their health, ensuring that they get checkups regularly and tying up

with the dhabas, roadside dhabas, to give them various medical aids, protections, and

even during vaccination, doing that drive, ensuring they are vaccinated. So these are

all strategic investments. And finally, this gives return. CSR can never be a charity.

Philanthropy one time, CSR to be sustainable, has to be strategic.

It has to be win-win. There are so many models which can be, even Lijjat Papad is a

classic example of sustainable CSR. Taking care of the entire village, the woman are

not doing anything other than Lijjat Papad. That entire village women are taking care

of; their health, the children education. They do not have to think left, right, center,

anything.

Just Lijjat Papad making. There are some models are being even developed today to

see to it that it becomes sustainable both ways. Research is required in this. Various

business houses are working on it so that CSR is actually becomes a DNA of a

corporate's business. That would be the time when CSR would be totally sustainable.

And we do not have to go on talking about CSR and 2%.

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That is all what I want to share with you on CSR. Thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-2: Corporate Governance

Solution Lecture – 6 Concept, Definition and Features of Corporate Governance

Good evening. This is the model 2, lecture 6 concept definition and features of corporate governance.

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Corporate governance is a buzzword today. Why today? I mean for last 10 years and it is more like why do you need a corporate governance by the way? Are corporate not governed or were it not governed? Why do we have to spell out governance for corporates? Well, there is definitely a reason for it. The reason being, as I think rightly very correctly guided by Kumara Mangalam Birla committee on corporate governance that yes corporates are governed well.

However, there is a need to be a guideline for that. You need a lighthouse; you need an objective; you need a focus; you need a direction for further improvement of corporate governance. Why the need? Question still remains; the basic question why the need?

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The basic question addressed again by the committee is a corporate is owned by shareholders, managed by board of directors for the interest of both majority and minority shareholders. So, corporate owned by shareholders, largely controlled by majority shareholders; owned by shareholders, largely controlled by majority shareholders, managed by board of directors, largely appointed by majority shareholders for the benefit of all stakeholders including minority shareholders.

So, a proper balancing is required, very much required. So, that control the majority control does not lead to exclusive benefit of the majority holders. Because, though there is separation of ownership and management in corporates, but there is a huge shaded area. The shaded area might look quantitatively less but quality is very high. What we are talking is a company has shareholders and who holds shares in the company, supposing a company has 100 shares held by 99 + 1 shareholders.

A company has 100 shares held by 99 + 1 shares shareholders. Now, that one shareholder holds 60% shares; there is 60 shares. One shareholder holds 60 shares, balance 40 shares are held by 99 shareholders perhaps not possible, because half shares cannot be held. So, I reduce the number 99 to 40. I revisit the whole thing by saying, there are 100 shares in a company and 40 + 1 shareholders for ease of understanding of all; 40 + 1 shareholders.

So, 41 shareholders holding 100 shares; out of which one shareholder holds 60 shares and balance 40 is held by 40 shareholders. How are decisions taken in a corporate? Majority decisions are taken by majority shareholders. Who are the majority? Anything above 50% is

majority for ordinary cases, ordinary resolutions and special resolutions more than 75%. So, one particular shareholder holding 6 shares, he will take care of his own interest and get everything passed about 50.

Other 40 shareholders holding 40 shares will be at the mercy of that 60 shareholder; 60 shareholder holding one shareholder. So, one shareholder holding 60 shares actually will override the decision of 40 shareholders holding 40 shares. Moreover, when it comes to 75% +, you might say or might ask, how is that decision getting passed; if we understand our 50% is getting passed, because he is holding 60 shares, because decision is taken based on shares, not by number of heads by number of shares.

Now, the beauty of the whole thing is, these 40 shareholders are not known to each other; they are scattered all over the country. They do not know what the other is doing, whereas the single shareholder holding 60 shares is everything. So, when a 75% recording is required, information is sent to 41 shareholders 1 + 40; out of 40, 30 do not vote even, not interested in voting, only 10 votes. Supposing, these 10 votes against, then what happens?

Nothing happens because the 30 has not voted, the effective bodies 60 + 10 70 and that 10 has voted against worst case scenario, even then, out of 70, he manages 60 which is much more than 75% of 70. This is exactly the scenario in India. Majority shareholders or promoters' shareholders or owner shareholders do not hold more than 55 to 60% shares in any company. Balance 40% shares are held by scattered shareholders who do not have any understanding or bonding or knowing what is happening.

Invariably 20 to 25% of them are indifferent, unaware of; refuses to be aware of; do not even vote. Therefore, this has been the practice, not that I am saying something which has not been the practice. This has been the practice in Indian corporates. Therefore, we find minority shareholders enthusiasm. Therefore, we find institutional investors coming up. Therefore, we find SEBI coming for monitoring, Securities and Exchange Board of India.

And finally, this word corporate governance formulated so, that this 60% does not run the company at its whims, totally ignoring the 40 shareholders holding 40 shares. That is the basic requirement of corporate governance particularly in Indian context. In the west, it is a

little different, because shareholders are aware of. Out of these 40 largely held by institutional

investors in the west.

An institutional investor, they are all extremely aware of what is happening and they move in

a cloud; they both in the group; they take decisions jointly unlike in India. We are in India; it

is moving now gradually towards that, as we call it, minority shareholders activism. It is

happening. It is showing up; we are seeing lots of corporates who is managing directors'

remuneration and getting defeated.

Even the owner, his remuneration has been defeated by shareholders. Expansion plans have

been shelved, because minority shareholders and institutional investors voted against.

Company shying away from passing resolutions. Even after sending the notice, withdrawing

the notice at the AGM saying that we are not proposing this resolution, knowing fully well

the resolution will get defeated; for the image of the company will get tarnished.

Taking back resolutions never heard of big companies. Why? Institutional investors have

been able to generate enough interest in the scattered 40 to come to the terms and make them

at least 2022. So, when those 60 finds 2022 already there to vote against and it is a question

of margin now 75 And the stake of the company would be; image of the company would be

lost.

The market cap will take a nosedive shied away from the resolution; took back the resolution

that is a corporate governance win. That is where corporate governance own but that will take

a lot of time, a lot of time because it will not happen like that and therefore, we need stock

strong corporate governance norms and that is a welcome step and it is going absolutely in

the right direction and the pace is also somewhat good. It is happening.

So, that is perhaps I wanted to make corporate governance need and understanding clear that

what is the need of this word buzzword corporate governance.

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It is basically a kind of commitment towards all stakeholders and good corporate governance and good business go hand in hand. If a corporate governance norm is strong, if you follow very ethical code of conduct and governance in letter and in spirit, then business is definitely going to do well and be sustainable. There is no iota of doubt on that.

Whichever company has been strong corporate governance may have taken a little time but has come up with flying colors and those which have not followed and gone for short term gains, fly by Night companies. They are all gone swept away. By that process, what do we mean really following corporate governance? Simple thing is balancing interests, taking care of all stakeholders' interest, not allowing decisions by the majority shareholders to be thrust upon the minority shareholders.

Listen to the voice of the minority shareholders; allow the independent directors to raise their voice and induct strong independent directors in the board. The basic pillar of corporate governance is the strength of the independent director in the board of any corporate.

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Balancing that is the word in corporate governance and who will do the balance provided you have a voice to raise for balance? Who will raise that voice for balancing? The independent directors will raise the voice for balancing because the board consists of minority shareholders interest bearing directors and majority shareholders interest bearing directors. The majority shareholders interest bearing directors are the owner shareholders directors.

Majority shareholder will always have its directors in the board. Maybe the chairman will be the majority shareholder in most of the companies. Then you have the non-executive directors who are not independent, largely in favour of the majority shareholders, largely, then you have the managing director who is a paid employee. He cannot be an independent director. He will always be leaning towards the majority shareholder.

Professionally, he may be 100% professional. But when it comes to board, he would be leaning towards the majority shareholder because he is running the company. End of the day, he is a paid employee. So hard fact is a fact; truth is a truth. So, who is left behind? Who is there in that block of directors? Who is independent? Who can raise the voice? Who can look after the interests of all the stakeholders including the minority shareholders?

The left is only the independent directors and why they have been brought? In India, the concept of independent directors was not there before 15 years. Companies Act was there 1956. Companies were in existence even before that. Shareholders were existence from day 0, 56. Why the concept of independent directors had to be brought in 15 years back? Because

of all that happened during this year showed clearly that there is a huge need for an independent voice in the board to be dazed.

If not, gradually company form of organisation will totally perish. And there will be more and more lifting of corporate veils. There will be more and more cases of fraud. There are more and more cases of corruption. There will be more or more cases of diversion of funds. And finally, the very structure will break down; the economy will break down. So, that is the importance of balancing. And therefore, the importance of independent directors.

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We will discuss with independent more. Yes, corporate governance is the mantra for inclusive growth, growth of all, all stakeholders, not one employee, vendors, shareholders, suppliers, environment, society and even beyond. Today, we are talking about diversity, inclusion, consider LGBTQ is coming in. To what extent, governance is going. All status of society should be taken care of benefited by the corporate.

Corporate should be the overarching entity or the force which will bring balance and inclusive growth finally.

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Transparency and accountability: these are the 2 strong words for corporate governance. Why transparency? Decisions that are taken by the board has for reaching consequences, our decision to merge with a company, our decision to invest funds in our company, our decision to acquire another company. Each of these decisions can be a decision which will destroy a company or make a company for the success; short term to matters investments killed a company short term.

Diversion of funds, raising money for one purpose and using it for a different purpose has been the age-old practice in corporates. Just because limited liability is there. Business risk is something which cannot be made into a personal failure. Corporate is not given any shield; no shield is given for that. But unfortunately, some corrupt companies have done this and therefore, the bad name has come.

Institutional investors shied away from India after short term for a long time. FDI was low. FDI was going down like anything. A lot of things got exposed after that and has been tightened to a large extent. But I am not saying for the moment that everything has stopped, no, long way to go, but the direction is there and we have to be more stringent on this. It is very important to have a strong independent board where voices are raised, recorded.

A lot of good actions have been taken by Securities and Exchange Board of India. If corporate governance is seeing light of the day in India, it is because of SEBI today and independent director resigns, he cannot just resign like that he has to give a reason why he is

resigning. And if he wishes to, he can put everything in writing that why he has resigned and

if he complaints because of fraud, he has resigned.

Then it will open investigation against that company and the promoters because he has been

the custodian. He has been the person who has been looking after the interests of the

stakeholders and independent director is supposed to bring out all these facts. If we go to the

code of conduct of independent directors, his duties and responsibilities, it is clearly

mentioned.

If he fails in that, he will be responsible for not doing his duty. It falls under his due

diligence. As I was coming, as I was going through a news appeared on 22nd of October and

independent director of a company has made it public to the stock exchange. He was sitting

director. Even now, he is sitting in that board. He has said some anomalies; he has taken

specified the anomalies.

Fraud has happened and he wants it that SEBI should take action immediately and find out

the reason. First time, I normally follow this kind of disclosures in the stock exchange,

anybody who wants to understand more about corporate governance can find out from stock

exchange, what kind of intimations are given and from there can make out what is the latest

development on corporate governance.

Here is a case where an independent director writes to the stock exchange sitting in the board.

He is actually doing the job whistle blow and independent director acts as a whistle blower of

a listed entity. For the first time, I have come across very independent directors after

resignation has blown the whistle. But here is the director who is sitting in the board and has

blown the whistle. And he is still in the board. Let us we have to see how SEBI reacts to this.

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Mindset: very important of the independent directors and of the owners, promoter directors. Is promoter directors really wants the company to shine, success sustain? Then it is his duty to allow the independent directors to voice their advice or grievance or whatever they want to say. If that is not the case, then corporate governance will not see the light of the day. No independent director of worth will join a company.

Independent directors join companies not for fees or commission, they join companies for their own, you know, self-belief that they can turn out this company. They can contribute in this company. Fees and commissions are definitely important for everybody and should be remunerative. The fees for the directors today has gone up to one lakh rupees per meeting, which was 10 to 20000, 10 years back, which is a very construct.

If an independent director has to spend 4 or 5, 6 hours per meeting and he has to attend the meeting, with all his study and all, it is worth paying him a lakh rupee for a sitting fee, which is allowed and most of the companies are paying. They are getting also the commission on the net profits of the company, which is again a welcome thing. But this is not what the independent directors are looking for off worth.

Independent directors of worth wants the company to grow during their tenure. So that they take pride in seeing, the company is getting further improved and transformed of course, with the emphasis on corporate governance.

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Is the old saying, corporate governance is like taking the horse to the pond, but cannot be made to drink water if it does not do so. But the choice is whether you want the horse to drink water or not. Are you only showing that I am taking him to the pond, but I am not really making him drink the water? You are from a distance, I am saying that you are taking him dragging to the pond that much I am seeing, but after ditching the pond, are we allowing him to drink the water? That is the mindset question.

You have taken independent directors, but you are not listening to the voice of the independent directors. Then that is not corporate governance. That is not the mindset of the promoter directors or the majority shareholder directors, which will help the company to grow. Then there is a big problem in the mindset of that promoter directors or majority shareholder directors.

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The corporate governance has been implemented by Securities and Exchange Board of India by an agreement which is called the listing agreement. Now, what is the listing agreement? A listing agreement is an agreement between a company and the stock exchange. Now in India, there are 2 stock exchanges which have got nationwide terminals effectively today only 2 stock exchanges.

One is called the Bombay Stock Exchange. Other is the National Stock Exchange. So, all companies which are listed are in 99.9% cases, enters into an agreement with both the stock exchanges both BSE and NSE. And do not require to be listed in any other stock exchange because these 2 stock exchanges are enough, allowing all the shareholders for freely trading in the shares of the company.

But in that agreement, there are provisions which are almost similar to both the stock exchanges. As regards the corporate governance very clearly, it is mentioned as dictated by SEBI Security and Exchange Board of India. Security Exchange Board of India does not directly enter into any agreement with any stockiest or with any corporate. It is a regulatory body. It does not enter into any agreement.

It has got its 2 arms, which is a BSE and NSE through which it regulates. And today, these 2 arms are most important for a company to keep it market cap up. If for any reason, the stock exchange issues are notice to you at your corporate and that notice is not replied with time properly, then stock exchange puts that in his website and the institutional investors looks at it very, very, very thoroughly and effectively.

And if there is anything, which throws doubt to them, they will immediately write to the company, why this kind of issues are coming up, please clarify. And if you are not, the next morning, they may actually dispose of or liquidate either their entire shareholding or 50% of shareholding. The moment that happens, the market cap goes down. So, no corporate will ever allow it to happen. So, it is very important.

The other important aspect of corporate governance is that the listing agreement I was talking off, also has a provision of another body of the board very important to discuss corporate governance, like independent directors are so important. The group of independent directors who sits in the committee of the board is called audit committee. This audit committee today is far stronger than even the motherboard.

The mother is a board of directors from which the committee is formed, but the child or the creation of that body is much stronger than the mother itself or the parent itself. Because the way it has been created. If I discussed the creation, you would understand that the board today has to have. If the chairman of the board is a non-executive director, then at least one third of the board should consist of non-executive directors or other independent directors.

But if the chairman of the board is an executive director, at least 50% of the board shall be independent directors or if the chairman of the board is even if not an executive director is a non-executive director, but still is a majority shareholder in most of the companies that is the case, the chairman is always the representative of the majority shareholder or he is the majority shareholder.

However, he is not an employee of the company, therefore, he is not an executive director, he is not Chairman cum MD. He is only chairman. But he is the majority shareholder. In that case, also 50% of the board should be independent directors 50% at least. This is a board structure. So, even if 50% is independent, still, you have a board where the other half is non-independent and the Chairman has the veto power if there is a balance.

And these decisions in the board are always taken by majority decisions. No special majority, only majority that is enough. Out of 9, if 5 are yes, then the decision gets passed, however, SEBI has made it mandatory those 4 which are not passing it, supporting it, they should

record it in the minutes of the meeting that they have not participated or they have not in favour of this. And they are doing it religiously now. Because if later on it is happens that because of this decision, the company went down.

And this decision was not really a decision as per business. But for certain reasons, it held the majority shareholders, then this director who voted against will not get production because they have not recorded their dissent in the minutes. We call it recording of dissent, very important that directors should record the dissent in the minutes of the meeting. Earlier it was not there. Now the directors are doing it.

So, what is happening in a board when it finds that 4, 5 directors are not agreeing, majority shareholders are not taking those proposals. Why? Because it will be recorded in the minutes and later on, if it is becoming a backfire, then it will happen. This majority shareholders in spite of the fact for directors voted against went for this proposal. So, it will put them into more difficulty.

So, they are not going ahead with those things, a positive development which is happening. In the various boards, dissent, recording of dissent has happened. The other important thing is if you look at the audit committee, you will be surprised the constitution of the audit committee is totally different. The audit committee should consist of only non-executive directors, majority independent and Chairman independent.

So, if our committee has got majority independent, no question or at least majority independent and Chairman independent also. So, suppose if it is 4, 3 would be independent and Chairman also independent. If it is 5, 3; if it is 4, it is 3. So, what I am trying to say is that all decisions are taken by the independent directors, even if a non-independent director is voting against, nothing will happen because the independent director deficiency will prevail.

And this audit committee is so powerful. Each and every financial decision, each and every account, each and every expansion diversification, each and every strategic investment has to be pre-approved by the audit committee before it goes to the board. So, audit committee approves, then only goes to the board. Now, if the audit committee does not approve, even if it goes to the board, can the board override the decision of the audit committee?

Yes, it can override, but if it overrides, it has to give an explanation in the board meeting,

why it has been taken a decision against the recommendation audit committee and if it is a

financial result, then it has to be disclosed in the stock exchange. The entire investor

community will come to know that the independent directors did not approve the financial

results or the expansion plan or the diversification plan or the acquisition.

However, the board in its wisdom consisting of majority from the majority shareholders have

taken a decision overriding the decision of the independent directors and has gone ahead. So,

any institutional investors will think twice in investing or remaining invested in this

company, but the independent directors are saying no, but the majority shareholders because

of the number has gone for years. However, this was never disclosed before.

Now, SEBI has said you have to disclose that. Disclose to whom? To its regulator, there is a

stock exchange and stock exchange so, you would put it in their website, public notice please

be careful, this is a company where a decision has been taken which is in disregard to the

decision of the independent directors. So, any company of repute having high market cap will

never do that.

Effectively, this has stopped decisions being taken by corporates looking at the interests of

the majority shareholders only because of this creation of audit committee, however, as I

said, are the independent directors truly independent that question remains. The directors who

are called independent directors, will they continue to remain independent or they will be

only independent in name, but not in practice. That is a question mindset question.

Therefore, that question still remains you can create everything by law, you can create the

you know, this whole ambience for good governance, but finally, it is the mindset of those

people, the independent directors to do it and wherever it has been done, wherever the voice

has happened, the voice is heard and the voice has raised. All those companies have really

come out with flying colors. So, that is something which is still to unfold.

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Of course, careful governance has a positive impact on shares. It improves the trust. The foreign institutional investors are very, very alert on this. They know it very well that a good corporate governance, a bunch of strong independent directors and today, there is a body called IIAS.

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They are doing a lot of study on this. We will discuss in next slides on how IIAS does study corporate governance. A lot of control measures. risk control measures, internal audit measures. Risk management is another thing which corporate governance looks into. A separate committee is formed, again a board committee to look into the various risks associated with the business.

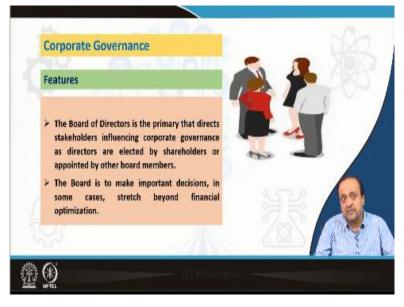
Some risks are not even perceived like nobody anticipated pandemic risk. There was not a single risk register of any company containing a pandemic. Today, all risks raised as contained pandemic.

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Business community looks at corporate governance always as a long-term sustainable option.

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The board of directors are the main custodian of corporate governance. The decisions have to be balanced, balanced from all angles, normal stakeholders, financial and non-financial. Again, one thing very clear, it does not mean only charity, business decisions are taken. Even after all these decisions can go wrong. Best of minds, best of mindset, best of independent directors can take decisions which may go wrong, that business is all about.

But risk is there in the business, nobody can guarantee the decisions will not backfire. But when you have a bunch of independent directors who have taken everything, there is nothing for a business or an owner or a majority shareholder to shy away from. And no one can even think of attaching the property of anyone because everything is transparent. It is a business risk. We all have to leave it. Therefore, so important is to ensure that corporate governance is in practice and is in letter as well as in spirit.

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Audit committees remains to be the most important committee having enormous power including appointment of statutory auditors, including appointment of the chief financial officer of the company, including looking at the remuneration of the key managerial personnel, like the managing director, the company secretary, the chief financial officers, the

internal auditors, their performance review, everything happens only through the audit committee.

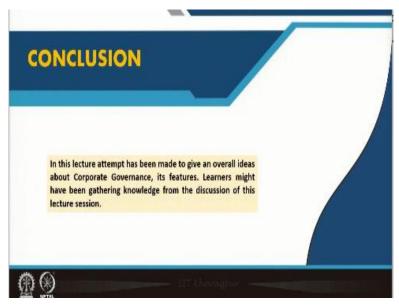
In today's scenario, the duration of a board meeting can be 1 hour or 2 hours, but the duration of audit committee goes up to 4 hours or 5 hours. So, one can understand the importance of audit committee. It really is the committee which drives corporate governance.

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Various references are there in this presentation of mind; I have taken from different sources.

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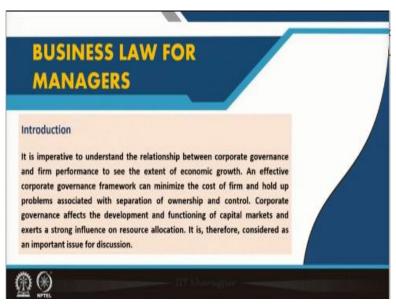
Of course, I would say still much of it is from my experience. I have been talking about corporate governance in various forums. So, when I speak of this, I speak more from my experience and my insights into many things that I want to share. Thank you so much.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-2: Corporate Governance

Lecture – 7 Effect of Corporate Governance

Good evening. We are starting now, model 2, lecture 7, effect of corporate governance.

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Corporate governance effect: if I have to put in a nutshell as far reaching, we can think of as a corporate, which adds value to the GDP of our country. Right? We have 7000 listed companies, I am talking of listed companies, because these are the big companies. These big companies actually shapes up the economy, their performance or the parameters of our economic performance includes BSE as well, of course. So, these BSEs are listed today.

So, all these companies adapt to the GDP, if you see the financial results of the corporate, which comes out every quarter now that will determine the performance of the economy. So, if these companies governed well and they Utilise the resources well, they take into consideration the interests of the stakeholders, the balance the interest and they are not guided by greed.

They are not guided by interest of only one particular stakeholder, the majority shareholder. And the disciplined, they are looking into the parameters of E, S and G, environment, societal and governance. They are following triple bottom line concept. The effect is for everyone to be felt; for every citizen to be felt; every citizen of every country will feel the impact of the effect of corporate governance such as its strength.

It is almost like the governance of the government. If a corporate governance is successful, then I think the government is also largely successful. And what can be the other effect, the negative? A negative effect of a big corporate, there is a failure of corporate governance of a big corporate, listed corporate having exposure in the books to the financial institutional holders. All of them have large exposures holding 10%, 15%, 20%.

Is the failure of a large corporate? In India, that will have a ripple effect, far reaching effect, on the entire investor community or the FDI inflows of the investment opportunities in India. And of course, finally, it will impact the government and the GDP as well. So, both sides are there, the positive and the negative; the magnitude one can make out that is corporate governance.

I mean, anything that is done in a corporate has to be aligned to that. Any decision has to be aligned to that. The question has to be asked; is it for the wider good? Is it for the good of all? Is it inclusive in nature? Are we being partial towards the majority shareholder? Every decision that we take; every action that we take at the highest level at the level of the board, corporate governance is always top driven.

If you see corruption at the highest level, it will percolate down to the lowest level for sure. An employee senior employee sees his boss meeting vendors separately, not meeting him outside the office. Obviously, the corporate governance of the company is questionable. Corporate governance speaks in an organisation as you enter the organization. It is something which is very much visible in the culture. It is the culture.

It is the corporate culture. If one has to stop speak of corporate governance, one has to see how the board is functioning. One is to see how the top management is functioning. Many times, big corporates ask corporate governance experts to do a random study of the corporate culture, corporate governance culture in the organisation and they come out with brilliant

suggestions which the corporate has never thought of.

There is a huge rift at the top level; top management below the managing director, they are

not even in talking terms. No one is aware of business goals as usual. Profits are recorded

quarter on quarter. But that is not healthy corporate governance. Any time, it can fall like a

pack of cards that is also a kind of culture in an organization.

Various HRs admins, I mean, stalwarts are doing a lot of, you know, practices they are

bringing out, consultants are being able to practice a lot of methods, how to ascertain the

corporate governance that is driving the organisation how to calculate the corporate

governance in a scale of 1 to 10? What will be the benchmarks? What will be the calculations

done parameters to be taken into consideration?

The independent directors' interviews are being taken separately. They are asked about the

organisation, their induction, their ability that not only whether they are given the scope to

speak in the board meetings, whether they are being heard in the board meetings, whether

they are contributing in the board meeting. Statutory audits are questioned. What kind of

support they get from the finance and the other members of the top management while going

for audit.

Are they given any enough time to audit the books? Internal Audit if it is done by the internal

people or outside people, they are also met to find out the parameters of corporate

governance, employs random. Vendors, they are interviewed; customers they are interviewed.

A 360-degree survey is done to find out that impact of corporate governance in an

organization.

Case studies have shown that these are extremely good parameters to find out early signals of

damages which may come in in course of time. It does not happen overnight. But signals are

given and the signals are to be read. It is definitely a culture of an organization.

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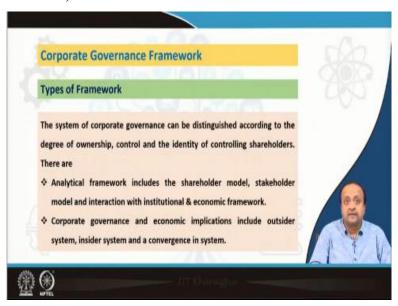
There is a framework financial institution to play a role. We will see to it; board of directors are the champions of corporate governance. market mechanism has a role. Institutional investments have some role and inside or outside the system of corporate governance is prevalent. Internal stakeholders, the employees, they also are randomly asked questions on practices.

There is an organisation which used to promote people based on letters of resignation. The employees came out with those suggestions; the whistle blowers are not encouraged in other organisation whoever used to blow his whistle was worried that he might get a notice. All these came out to the interviews of the random interviews of the employees of the organization.

Exit interviews are extremely good mechanism to find out these are all inside, outside a system of corporate governance measurement. Exit interviews give fantastic insights into the early signals of corporate governance failure. So, if the mindset is there, the drive is there, then corporate governance can be determined. It is not something which cannot be determined.

We have no idea that corporate governance how failed. There must be; there is so many ways out to ascertain it. Exports are there in this and it has to be done continuously. It is not that I do it corporate governance study once and then do it after 5 years. 5 years is enough for damage. Every 2 years, 3 years, it is to be done if not on an annual basis. Banks financial institutions are good informers of corporate governance.

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Analytical framework, shareholder model: all types of shareholders, institutional shareholders, majority shareholders, multi shareholders, large retail investors, they are extremely good source of information. Not large majority shareholders, I am talking of, large retail shareholders. Retail means, small shareholders holding large chunk of shares, maybe one single shareholder.

If I want to get the top 10, top 1000 shareholders or top 500 shareholders of a company, the registrar will give me in just 5 minutes who are my top 500 shareholders, then I tell him give me the top 10 shareholders for holding more than 10,000 shares individually. One can find out a particular group of shareholders or maybe 2 or 5 of them are holding almost 25, 50, 30,000 shares which is a huge share for a single shareholder.

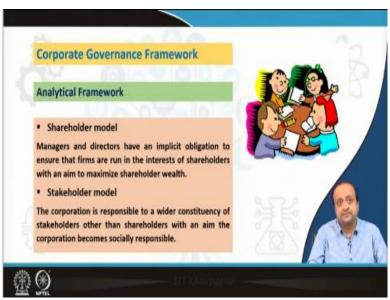
And he has been picking up or he has been holding or he has been disposing what was his transaction in the last 3 years. Then you can speak to him directly and find out what is his views on the company. Why is he selling or why is he buying? Or why is he holding off either of the 3 would happen? Either he is selling or is buying or is holding on, what is the reason for that? They are extremely good sources of information.

Stakeholders definitely all stakeholders, government comes out openly. Banks comes out openly; vendors, extremely good sources of information. Customers also very, so, as to be seen that the customers are all not interviewed by a person whom they know, otherwise will

not open up. They have to interview, the policy, because they also know that are we meeting the gentleman?

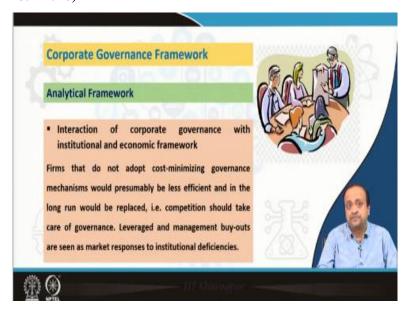
How can I say bad about him? To know bad, no good in general, then very interesting models and methods of ascertaining corporate governance, the framework of corporate governance in an organisation.

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We have discussed about shareholder modelling, stakeholder modelling.

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Institutional framework: interaction, there is a strong body which is called IAAS, institutional advisory institutional advisory services, institutional investor advisory services IIAS. They

are actually voicing the interest of the minority shareholders. Every time, a resolution is proposed by a listed entity invariably.

Any resolution, any decision that you are taking, which requires shareholder approval has to go to the shareholders along with that has to be put in the company's website as well as in the stock exchange. So, that the entire public comes to know not only the existing shareholders, the future shareholders also comes to know that I am going to invest in this company, this company is going to do this now.

Shall I invest in that company? Or shall I not? Now, the institutional investors, you do not have to ask them. They will come on their own with the recommendation that you have passed a resolution for such and such expansion or acquisition. We are not in agreement. These are the reasons for that or we are in agreement extremely good decision we support this, either way.

Now, this kind of recommendation by the institutional investor advisory services, SEBI has mandated the institution advisors to please consider these advisory services recommendations before taking a decision. So, all institutional investors when the corporates approached them for support, corporate obviously would approach them that we are coming out with this resolution kindly support us, there is no harm in asking the institutional investors, the institutional investors then say, well, we are appreciative of your efforts.

However, we are guided by IIAS. If they recommend no, then we cannot support this resolution. Therefore, the corporates now cannot go to IIAS because IIAS is guided by SEBI. SEBI has clearly stated IIAS that if we find later on that any decision that you have taken backfires and it is investigated and found out that you are partitioned towards that company. Then your entire job will be blacklisted. So, they are afraid.

Even if they have the mindset, they cannot do that. And actually, it is happening. They are not asking the corporates, they are coming out with their recommendations and saying that for, for or against, against with a line, of course at the end that if you are not in agreement with your views, they are writing the corporates, please provide evidence for that. And there are corporates which have given evidence to them, they have not accepted that.

They have clearly stated no; this is not the reason; we cannot accept it. And there are very few cases where they have modified their opinion also. So, institutional framework is very important for corporate governance and more and more such come whenever a corporate comes out with a resolution before that, they do approach the institutional investors that we are coming out with this, would you support. The question and the answer is the same.

The question is would you support; the answer is the same, we would; in fact, we are going to support. We find this extremely good proposal, but if for any reason, the institutional advisory services, investor advisory services says no in the recommendation, then we are guided by SEBI to follow that. So, you please ensure that the recommendation that comes you comply with them, because IIAS gives some recommendation like in many companies' cases.

They have given the recommendation. it was on the appointment of a managing director with their increase in remunerations, recent case of a company and it is published, everybody knows the name of the company. However, for confidentiality or not really code of conduct, I do not want to take name of any company. I am just giving the example X company. X company came out with a resolution for appointment of its managing director along with the increase in remuneration, fair enough.

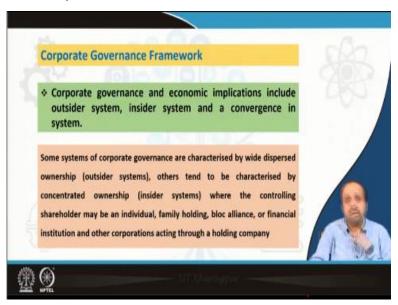
The company has done reasonably well. So, there is an expectation of increasing remuneration like all employees. What was the recommendation of the institution advisory services? I follow this, vividly this is my subject. Now, when I went through it, I found very interesting. They say yes, we appreciate and approve the appointment. However, the increase in remuneration, we do not have to approve and hence, we reject the resolution.

With a recommendation, please bring out a resolution only for appointment without any increase in remuneration, we favour the resolution. I do not know what the company will do, but this is the recommendation. And the reason they are given a like this, we are not appreciating the increase in remuneration for number 1, the reason is that this remuneration is high compared to others in the industry of this nature of business, of this magnitude of business, of this turnover of business, what the CEOs or managing directors are getting, number 1.

Number 2, your remuneration that you have given is not linked to the performance. It is a fixed remuneration. So, the remuneration of the MD will be linked to the performance of the company, think the way they are thinking that is the reason we are not. So, this is the kind of control mechanism which is working now on corporate governance. Never thought of 3 years back, even 3 years back that is why my view is very clear that we are going very good on corporate governance.

As a whole, the direction is absolutely good. The speed has also picked up. Now, it is to be seen how Indian corporate response to this.

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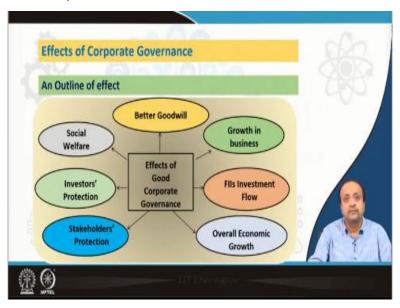
Ownership: outside the systems, inside the systems where controlling (()) (19:01), maybe an individual family or financial institution, other corporation, these are all holding systems, how it holds shares, can be majority inside, can be through companies, where the majority shareholder individually is not coming out. The names are not coming out. This is a peculiar system in India.

Do not find in other companies, Indian corporates therefore when go abroad for investments, for any business transaction, they asked one question permanently, what is the beneficial holding? Who is the beneficial owner? It is very difficult for Indian corporate to find out the name of the beneficial owner. This is one thing I think which SEBI is going to dilute very surely.

SEBI has taken some steps, but it is still not the last step, the last step is still coming where the beneficiary holding name has to be disclosed in the stock exchange site. We are now having holdings of outside and inside the systems. It will not work any further, maybe in a year or had COVID not happened (()) (20:16) happen by that time. COVID has put everything back for 2 years.

Compliance has taken a backseat now. It is question of survival now. First to survive, then to comply I mean, compliance is definitely required, but survival is more important right now. But it is definitely going to be a something coming because already 2 or 3 steps have been taken, where SEBI has asked to disclose the beneficial owner to them, not to the stock exchange. Now, it will go to the stocking directly on a permanent basis.





And of course, some leeway has been given where it is held by an NBFC. You do not have to give anything beyond the NBFC. All those shields are going to go away. Of course, corporate governance I have seen for myself, good corporate governance helps a lot way in retention of employees. It might look as; it might sound as a little bit myth, but it is not a myth it is a reality.

Companies with good corporate governance can retain employees with lesser salary. It is a fact. Wherein employee has clear mind and eye and line of sight that good performance of his will be recognised, if he can perform, no amount of influence, no amount of you know favour is required for that. Even a lesser salary, he will work in that organisation rather go to an organisation with higher salary, where nepotism works. It is true for everyone.

Similarly, an organisation which takes care of our employees, when in need obviously, would be somebody who sought for then an organisation which says you have to survive always on your own perform or perish. Not for a moment I am saying performance is not the aesthetic, performance is the aesthetic everywhere. But is it Performance plus something or only performance? That is what is important.

So, effective corporate governance, better goodwill, better branding, better retention, better market cap better pipe inflows and of course, social values.

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Auditor has also same way. There has been a case at least, I think from December 9, from March 19 to just before COVID February 20, a little before that, if one sees the number of statutory auditors who have resigned from corporates, number of statutory auditors and all of them coming under big 4, many of the big 4 have resigned giving reasons for loads of work or something on the other from corporates. Because they have also understood that as temporary auditors, they also have a moral responsibility for corporate governance.

They cannot afford to just write the word to the best of my knowledge and belief. And only gives, this is true and fair view; they cannot wash their hands off by saying I have been provided with this information, I have restricted my audit to this information. Knowing fully well, whatever I provided, there are areas which required me to do a deep diving, I have not done. I have done a test check only that is very clear now.

You have to take responsibility. You have been given a protection by the law. Law is; you are

appointed now for a number of years, not on a regular basis. Earlier, it was hired on hour

basis. So, your appointment, your job was at the mercy of the shareholders again that 40, 60;

60 shareholders 60% of the shares held by one shareholder, 40% of the shares are held by 40

shareholders.

So, majority shareholders actually deciding whether the auditors will remain or not. That

concept actually made the auditors appointment in the hands of the majority shareholders. So,

they were in one way you know employees within the bracket of the majority shareholder,

this has been detached. They have said, they have been told categorically that he will

continue once appointed for a certain number of years, 5 years and then cooling off period,

then again, 5 years.

Now, what the auditors have done is that they have taken this in the right space, they said

nothing doing. Wherever we find we are not comfortable, the management is not providing

adequate information. In spite of our repeated disclosures that this is required, the

management is not disclosing, better let is resign from the corporates. So, they have to resign.

So, corporate governance also depends on a large scale on the efficacy of the statutory

auditors and how independent they are.

Again, that is what I feel the word independence should come again. Here, are the statutory

auditors truly independent? Are the independent directors truly independent? These are the 2

questions which if or as strong as that corporate governance will always fly in high colors and

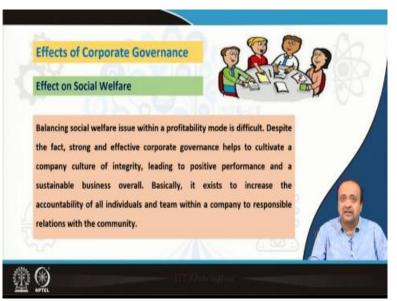
it will always be a success story for that company.

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Goodwill for sure. Branding for sure. Investor Protection, social welfare, we have discussed stakeholders' prediction, overall economic growth, it goes to the GDP.

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Disclosure in annual reports, quality of corporate reporting, adequacy processes, involvement of managers in corporate governance activities, board and corporate ethics. Ethics is another thing, which is something which is beyond law. Example, many corporates have board of directors who do not even look at the shares of the companies, (()) (27:08) stopped buying shares of companies.

Any data can buy the shares of that company, when the trading window is not closed. The time when trading window is closed that means when financial results are to be disclosed, that time, you cannot buy the shares. Otherwise, you can buy the shares. But there are corporates whose ethics are so high that their board of directors never buy the shares of the

company because they feel somehow the other, they are private to some information, which

that information does not have in the public domain.

So, it is better to shy away to do away with those companies. I mean, shares of the

companies, not only that they are also do away with the shares of the group companies means

associate companies one step further. They will not buy and sell the shares of the company in

which their directors though, a lot of law does not stop even not the independent directors,

right.

Law does it stop them, only they need to disclose that is it. But they do not want to buy and

sell the shares for better good, for wider good, not only of that company, but also the

associate companies. That is what I call ethics. Ethics is beyond law. A law might require X;

ethics is X plus 1, 2, 3. Whatever you think is best, so that there is not even a nudge, an iota

of evidence of conflict. Independent directors, directors, ethics, whenever they come to know

there is a conflict of interest, which the company will never come to know.

If for example, an employee joins an independent and knows that employee his relation of

him, even a distant relation, law defines only near relationship, does not define the distant

relationship. The independent director discloses that this gentleman is known to me, so

anything to do with him on any information relating him should not be shared with me

number 1.

Number 2, if the board feels that is for this, I need to step down, I am ready to step down, left

do the decision of the board, because why the young man should join, I mean, why the young

man should resign. He has done nothing wrong. He has joined about company on merits, but

he has a conflict of interest and discloses. Similarly, taking a loan from a bank or taking

appointing somebody a consultant, he might say that we have worked with him in the past.

Law form: a partner of a law form joining a company the moment he says that this law form,

he doing business with him, he has to disclose that well, my form is doing business with you

and the amount of business is quite high. So, I do not want to be a part of the board. So, these

are all ethical practices, which law is not bothering you, but your own value system is

stopping you from continuing in the board.

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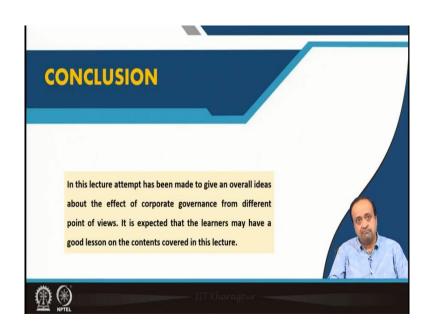
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Various references that I have taken, in fact, some of the articles I have also written in Taxman on his corporate governance a myth or reality. My article is also there on how independent other independent directors if you want to find out from Taxman publications, I think it is possible that you can get this. From there, at least 4 to 5 articles is published in Taxman on the subject of corporate governance, independent directors, which I have not mentioned here.

But it is very much there, from which I have, of course, developed my presentation, but I always say mostly it is from my understanding and it is from my experience that I have gathered that I prepare this and share with you all. Being in this profession for so many years and looking into all these aspects, I do not look into books for this kind of presentation which is more of my experience that I share. Thank you so much. Thank you.

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Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-2: Corporate Governance

Lecture – 8 Major Structural Issues

Good evening, we are on lecture 8 major structural issues on corporate governance.

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Now, governance in India has gone through changes and changes have been quite drastic in nature though it took time, but it has in the last 10 years picked up speed momentum and genuinely concerned about the level of corporate governance that India is deciding and that signal also has gone to the community outside India, the international community, the foreign institutional investors, FDIs, the big investment giants; they also appreciate the journey of corporate governance and the spread, the momentum, the speed has been appreciated.

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The framework is quite robust. It started all with a board committee namely audit committee comprising mainly of a new nomenclature of directors which was conceived and introduced by the Securities and Exchange Board of India first time called independent directors, as if the directors in the board were primarily required to be independent, still required to be told that you gentlemen are independent directors.

If we see the definition of directors, you would find that directors are primarily required to be independent whether representative of majority shareholders or not that is not the criteria. He is basically a director who has to look into the interests of all the shareholders, not one shareholder, one, later on, all the stakeholders not shareholders only. Still, the need was that we need a class of gentlemen in the board to be declared to the outside world as independent directors.

Earlier, we are only 2 types of directors, executive directors and non-executive directors. Easy to understand directors who are in the employment of the company or executed directors like managing director or executive director per se, if the finance head CFO becomes a director if the legal head becomes a director, if the marketing head becomes a director, he becomes an executive director. All other directors are non-executive directors.

Now, within non-executive directors, SEBI created a separate block called independent non-executive directors. So, non-executive directors can be both independent and non-independent, but executed directors by their whole definition are always non-independent.

They can never be independent because they are paid employees; they are salaried employees. So, they cannot be independent of the management.

So, all executive directors are non-independent directors but all non-executive directors are not non-independent directors or independent directors, they are bifurcated into non-independent and independent. Now, in that independent lot, maximum number is taken and formed a committee called audit committee. So, an audit committee is constituted with the majority independent directors and chairman independent.

So, if 4-member committee is there, 3 will be non-independent and the chairman also will be non-independent. Therefore, only one person will remain who sorry, will be independent audit committee would be consisting of majority independent directors with chairman independent. So, supposing there are 4-member audit committee, 3 would be independent, chairman independent, only one person who will be non-independent that is a creation of SEBL.

Now, that is one part of it, a committee has been formed. So, what does this show? That this committee will be governed by independent directors largely. An independent directors will take the decision because decision of audit committee is always majority and majority being independent. So, decision of the audit committee will always be independent of the board, not be influenced by the majority shareholders in any way or by the board even.

They will be independent of the board. This was one part of it. But if you look at the powers of the audit committee, what the audit committee is going to do? We will be seeing that the practically the entire power that is there of the board as regards the financial part is concerned, including appointments and reappointments of CFOs, statutory auditors, internal auditors are all to be pre-approved by the audit committee, pre-approved.

Unless they approve, it will not go to the board. If they approve and it goes to the board, board can reject. But board cannot take on its own if they reject and it goes to the board, board takes it up on its own and approves it, then it has to be disclosed in the stock exchange. A very, very devastating disclosure, it should be that the board of directors has disregarded the view of the audit committee and appointed somebody which will be a blow for the corporate governance of the organisation to the outside world.

Huge power is given to the audit committee. So, that is one strong message that has gone to

the corporate Indian corporate that the audit committee is primarily consisting of independent

directors and all decisions, strategic decisions, important decisions are taken by the audit

committee before it goes to the board.

Then there are other committees like nomination and remuneration committee will discuss in

the next following slides, which we will call system independent directors only, only, which

will consider the remuneration of the managing director, the key managerial personnel, any

person who will be appointed as an independent director or a board has to be recommended

by the nomination and remuneration committee consisting only of independent directors, then

stakeholders' relationship committee.

How we are maintaining the relationship with the institutional shareholders and other

stakeholders? Very important. What kind of complaints are coming from them? What kind of

questions are raised by them? The committee has to see. Then perhaps a very important

committee now, one of the most important committees of the board, risk management

committee.

Every business community has multiple risks starting from operational risk, technology risk,

cyber risk, financial risk, pandemic risk, pose major incident risk, technology risk, disruption

risk. So many risks are there that sometimes one gets that how does the business perform

which so many risk, procurement risk, foreign exchange validity risk. All these risks, political

risks, you are doing business in a country where there is huge political risks.

So, your entire business is dependent or you are sourcing material from a country which has

got huge political risk. Your main customer is located in a country which has got a huge

political risk. So, various kinds of risk management committee risk management committees'

job is to see the various kinds of risk and that continuous mitigation measures. Risk cannot be

indicted. Business has to live with risk, but what are the mitigation measures and of course,

the corporate social responsibility committee.

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So, section 149 of the Companies Act and SEBI LODR, listing, obligations, disclosure, regulations, very important is table LODR which I think is more important even than section 149 which guides the independent directors and their provisioning. Special resolution is required to increase the number of directors beyond 15.

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This is exactly the composition of a board. As I say, it can be basically executive and non-executive. Non-executive can further break down into independent and non-independent. This independent director is actually a break, breakaway group of the non-executive directors. And now comes one more provision, at least one women director. This is another very good introduction by SEBI, again by SEBI Security Exchange Board of India requirement that at least one women director should be there in the board.

It is important not only from diversity angle. It is also important for the quality of discussion that happens in a board. A woman director brings in a lot of in perspectives, which are perhaps missed out and mostly, I have seen from my personal experience, societal and governance, discussions and improvisations, focus is strengthened by the presence of a woman director.

Basically, what happens is discretion many times centered around business primarily. And at times environment of course, because that has something to do with the sustainability part of it, largely sustainably part of it. As for business, operational sustainability is required. But many times, A's and G gets little more or less importance in the discretion of the board. The induction on the women director has been rightly done to bring that focus into it.

The societal aspect, the aspect of the governance, the aspect of the larger good, the aspect of the inclusive growth. The number is to go up from 1 to 2, to 3. And already we are seeing in many corporates, the number is 2, not 1, the number is 2. And SEBI has mandated now. One independent of women director, which was earlier only women, now it has been mandated one independent women director which is another very good move.

If the wife of a promoter is in the board, then it complies with the women director, but does it comply the very purpose? In later, it is complied, but is it complying in spirit? So, to comply in spirit, you require an independent woman director or a relation of majority shareholder is a lady and she occupies the post, most welcome to occupy. But, is it compliance in spirit? It is in law, of course.

But in the spirit, it was meant for women director. SEBI did not initially mandate it. The very nice move of SEBI, SEBI gives the blows gradually. Because the regulatory also needs to be given time to improve, you cannot bring a regulation on a fine morning and just put it on the regulatory. The regulator and the regulatory both have to survive. So, the regulatory is given time that look, I have come out with a one provision of a women director, better make it an independent woman director.

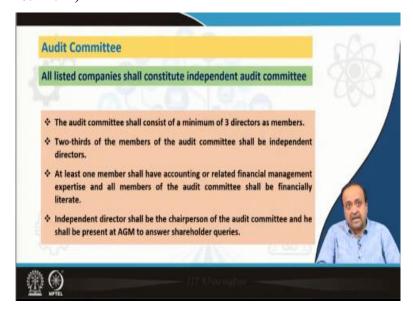
I will give 2 more years to make it independent woman director that exactly has happened. Now, it is an independent woman director, 50% of the board, non-executive directors and specific code of conduct has been given by the independent director; specific code of conduct. What you need to do? Very important. What you need to do your guidelines? Even to the extent of power has been given to independent directors to seek expert opinion, if he is not comfortable with something.

If he is not comfortable with the presentation of the CFO on the matter in which he does not have the expertise, he can say, I need to check with an expert in this. I will find out whatever you stated. I will get it reverted by the export and then only will pass this in the next board meeting. That power is also given to him. All the expenses of that consultant has to be borne by the company. Independent director has only to raise his voice saying that I need a riveting by such and such person whom he thinks is an expert in that.

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Another important prohibition has come in in this aspect is independent directors now have been told not to randomly accept assignments as independent directors because they also need to give time. So, a cap has been given maximum 7 listed companies, they can be independent so, on one individual independent director can be in the board of maximum 7 listed companies, not beyond that.

So, that he could do justice to all the requirements of an independent director. That is another very positive move. These are the constitution of an audit committee; very interesting. The audit committee should consider minimum 3 directors as member, 2 thirds of the members of audit committee shall be independent directors' majority; at least one member shall have accounted related financial expertise.

So, one member should have financial expertise. Why? Because finance is a subject which not everybody's cup of tea. It requires some specialised knowledge. He maybe a chartered accountant, maybe a finance; he maybe a CFAs. He may be anything but he must be considered or have the acumen knowledge to understand financial results. Because financial results are prepared by financial chartered accountants audited by statutory auditors, many times reading between the lines becomes a challenge.

I myself as a chartered accountant; I am a company secretary also; I also feel sometimes the results which have been published by the listed companies, which we go through perhaps the institutional investors, even the retail investors would not be able to get the full picture unless an analysis of this result is done. There is a gap in the presentation. There is always a gap in the presentation.

What is stated? What is perceived is a different. What is actual is again different. So, actual statement, perception, all are different. Now, is it done deliberately? No one can answer because legally absolutely correct. But interpretation is something which is something which is debatable, how it can be interpreted. Therefore, for that reason, he is stitching on the pant that one member should be financially literate.

Now, what is the definition of financial literate? It has been beyond be given whether it will be MBA finance from any premium management institute or he will be a finance-chartered accountant that has not been defined; it will leave open. However, it has been said that if he

has been the managing director of a company, then he will be presuming that he will have

financial literate.

But I have question mark even on that whether all managing directors of companies are

financially literate is a question mark, because they are exceptionally good professionals in

their own subject. But as the finance goes, other than seeing the bottom line, the top line, the

various notes that come in interpreting that notes really, really becomes challenging.

Independent directors shall be the chairperson of the audit committee and she shall be also

present in the AGM to answer share's query.

So, shareholders will take him to task; shareholders have been given the power to take him to

task in the only meeting that they have with the directors which is the annual general

meeting. The shareholders meet them only once religiously that is in the annual general

meeting. So, there, he can take the chairman of the audit committee with an independent

director to task that how you are approved these results.

What is your answer to these results? Because this result must have been approved by you.

Because any results, financial results has as I told, earlier said, stated has to be pre-approved

by the audit committee. Then the shareholders will ask how is that these results have been

approved by you; you are the chairman of the audit committee; you are an independent

director; you are a financial literate.

Or you have in your stable financial literate directors; you may not be financially literate but

at least one should be financial literate. So, how is that you have positive results? We do not

accept this result. So, you will be taken to task.

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The company secretary, of course, is the secretary to the audit committee. Finance director, head of finance shall be invited. This is another important thing. The audit committee can invite the CFO, the head of internal audit, anyone under the sun, he wants to be present in the audit committee to question him, even to use the what, Coast Marshal him, even the factory head if there is an incident of fire, there is an incident of any damage, accident.

He has the all authority the audit committee to call each and every employee to present grilled, answered and desktop, what is happening because a large responsibility is given to the audit committee members to do their due diligence.

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Now, we come to another important committee, which is called the nomination and remuneration committee. The name suggests who nominating whom and remunerating

whom. The committee actually nominates and remunerates all the independent directors, the directors, as well as the key managerial personnel. Who are the key managerial personnel in the company?

The only 3 persons who are defined as the key managerial personnel, key managerial personnel. They are the managing director, the company secretary and the Chief Financial Officer. These are the 3 key KMPs in an organisation. All 3s remuneration are to be screened and pre-approved by the nomination and remuneration committee. All directors of the company shall be non-executive directors.

50% of directors shall be independent directors and the chairperson shall be the nomination remuneration committee.

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At least 3 directors shall be members of the committee; at least one will be an independent director; same thing in case of listed entity also your superior equity shares at least 2 thirds of shareholders relationship committee.

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Now, we are coming to another committee, but before that, this nomination remuneration committee will also be important in the respect that he is recommending somebody as an independent director, then the nomination remuneration committee actually has to take the owners, he is truly independent. If an independent director is not truly independent, the whole entity will fall. Then that question of corporate governance will not come.

It will not deliver the results. So, it is important prerogative for the nomination remuneration committee to recommend the right person as an independent director. And the chairperson of the nomination remuneration committee being an independent director would be in a better position to ensure the proper independent director is inducted in the board.

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Stakeholders' relationship committee is another important committee which looks into the grievances of the shareholders; many times, the shareholders bring out very pertinent questions, but one thing is to be important understand that shareholders sometime ask questions which are not in public domain.

They may ask innocuous questions about the development of the company, the study of the company, what do we expect about the results of the company, how the company is doing, innocuous questions, but the answer to be take given only to the extent of information available in the public domain. No information can be given which is not available in the public domain.

Companies and companies have made mistakes in that and there have been violations of regulations. Very important regulation will discuss is prevention of insider trading, PIT, prevention of insider trading regulations. If any information is given, which is not in public domain, you know, said even, inadvertently even that will not help. Inadvertently will not help.

It will tantamount to violation and show cause and find an image of the company and therefore the market cap. So, it is very important that this comedy ensures no information goes out, which is not in public debate.

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The risk management committee is another important committee which gives very early signals of corporate failure, corporate governance failure, very early signals, it can catch. If a

proper risk management committee is there, it will be the first committee who will raise the red flag here is where you need to have your attention and convey that to the audit committee.

The risk management committee chairperson shall be a member of the board of directors, however, not specified to be an independent director, not required, but 2 thirds of risk management shall comprise of independent directors, but most companies have made the chairperson of the risk management committee as an independent director. Now, how does the risk management committee function?

The risk management committee prepares first of all a risk register, robust risk register, every company will have some risks, which are germane to that business means those come businesses are based on those risks. Certain business risk maybe from the procurement side that we have bought only 2 raw materials to produce the product. So, procurement of those 2 raw materials actually is the oxygen of the company.

If those 2 raw materials for any reason is not available, the business will fail. Whatever be the case, we need to develop other sources for those material. Maybe the procurement team will say that we have done everything possible and it was only one source. Now, we have to have developed a second source and they have done their best.

Risk management committee has to highlight this and say that we are still surviving on such a business, robust business with so much products, I mean, so much market share with so much contribution, but the root thing is still remains very thin and narrow. The route is thin and narrow because we are dependent only 2 suppliers. If for any reason, even one of them is cut, the business gets off that huge risk that may be a case of one of the companies or many of the companies.

Then there may be risks where some companies are doing business largely in an area or in a country, in a continent where there is huge political risk, nobody can stop it. Now, can we develop elsewhere? Or how do we mitigate that risk? Another example, there have been 2 or 3 ransom attacks, ransomware attacks, cyber risks. Even after that the management because of other considerations, other pressing business needs has overlooked it.

The risk management committee has noted that there have been 3 cases simultaneously of ransomware attacks. Man in the middle, another concept where you do not know who is doing it. I am sending money to my supplier man in the middle intercepts that money and money goes to him, I do not come to know. My account is still showing the money has gone to the vendor.

Vendor comes and says no, my money has not come to me. Then it has found out the vendor has asked for change your bank account. And I have sent that to the change bank account. The mail has been intercepted and change of bank account mail has been sent to us. This is happening random, men in the middle even during COVID times, this last 2 years this has become random for many companies.

Money is not going. Money has been sent right everything there, but money has gone to somewhere else. Similarly, while money coming, same thing has happened. Somebody has gone into the mail ID or somebody has captured this and done it, man in the middle. Now, the risk management looks at the mitigation misses. First, how the system can we make more robust? Can we do a third-party check?

The IT head says I have done everything. Nothing further can be done. We are absolutely okay now. He gives in writing but what does this mean. His writing does not prove anything that it is the best. So, the audit committee, risk management committees is nil. Let us engage a professional hacker. A professional hacker, these are ethical hacking, they say, ethical hacking, professional ethical hackers.

They will hack, taking your permission that I am hacking and trying to hack and you use all you might to stop me. Still, I will hack and show you I can hack, professional ethical hackers. Risk management committee may say we engage that and find out what is there or not. And last but not the least risk management committee might say, take a robust cyber risk insurance.

Much before everything else the risk management committee can highlight areas where we need to plug, so that governance is not impacted. Today, this is one of the primary committees and it takes a lot of time; this committee takes a lot of time if I have to rank the

committees now in today's scenario, it will come very next to the audit committee. Audit committee and then the risk management committee.

Board of directors more of a mother body but the actual functional bodies which are holding the corporate governance together and raising the bar; ensuring there is very few chances of you know failures. I will not say 100% but very, very few narrowing down that are the audit committee and the risk management committee.

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CSR committee is again; is basically a committee to ensure that the policies of CSRs are imbibed. It is socially responsible and that we comply with the law.

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The committee mainly looks into the fact that whatever is stated like 2% of the net profits of the company, the policies that are framed, the pay the areas activities, which are mentioned where you can invest are properly done. Disclosures in the annual report status report very important. The CSR committee has to maintain that. If for any reason, any disclosures is not complying, the CSR committee would be squarely responsible.

CSR again can be environmental, can be philanthropic, ethical, economically responsible. I think economic responsibility is what makes this the CSR strategic in nature. Ethical has to be because it cannot be the do something finally, which brings good too few people. It has to be for all. It cannot be for few; then that is not CSR. Transparency and accountability is very important in CSR.

Philanthropic, we have seen philanthropic is always required in CSR. A part of CSR will always be philanthropy. There will always be some crisis nations call, regions call, call of the heart, somebody is having some problem in doing some studies, you get a request and committee considers that, well, this is a genuine case, we should give help, help the child to have the operation or the studies. So, philanthropy will always be there in CSR.

I mean, there cannot be a CSR when there is no philanthropy. One way, CSR is also, one way you cannot stop, I mean, one should not even think of not doing philanthropic CSR, just because he is not strategic. Philanthropy is a part of CSR even if it is not strategy.

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Environmental obviously, is CSR because environmental aspect has to be taken care of. Corporate Social Responsibility committee is a part of the board. It creates the committee amounts of expenditure incurred, monitors this corporate policy of the company.

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2% of the average net profits of the company is again something which is not, I personally feel is required, but that is the law, one has to abide by the law. And, again, net profits are not during the three immediately preceding financial years. It is not that all the three years you have to earn profits, it can be one year, last two years profit but net there has to be plus minus profit for the three years.

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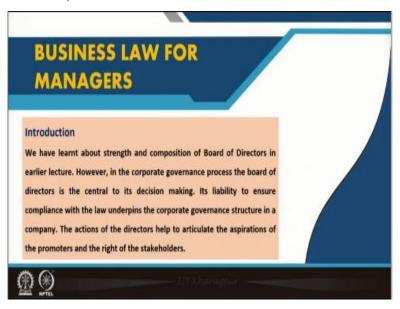
References are taken. As I said from different textbooks, but it is more from my experience that I always share in my slides and when I deliberate on this, being in this for so many years. Thank you so much. Thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-2: Corporate Governance

Lecture – 9 Duties and Responsibilities of Directors

Good evening. Model 2, lecture 9 duties and responsibilities of directors.

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The board of directors are the most important body for the performance of a company. (()) (00:50), if you have a strong board, then the performance of that company financial, non-financial, both yardsticks would be obviously stronger and a company which have a weak board will always have even in a good business environment, the chance of collapsing. On the other hand, even with strongest of challenges and odd situations, a strong board will come out in flying colors.

There will be a temporarily dips; there can be temporarily adverse results, but a strong board will definitely fight back and the resilience and the resolve will file any reward and give returns to the stakeholders. So, there is an old saying how strong is your board depends exactly on how strong you have made to be. If you allow your board to be strong, it will be strong. By means of the board allow is who will allow and how will allow.

In Indian scenario, the board is strong only when the majority shareholders want the board to be strong to put it absolutely straight. If the majority shareholders do not want the board to be strong, then it will can never be strong. Even after all this SEBI has tried and the Ministry of Corporate Affairs has tried its best to make the board as strong as possible.

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Considering even the fact, the majority shareholders still hold the majority shares and the system still allows them to take decisions where majority decisions overrule the minority decisions. Having said that various provisions have been brought in; various disclosure mechanisms have been brought in; various other third-party interventions have been made, allowed by SEBI and Ministry of Corporate Affairs to ensure that the board becomes strong.

One of the ways of doing it, of course, is the manner of appointment the removal and resignation. The appointment of the board, no longer in the hands of only the majority shareholders. It has to be pre-approved by the nomination and remuneration committee consisting of majority independent, non-executive independent directors and Chairman, independent director. The new wall again cannot be at the whims of the majority shareholders again to the nomination and remuneration committee.

And for any reason, if the gentleman himself resigns, he has to give the reason for the resignation and it will be published everywhere in public domain why he has resigned. So, both the cases, any new wall, any resignation will have a mechanism and not at the whims of the majority shareholders which was there earlier. The other concept is independent directors, their role, their responsibilities, their code of conduct, their due diligence.

They cannot say after giving so much power by the Security Exchange Board of India that their appointment is no longer at the mercy of the majority shareholders. Their appointment once recommended by the nomination and remuneration committee, they are appointed stayed away for a period of 5 years.

So, if they are appointed for a period of 5 years, they can be appointed for a period of 5 years, they cannot be touched further for that period of 5 years, unless they themselves resigned or they are removed and removed is a strong word, there has to be sufficient reasons one cannot get removed like that, almost zero removal, resignation quite a few, we have seen and each time that reason is very important and had an impact on the company.

At the same time, SEBI is demanding also. It is giving protection to the independent directors. It is giving protection from the majority shareholders. Clearly, today independent directors knows that I am protected; my seat is protected. If I raise my voice, I will not be thrown out that fear or that you know, kind of you know, threat perception to put it blank I mean state, is no longer there.

So, SEBI has also become demanding from the independent directors that if I am giving you so much comfort, support, then what are you delivering? You have to deliver this way. These are what I require from you. You have to do your due diligence. You cannot say that I have tried, I have done whatever is best. You are not going to decide what is best. SEBI is going to tell you what you are doing in that company, when you find any irregularity there.

You cannot sit tight; you cannot just keep your eyes closed and say I have abstained from voting; abstain from voting will not give you escape. You have to protest; you have to record your dissent. Earlier independent directors of repute used to keep their eyes closed. I am not a party to that decision. So, no question of dissent, no question of assent. Now, SEBI is no. You cannot remain neutral; you have to take a decision.

You are an independent director, why are you on the board then? So, various directors have resigned in the recent past from companies where they were not comfortable. I know a particular case, I know for quite a few cases, very established persons, they have resigned

from the board because they were not feeling comfortable, because their due diligence will be challenged.

Their question of brand, their question of their image that they have in the society and the other person is key managerial personnel. The 3 key managerial personnel managing director, company secretary, CFO, they all along are exposed to anything that is happening, which is too due with non-compliance fraud or anything. They have to give an undertaking that they have checked, they have seen; no question of to the best of our knowledge and belief.

This word has been deleted by SEBI as far as a KMP is concerned. You cannot say to the best of your knowledge and belief, because your job is to find out what it is happening. If you also say I am to the best of my knowledge and belief, then who is having the knowledge of that which is not the best of knowledge, there is no question of best of knowledge. Your knowledge is there or your knowledge is not there.

If your knowledge is not there, you are incompetent, you should resign. If your knowledge is there, then you have to give an oath and under undertaking. Therefore, every CFO, every managing director in every quarter for all listed companies have to extend their neck and give an undertaking to the board of directors including the audit committee that all the records, all the accounts, all the entries, all the reflection in the accounts are correct and free of any fraudulent activities.

If for anything happens, then these 2 and 3 persons can have not or have any escape from that. Therefore, various CFOs, MDs nowadays do not you know, take decisions based on what is understanding is correct or anything which feels has got, you know, 2 sides of it, what they do, they get a legal opinion from a counsel. They keep it in their file or from financial expert, third party experts keep it in their file as a measure of production that they have done their best.

There is nothing called absolutely correct or absolutely right. And you can never go wrong. Point is, have you done your due diligence? One is your due diligence; other is where you are failing, you take the expert view and keep it in your file. But important thing is, it should not be something which is grossly wrong on the looking at it. If there is an interpretational issue, get a legal opinion.

If there is no question of interpreting an issue, you know, it is wrong, you are chartered accountant you know, it is wrong, you are a company secretary, you know, it is wrong, then there is no question of taking a third-party opinion you should have frothy said no. It is not possible. The key managerial personnel are extremely important.

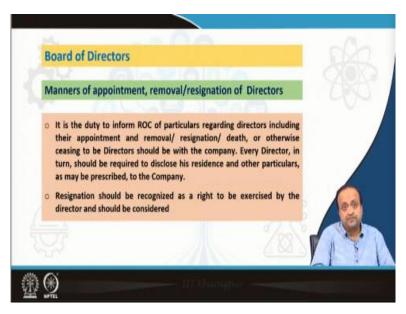
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So, basically, the ultimate responsibility remove should be that of the company shareholders, the government do not intervene in the process of appointment that was what the shareholder's approval is majority shareholders. But now, anything that has to do, has to be routed through the nomination remuneration committee. Once they recommend, then only the majority shareholders views will hold good because ultimately it will be the shareholders appointment in the annual general meeting.

But independent directors' appointment again will be the shareholders appointment, but after passing through the nomination and remuneration committee.

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Any director is ceasing to be, director should be company in turn should be declared the residents' other particulars as we prescribed. He has to inform the stock exchange. He has to inform the registrar of companies regarding directors that appointment, viewable, everything. ROC is the control of companies but more important for listed companies is not the ROC, is the stock exchange.

You have to give the reason also why you have resigned. You cannot simply write personal reasons to resign. You have to specify why you have resigned. Unless it is for health reasons, you have to give for health reasons, you have to give for my preoccupations. Normally, these are the reasons which are going in the market, health and preoccupation. Wherever they do not want to give you know really put the nail on the head, they find Okay, let me resign and go.

There is nothing that has happened to me or till I am there. So, I do not want to disclose anything because I do not have any fact control but I am anticipating something might go wrong. Let me just resign. Even that is happening without anything happening directors are resigning. I understand, directors are resigning after something happening. Here, directors resigned before something is happening on that dissipation something is going wrong.

But they cannot right what is going wrong. Therefore, they give the personal reasons or preoccupations. But foreign institutional investors know all this; they understand all this when they say a person of repute is resigning from owning company, giving a personal reason, there are 1000 questions to that company. What may be the reason? Why he is

resigning? He is still in the board of so many companies, why he has resigned from your board giving personal reasons or preoccupations or health reasons?

Personal reasons do not hold good; now, they give health reasons. It becomes very challenging for the company to answer those questions. What do the director independent received as remuneration? Basically, they receive 2 things as remuneration. One, they cannot get ESOP right. The moment they get ESOP, they are not independent directors. They are no longer allowed to have any kind of ESOPs, employee stock option schemes.

No, they cannot have because they are not employees. Independent directors can have seating fees, fees for attending the board meeting. The amount maximum that can be paid is one lakh per board meeting. If you have to pay more, you need to have central government approval for that. Normally, companies do not go for it. One lakh for any meeting, whether it is board meeting or audit committee.

So, he attends an audit committee, he gets 1 lakh; he attends a board meeting, he gets 1 lakh. How many meetings in a year? Minimum 4 meetings, 4 board meetings, minimum 4 audit committee 4, 8. So, he gets 8 lakhs per company. Maximum how many companies he can get? 7 companies, 7 listed companies. So, 8 lakhs into 7, 56 lakhs but he gets also commission. Commission is what? Percentage of the net profits of the company.

Now, it varies from company to company 1% to 3%. This is variants in Indian Corporates of Commission. Supposing, the net profit is 100 crores, so 3%, 3 crores. Supposing, there are 10 directors, it will be divided into 10 directors. So, 30 lakhs so, 30 lakhs, he gets the commission from one company. So, this is what the remuneration he gets normally.

It depends, some independent directors do not want to work in companies if the remuneration is too low, because they feel it is not good for them. Why? Because they spent so much time in studying in giving their advice which they could have given otherwise to any company and they would have charged as consultancy. So, they feel this is not what; there is another case where good companies, unless you pay well, you do not get quality independent directors.

To get quality independent directors, normally, it varies between 15 lakhs to 20 lakhs per company. So, 50 lakhs to 20 lakhs you have to can pay whereas, only in sitting fees and in

board meetings you get maximum 4 to 48, yeah 5 to 5 10. So, 10 into 1 is 10 lakhs, so, 10 lakhs you get, but there is still a gap of 5 to 10 lakhs, which comes from commission. So, if you get that much commission, then only they would join, otherwise you do not get quality independent directors. They do not come for anything. They have a price.

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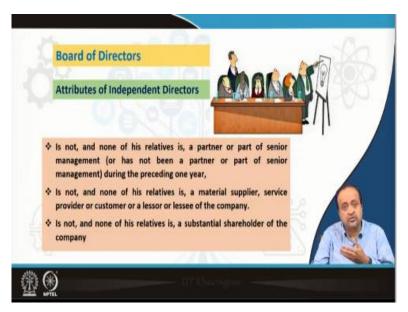


Independent directors attribute, definition is very elaborate, it says you should not have any pecuniary interest in the company. You should not trade in the shares of the company. None of your near relations should be in the company. You should not be a consultant in the company. You should not have been an employee in the company in the last 3 years, cooling off period is 3 years. Quite a few restrictions are there to be an independent director.

You should not be a major supplier of the company. So, anything which has going to be a conflict of interest in your decision making, broadly speaking, should be avoided and you should disclose that. You should not accept your appointment as an independent director. Then you can be questioned by SEBI later on, then knowing fully well that you are a part of it, how could you declare yourself as independent director because an independent director has to declare in a letter to the company, I am an independent director.

I do not have 1 2 3 4 5 6 7. There are 10 to 15 such items, which he has to declare saying that I do not have any conflict of interest in any of this. If it temenos to later on disclosed that no it was a violation by him, he can be prosecuted, not even a substantial shareholder of the company, not even relative also.

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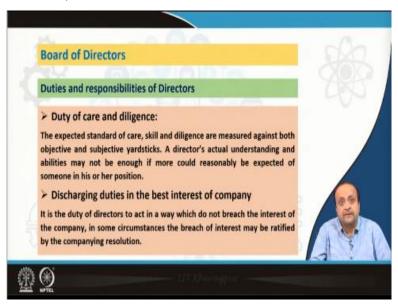
Now, this is the director's responsibility, duties and responsibility, not independent director, only the director. So, only a director is required to independent director is a part of the director. So, independent director has to comply with this plus the additional responsibilities given to them in the code of conduct. If we look at the even the director's responsibility which includes the majority shareholders, representative also, because the director also includes the chairman, who is the majority shareholder. A chairman is a director.

So, his duty of also is like that duty of care and diligence, discharging duties in the best interest of the company, not only his interests as the majority shareholder, is in the best interest of the company, exercising independent judgement. So, independent, even if you are

a non-independent director by definition, you are a director, still your independent judgement is required.

So, independent director is over one of these his responsibilities, over one of this responsibility is a code of conduct specifically for independent directors; duty, promoting the success of the company, avoiding conflict of interest, duty of care and diligence. This is very important.

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He has to have actual understanding abilities may not be enough, he can get help from outside. If he is thinking that I do not have the ability to understand finance, I do not have the ability to understand engineering, I do not have the ability to understand patents, copyrights, IPR, I do not know the ability to under cyber risks, why not get an export? Understand from him in the board, invite him in the board so that every board member understands from him, pay him professionally. But you cannot go and say I was not an expert in that.

What prevented you to do a due diligence? What prevented you to ask for an expert opinion or a view or a presentation? So, that is very important.

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Again, another responsibility of the director to see the company does not go beyond the memorandum of association. The object clause of the company does not go beyond the articles of association. It is his responsibility to see. He may not be a legal export, but he has a company secretary sitting in the board, who is illegal export, compliance export.

He can jolly well get a confirmation from him that the business the company is going to embark upon now is covered in the memorandum of association of the company and is also supported in the articles. Moreover, nothing is there which violates, contradicts whatever is there in the memorandum of articles, you can ask the company secretary to do a study on this and put up a note for the board in the next board meeting and make a presentation before the board.

Apprise the board on this. Today, all board meetings are recorded another thing which has come from SEBI. All board meetings needs to be recorded, not to be disclosed to the stock exchange, because board meeting minutes are never disclosed to the stock exchange. Board meeting minutes are the most confidential documents who are privy to that, the board of directors and the statutory auditors, nobody else.

No one else even the shareholders cannot get a copy of the board meeting minutes, but the recording has to be there. Why? If there is any investigation, if there is any further requirement for the regulator to see what exactly happened in that board meeting, then the recording is a must. It has to be in the custody of the company secretary. So, even on compliance, very important aspects SEBI has dealt with in.

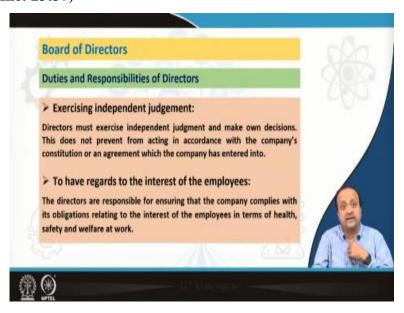
This the regulatory compliance, the compliance with law, the compliance with the various regulations. Not only law, it has got SEBI. It has got FEMA, it has got CCI, it has got the insurance. So, all these regulations even more. There are the environmental laws, specific laws for the states where we are operating. A company may be operating in a state called Gujarat, in a state called Kerala and there will be specific laws applicable to that state only.

So, all those compliance procedures has to be brought before the board and stated that everything is in order. If not in order, specify what is not in order. If you have not got the factory license now and you state that the factory has started, but the license is still pending, then it is a gross violation, the occupier of the factory, who can be jailed for that and who knows who is the occupier of the factory.

One of the board members has to be an occupier of the factory. So, an independent director may be an occupier and he does not know that the factory license is still pending, is the responsibility of the company secretary the compliance say to inform him, but it is also his duty to ensure that this is there, both ways. He cannot say the company secretary has not informed.

Have you asked him? Has it been recorded? Has he given a certificate that all complies in order? All licenses are in place. So, this kind of due diligence is required.

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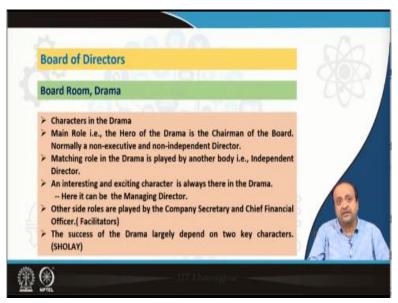


Independent judgement is required from all directors. Even if he is a non-independent director, his judgement should be for the wider good, though majority shareholders directors only are guided for the larger guidance for the individual, I mean, basically majority shareholders goal, but he is saying, the requirement is for the independent judgement, interests of employees, avoiding conflict of interest, promoting success of the company.

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Now this is a beautiful, I mean, I would say, I prepared this specifically, it is not from any book or any presentation. This is a kind of seen what happens inside a board. It is a boardroom drama I have given it, dynamics actually. The various characters in the drama. Main role is paid by the hero of the drama is the chairman of the board. There is no second thought on that. He calls the short.

Why he calls the short? Why he calls the short board? Because he is representative of the majority shareholders. He has the largest say in the company. He is the largest risk taker. Therefore, he is the boss of the board, boss of the board. Boss of the company is the managing director. Boss of the board is the chairman. He is the hero of the drama in a board meeting.

Normally, he is a non-executive and a non-independent director. Why? Because he never becomes an employee; he keeps himself as an employee. At the same time, he can never be independent because he is the majority shareholder. A matching role in the drama is more or less played by another person is an independent director, matching role, very important role.

If the chairman is powerful holding the majority shareholders interest, the independent director also has to play a matching role to look at the inclusive growth, to look at the interest of all the stakeholders, particularly the minority shareholders. He has to play a matching role. Then in the boardroom drama really becomes interesting. Otherwise, it becomes one sided, no drama at all, failure. The film is a flop. The drama is a flop.

A very interesting character in the drama is of the managing director because he has to play both sides. He has to balance. A very intellectual, strong, effective managing director knows how to balance between the independent directors and the chairman. The chairman, he is his boss. He is the boss of the company. He is the boss of the board and he is the boss of the company. But the boss of the company is dependent on the boss of the board, because finally, he is a majority shareholder.

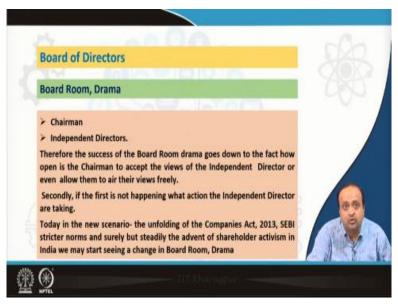
He is a salaried employee, but he knows the strength of the independent directors and the chairman who also wants him, then the independent directors should be kept under in confidence. They should not feel left out by any means. So, he has a very exciting character, I would say, a managing director, much of the success, ultimate success depends upon him how he balances.

Other side facilitator roles, normally their facilitator, they do not talk, they do not speak in a board meeting, unless they are told too, normally, they try to follow the line which direction it is going. They have no right to raise their voice or do very talking, unless they are told too

but they are the listeners. They are the real custodians of happenings in the board meeting, the company secretary and the chief financial officer.

Chief financial officer does not get path by right. Company secretary gets a path by right in the board. But chief financial officer does not get a path by right in the board, but is always an invitee in the board.

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The success of the 2 characters, the drama largely depend on 2 characters, right, as I told chairman and independent directors. I have given the example that chairman, independent directors actually are the success of the drama largely depends on how successful the drama is, the climax is, how they have raised the bar and discussion levels.

Now, one important thing is the chairman has to have a mindset to listen, a mindset to allow the independent directors to speak, open their mind and then a chairman would always like his independent directors to support him. So, he will find a reason, he will try his best to make them convince if they still want certain modifications, he will accept those modifications.

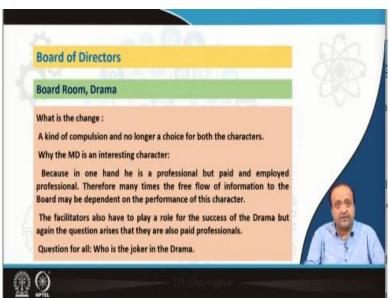
Even after this, he cannot make them agree, then a chairman would not take a decision against the independent directors. He will rather wait for the independent directors to fall in line into this scenario for a big listed company. He will never go in a conflict with the independent directors because he knows the market cap will further, I mean, will come down

like anything that is the last thing you want as the chairman, the market cap to go down; the share value to go down; the brand the net worth of the company to go down.

And it can go down in weeks by 500 to 1000 crores for large corporate. For large corporate, it can go down to 500 to 1000 crores and that has happened. So, no one will do that, no one. It depends how you can bring the independent directors in line, see reason to your decision or modify it the way they want it or even then that has happened, they say no, we want to rediscussion, revisit, rethinking, shelve it for the time being.

The other important aspect is the shareholder activism which is coming which perhaps, it is not affecting the board right now. But independent directors are very much aware that the shareholders activism, meaning that IAAS, institutional investors advisory services are playing a big role today in making things happen.

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MD, I told you that interesting character because he has to balance. The facilitator's role is there. Who is the joker in the drama? I mean, the joker in the drama would be somebody who is neither an independent director nor he is disclosed to be a majority shareholder, but he is somewhere in between. Who is this? This is the non-executive, non-independent director.

The non- executive director who is not an independent director so, he is not an independent director. He is non-executive; he is not in the board. He is not the chairman. Has been in the chairman? He would have become the chairman. So, he is actually sandwiched between everything. He is a yes man, maybe yes man to a chairman. But he cannot really come out

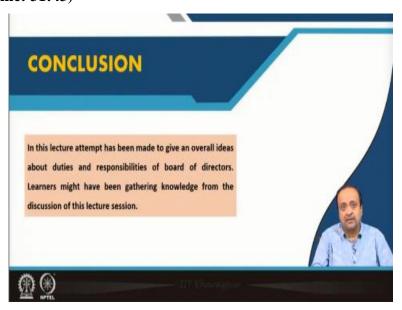
with a yes man because he has a responsibility also. So, he in the board, he almost becomes like a joker. Not much to say but still he is there in the meeting.

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References from all this, but actually, it from experience and what I have written and gathered in few of the taxman publications also, but references, of course have been taken from quite a few of them.

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The shareholder's activism does play a big role and independent directors are totally aware of that. However, I feel that non- executive directors, the persons who are non-executive directors and who are non-independent directors, they are somewhere sandwiched between the two and many times when they sit in the board, they feel suffocated. So, quickly have to take a decision whether they would remain like that or become independent. Thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-2: Corporate Governance

Lecture – 10 Corporate Governance a Way Forward

Good evening. Model 2, lecture 10 Corporate Governance a way forward.

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Corporate governance is always a way forward. It is something of a journey for any organisation, for any corporate or a wider thing for a corporate organisation for any country. There is literally no end to this journey. And in case of India also, we have come a long way from the days of voting at remote places for annual general meeting, where the shareholders cannot go, just because the shareholders cannot go, you have your registered office.

And remotest of remote part of the country were hardly out of total 50,000 shareholders in a company, 50 shareholders even cannot reach and out of which 49 belongs to a particular majority shareholders and maybe 1 or 2 straight shareholders living nearby can approach and all decisions passed within minutes, because shareholders cannot reach there. This was the practice in India.

Even 10 years back, have your registered office at the remotest place? So, that annual general meeting, the only meeting where shareholders can participate and take a performance

appraisal of the management, the owners who are in control of the management, including the directors, the auditors, statutory auditors cannot even reach that place. And votes are only cast those who could reach.

So, out of 10,000, 50,000 shareholders only 50 shareholders, 100 shareholders used to come, vote and all resolutions got passed in 5 to 10 minutes. Today, even in the remotest place, if a shareholder is there, he can if he wishes too that is a different concept, whether he wishes or not, but today he has the option to vote for or against a resolution; exercises is your choice.

And therefore, today, we are hearing and we are seeing literally resolution of resolution supported by the majority shareholders are getting defeated in the hands of the minority shareholders. Why is it happening? Because, you have allowed them to vote. You have done a mechanism of voting which is e-voting, electronic voting because you have made them aware by the various disclosures as you have done in the stock exchanges, which everybody is privy.

Everybody can see in the public domain. Because, you have brought out results in 3 months which used to come out in 1 year. Now, in 3 months, you are getting the results of a company; every quarter, you are finding what the company is doing. Because you have been built in a system of monitoring by independent directors, audit committees, risk management committees, various committees you have created of the board largely of directors who are not connected with the promoter shareholders, large shareholders.

All these have enabled the investors to be a little aware of still a long, long way to go but today still, with this small progress, we can see the results coming. Not one, quite a few. Resolutions supported by majority shareholders even holding 60% shares getting defeated even to the extent of shareholders, resolutions proposed by management supported resolutions proposed by majority shareholders sent to the shareholders for approval.

Withdrawn, withdrawn taken back, knowing fully well that this will get defeated, but at the same time of sending, they were not aware. In 10 days, 15 days, they came to know that these resolutions will get defeated, but by that time, the field has come from the market that the overall feeling is, this resolution does not require to be supported. So, a long way has, we have come in this journey of corporate governance.

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The way forward is going to be very interesting. It is to be seen how the majority shareholder run companies discipline themselves. Yes, there are quite a few of them who are doing everything possible to do the best of governance. They have changed their mindset. They have allowed directors of repute to be inducted in the board as independent directors. They are opening up the board for discussion.

The board was closed for discussion. Now, the board has opened up for discussion. Board meetings which were for 10, 15, 20, half an hour. Now, going for 1 hour, one and a half hours, 2 hours. Meetings before the board audit committees, majority independent directors, chairman independent as rounds for few hours much more than what the board meeting time consumes is almost 2 to 2 and a half times the board meeting time.

Quite a few mindsets of the promoters are now even talking of environment, society, governance, which were not the words earlier because it does not add to the bottom line. Now, the bottom line has been replaced by the word called health line. It is not bottom line only. It is not profit only. It is the health of the organisation which the promoters are talking off. Earlier, they used to talk of bottom line and top line.

Top line means revenue; bottom lines meet net profit. In between, they were not concerned. Today, that talking of in between which is the health of an organisation. So, health line is becoming important, not for all, but at quite a few of the promoters. They have felt that going

forward, way forward, the only way is allowed, open, disclose, dialogue. There is a distinct change of mindset and that is a very positive sign for corporate India.

Rules and regulations are all a welcome but mindset change is finally what is required. And that has happened for quite a few promoters. Corporate governance in India, it surely is surely on the upper path. It is very encouraging to see the way forward also looks extremely encouraging, extremely interesting and exciting as well. A lot of facilitators are there in this journey. We have taken by one by one.

Accounting standards are nothing but the guidelines for a statutory auditor to be followed while auditing the accounts of the company. The statutory auditors are basically the persons who go through what is given to them. Now, what is given to them is not what they should go through. They should look for evidence which is not given to them but which are significant and that is their expertise of an auditor, studying the business and knowing the business, understanding the business is very important.

Accounting standards gives various kinds of guidance notes in understanding this. One of the very important aspects of accounting standard which has helped corporate governance, improvisation; corporate governance disciplining, very important is related party transactions. We call it RPT. No one spoke of related party transactions before 10 years. Last 5 Years, they are all discussions. Now, it has become rigid.

For them, it is becoming rigid from next 3 months just down the line January 2002. Every quarter you have to know disclose your related party transactions. Corporate India never thought off; initially, no discussion at all. What is related party transactions? Now, related party transaction means a promoter driven company or a promoter largely promoter hold, held company, all companies are basically owned by a large shareholder.

Now that large shareholder as is holding as well as margin management control to its representatives. Now that large shareholder is not shareholding only this company or having control on this company, he has also a plethora of other companies in which he has got control. Many times, what happens? Business is done between these 2 companies, nothing wrong; nothing wrong.

You can do company business with various companies including the companies in which he is also a majority shareholder in that company also. So, supposing X company majority shareholder, Mr. A, also is a majority shareholder in Y company. Now, X and Y companies entered into transactions. Both the decisions are taken by these 2 companies board of directors in which he has influenced, significant influence being the majority shareholder.

Ideally, when this decision is taken, law is very clear you have to abstain from voting. You will not be counted in that. Legally, that is recorded, but actually what happens that is something to be known. Though he is not voting, but his presence is always there in the mind of the board that this is a company in which majority shareholder has a stake.

So, board might be influenced by that and might take a decision in favour of that. Now, if that happens, then that is a wrong decision. There is a break of corporate governance culture, because you are considering influence; you are not considering merit. Although he is not voting, the majority shareholder is not voting, but the shadow of the majority shareholder is looming large in it. So, what did SEBI do?

SEBI said, accounting standard said, let that be disclosed, nothing else. Let that be disclosed in the annual report initially. Now, it says let that be disclosed every quarter, the quarter related transaction which has happened and disclose it to the stock exchange, so that the whole world comes to know pan India, pan world is good in the institutional investors come to know that this company has entered into a transaction with another company, which are related parties.

Now, supposing I sell my goods to a related party transaction holder company, right fine, fair enough. You can sell. You can sell to anybody you want. But if you have sold, then you disclose that. When you disclose that, you disclose the quantum you have sold and the price you have done. The moment you disclose the price, the world comes to know whether you have done at an arm's length price or not at an arm's length price.

Arm's length mean, whether on an independent basis has the decision taken on merit or not. That is a huge disclosure requirement. And what has happened? This has stopped related party transactions to a large extent. This has stopped another related party transaction. Selling

of goods is not what is the thing to be looked into; what is to be looked into is loans we are

giving to related party.

The investments, you are making to that related party. The buying of shares, you are doing of

the related party. And why are you buying shares? What amount of money is going to that

company? What is the purpose of buying that share? How much dividend you will get from

that share? What is the worth of those shares? How do you do the market evaluation of those

shares? Are those companies listed?

Are their shares traded? Or is it a private company? Or is a non-listed company? All these

questions will open up the basic purpose of investment in related parties. Though the time

and inter-corporate deposits used to be given random to associate companies, companies

having significant influence at very low rate of interest or even at no rate of interest. Today,

all those have stopped.

All related party transactions getting captured each and every, even to the extent of managing

director remuneration related party transactions. Company paying salary to the managing

director is also getting disclosed verbatim. Any loan to the managing director, even in the

ordinary course of business has to be disclosed. Any loan to the KMP even in the ordinary

course of business are; not ordinary course of business in.

As per the company policy, he is an employee, he is entitled to get some loan house-building,

provident fund, whatever it is, children education that is to be disclosed. How much known

has been given to the managing director and what is the interest rate, how much loan has been

given to the KMP? So, accounting standards have brought in a lot of disclosure requirements,

one of the primary important related party disclosure requirements which has made corporate

governance which different level.

And I would also say cleaned up a lot of mess in corporates; cleaned up the balance sheet of

corporates is the related party transactions.

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There is another meeting which happens about the independent directors, is that the independent directors they meet have to meet at least once in a year without the other directors, meaning there will be no chairman, there will be no non-executive, non-management directors, only the independent directors, closed door meeting, nobody else is invited, not even the company secretary, not even the CFO, no one, only independent auditors.

What they will do? They will discuss among themselves, whether they are getting enough flow of information from the company they will record that. And all this will be taken by SEBI and other enforcement authorities investing authorities when there is a crisis in that company. Did the independent director record in their meetings that they were not getting any information?

And what steps did you take? Did they take to get that information? Did any of the independent directors in their meeting recorded that? No. If not, they kind of later on blame that we are not privy to information. If yes, recorded and what action you are taking to get that information. So, very little room is there now to play around for the exit route. If you are not doing your due diligence, so independent directors have to be very careful.

They are now responsible, they are having, you are meeting your own independent directors, your body, your team, your team members, nobody else is there. You tell whether you are privy to all the information, number 1. Number 2, you read the performance of the managing

director, evaluate the performance of the managing director. Most importantly, you evaluate the performance of the chairman.

The chairman's performance has to be evaluated by the independent directors in their meeting only. The chairman will not even come to know. They might say, the chairman does not need to listen to us. They might say, the chairman always forces us to listen to him. Or they might say, the chairman does not give him the scope to read. I mean, allow us to speak. If the right, what action they are taking?

In the next meeting, they have to say what action they have taken. Have they brought up before the chairman? Have the disclosures to the chairman? Have the shared this with the chairman? And what are the views of the chairman? And is there any improvement? And if they say no, we are fantastic. Our chairman is brilliant. We are getting all information. Chairman is so good, fine.

Then later on, if something happens, do not tell us the chairman has allowed you to hear your views. So, this is the purpose of the independent directors meeting, no escape route. Very strong due diligence now.

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And there is the reason you find; independent directors are no longer much demand. Only if you are sure of an organisation one joints as an independent director, otherwise not.

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These are basically to deal with the rights of the shareholders, audit committee, related party transactions. This is most important. Prompters of the company cannot vote related resolution for related party transactions. No, you cannot vote. Moreover, there is a threshold limit. Beyond which, if any transaction goes 10% of the net worth of the company, then shareholder's approval is required.

What approval? Shareholder's approval that too the number of shareholders voting in favour shall be more than the number voting against however the promoter shareholders will not be considered. Now, what will happen then? Supposing, there are 100 is the total number of shares, 60% is held by the promoters and 40% is held by the others. Now, 60% will not vote at all.

In that resolution, only 40% will vote and in that 40% voting, if you take it as 40 shares, then 21 must be in favour and 19 against, then only it will get past, minimum 21. So, promoters influence totally gone; it is only non-promoter shareholders who are going to decide whether this related party transaction will pass or not. Therefore, no promoter will go knowing fully well, it will not pass in on related party transaction exceeding that network, for sure.

So, this is another very, very important move which has been done. Within the network, if it does not contain the network of the company, in that case, fine. You can take a decision related party but you disclose everything to the stock exchange and the public. The moment it crosses that limit of 10%, shareholder approval will be required but the promoters cannot vote.

Other than the disclosure in the in the stock exchange and all, over and above this resolution cannot be passed at all unless it is approved by the shareholders where the promoter will not be able to vote. If the promoter does not vote, the straight away his shareholding goes, supposing he holds 60%, 60% goes, out 100, 60 shares goes, only 40 shares remain and in those 40 shares, 21 must be in favour which is a tall, tall task.

No one will vote for that resolution, which has got related party transactions. People normally shy away from those resolutions and institutional investors if the right not to vote, no one will vote for that. This will go for an absolute loss. I mean it will fail from day 0. Therefore, none of the promoters will take the resolution to the shareholders for passing.

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And the prohibition which has been made mandatory by SEBI is a whistleblower provision, very important. Corporate governance to a large extent depends on a proper whistleblower mechanism in an organisation. It should allow employees on a no name basis to blow the whistle. Sometimes wrong whistles are blown. It is true. Some cases, actually are done for a purpose.

However, for that reason, you cannot stop a very good mechanism like we should blow on. It has its pitfalls. It has its pitfalls; it has its challenges, but a mature committee which controls this kind of mechanism which screens, that kind of whistleblower mechanism. I mean, the complaints that come in, can jolly well find out whether it is time to take cognizance of those complaints or not.

Sometimes, these also are placed before the audit committee of the board and sometimes before the risk management committee of the board because both consisting of independent directors. So, there might be a case where it has to be placed before the audit committee take a decision. A certain whistleblower has raised a question of corruption or certain whistleblower has raised a question of crisks, it can be raised before the risk management also, but it is a very good mechanism. It has its pitfalls as well.

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Accounting standards definitely has improved a lot over the years and has become much more demanding from the auditors as well as from the CFO in maintaining the accounts. Large global corporate practices benchmarks have been put in with regard to disclosure requirements, even with regard to valuation of assets, fair value concept has come in. We have been always going into the value of depreciated assets.

Now, fair value concept has come in which is fair in all respects to get the net worth of the company. Many times, deliberately, fair value basis was not taken for income tax gains and purposes. However, now this has been stopped that accounts should be done on a fair value basis.

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Ineffective corporate governance will always lead to scams. We have seen a plethora of them. I am not for a moment saying these are only the cases. These are just tip of the iceberg. The iceberg is very deep down and quite a huge one. But it is not that all have to be honest, if they are disciplined, even now that is enough. There is no question of unearthing; unearthing those scams are failures, which are there yet to be disclosed.

But what is important is, no one is trying to score a point on this. Everybody is looking for a better environment for corporate governance. And that is happened; that will happen and that is happening. These measures will make those who have still not come in line, fall in line. Quite a few of the majority shareholders has gone through a mindset change, no doubt about that.

But those who have still not come, just sitting and thinking what should be done, should I think are all going to follow this. It is just a matter of time. There is no escape from this.

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SEBI guidelines of corporate governance on transparency, integrity, ethical decision making, mitigate the conflicts of interest between shareholders and promoters basically. Shareholder's promoters mean large shareholders or minority shareholders that are the conflict of interest.

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A lot of right has been given to the minority shareholders to raise their grievances to write to the regulatory authorities, Ministry of Corporate Affairs, Serious Fraud Investigation Office SFIO. If they find anything like that thought, they can on name basis, fine, send it and investigations are done based on that primer facie evidence there, then only real party disclosures.

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Investment decisions are very important. Investors look into this corporate investment decisions. Today, investors are very foreign portfolio investors do not subscribe to the views of the company as regards investments. Unless and until they are absolutely clear, it is in the same line of business whether it is creating competition or it is further aggravating the situation, whether there is enough players in the market which is already the market is there or you are a new entry.

So, many things they are looking into just because you are making an investment; they are not looking into approving your investment decision. Whether there is a need for going to the market or not, basic question they are asking. Why are coming to the market raise an issue

your internal accruals are enough to fund your expansion, diversification or whatever you are doing. Why are we raising this fund?

Then you must be doing something which is other than that, you are telling you are raising for expansion, diversification, but your results are not showing that you required that. You have enough net worth; you have enough reserves; you have enough past profits. Do your expansion and diversification from there. Why you have come to the market to raise funds? There has to be an answer to that.

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These are the major filings which are done in the CG system, annual report filing, corporate reporting, management controls interaction, functional departments, any investor presentation you are making, any meet you are having with the financial institutional investors, you have to give that information to the stock exchange first. And before putting that investor presentation to the investors, you have to share it with the stock exchange.

It must go to the stock exchange that this is what I am presenting to the investors. So, that they are not privy to their information, the whole investor community comes to know what you are doing.

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Basically, key factors that influence the corporate governance system is not only the fact that independent directors, audit committees, minority shareholders, majority influence of the major shareholders, it is also to do with the sustainable business development programmes that a company does. So, there is a provision now of business responsibility reporting, BRR which is again, our practice to improve corporate governance.

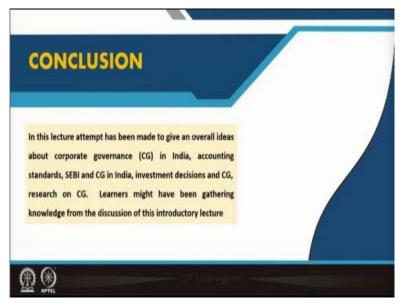
There, a lot of disclosure requirements are there which gives basically, the strength and weaknesses of an organisation as well as the risks and opportunities. So, it is one way a balancing thing. What are the strengths of the organisation? What are the weaknesses? So, the shareholders, investors can come and see and evaluate the company because many times, it is not possible for them to find out what exactly are the risks, what exactly are the strengths, what exactly are weaknesses, what exactly are the opportunities?

So, all this is a separate section for listed companies which are called business responsibility reporting. Various inside information are given on that intrinsic inside information, which is made public and this information is a statutory information, not a non-statutory information duly signed by the all directors. So, the board of directors take responsibility for the statement. This is another good disclosure, which has brought in by SEBI for the investors community to understand the corporate well and accordingly made their decisions.

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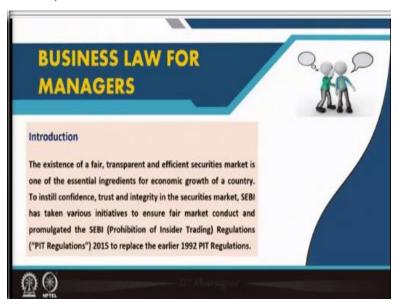
Various references that I have taken, mostly from my experience also, it covers the various aspects of investments, decision making, corporate governance and all. That brings us to the close of this session on lecture. Thank you so much.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-3: PIT (Prohibition of Insider Trading)

Lecture-11 Concept, Scope and Features of PIT

Good morning, we are starting lecture 11 on concept, scope and features of PIT. PIT stands for prohibition of insider trading regulations.

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Now the whole concept of prohibition of insider trading a regulation which was brought about in 1992 was replaced in 2015 because of the reason that the 1992 act was more of an awareness kind of thing. And it was more into awakening of what can tantamount to insider trading. It was a guiding but that act did not have much teeth in it nor this act was actually looking into the nuances of the nitty-gritties of fine insider trading practices which started with the help of digitalization, with the help of technology. Where to get into the route was becoming a challenge and again even if you are going to the route to established the violation or the crime was becoming difficult in view of the provisions of the law that in time, so 2015 act came into play.

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Whenever we talk of insider trading 2 words come into play, who is an insider and what is trading? And why there should be a prohibition? Many times, question is asked what is the need of prohibiting of trading. Trading of shares is always healthy, there will be demand, there will be supply, more the liquidity the better it is for the company, for the stakeholders, for everybody, for the investors. It is not the question of prohibition of trading, trading is most welcome but trading by insiders has to be prohibited. Who are insiders and why it is to be prohibited?

Insiders are person in one small definition of insider there may be a huge definition of insider connecting all the dots. But the basic point is anybody who has access to unpublished price sensitive information, anyone under the sun who has access to unpublished price sensitive information. So, if we have to go to that length, we have to go to the next slides to understand what it tantamounts to? We will see the scope, the salient features, the disclosure of trading by insiders and trading plans.

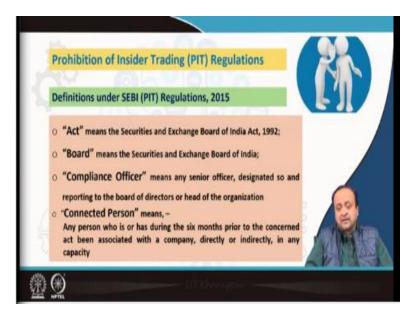
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This is more of a preparatory ground for 2015, recommendations were there, truth committee actually it is called the Sodhi committee not because that chief justice Mr. N.K. Sodhi was heading that committee. And various case laws, case studies were placed which unfolded that 1992 act was unable to take care of those. So, the need of the hour was to bring a more robust definition of insider, earlier the definition of insider was restricted to the employees, the directors, those who are connected to the employees and directors in some way or the other.

But the 2015 definition of insider is anybody who is possessing or access not possessing or access to unpublished price sensitive information. If for any reason somebody is having information by his role in a company and he is sharing their information also because of his role to somebody, so that person also becomes an insider. Earlier definition would have restricted it to the person who has been authorized to have this information. But while he was sharing in the course of his work in the discharge of his duties was not really coming into 1992, now 2015 brought it under. Anyone who is having access to that information whatever be the reason will become an insider.

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Certain further definitions were brought in. Compliance officer who is always the company secretary of a company. Being the company secretary, his role has expanded like anything, today he is the custodian all the records, he is a custodian of all the recording some minutes, he is also an officer who has to ensure that the insider trading regulations, prohibition of insider trading regulations are followed.

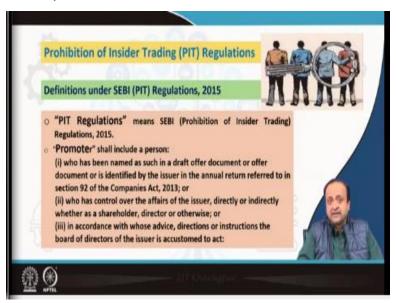
And any violation deviation he has to report to the stock exchange, his responsibility is to report to the stock exchange. We find today so many disclosures by companies saying that ex-employee has traded in the shares of the company and that employee has not disclosed that before trading. Neither he has submitted a trading plan; however, he has now disclosed that he has traded with the shares, so this is for the information of the stock exchange.

The company is further investigating the matter to find out if there is any financial gain even if there is no financial gain. Whether he was in possessing of any unpublished licensing information during that time, necessary action as per the code of conduct of the company will be taken. There was no need of this disclosure before in 1992, 2015 made it mandatory. There are examples where senior officers of the company before they buy the shares of the company never used to inform the compliance officer of the company secretary.

Now if they do not do, they run the risk because all their pan numbers are had to be manually submitted to the regulatory body through the registrar. There is a registrar; there is a controlling body which collects the pan number of all the employees, senior most employees whose names have been given by the compliance officer. These are the persons who are the designated persons who are supposed to have access to unpublished price sensitive information.

This list has to be prepared and given to the regulator along with their pan numbers including their spouse's pan number. So, from there SEBI can track whether their trading has happened or not and therefore so many cases are now coming up. That you have traded in the shares of the company, please explain was the trading window open? Did you take the permission of the compliance officer? Was it as per the trading plan and copy given to the company to also respond? So, tracking of those trades have become easier now because of the information flow that is happening.

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Definition of promoter has been widened here, anybody having control over the affairs directly indirectly whether the shareholder director or otherwise, the control aspect has come into play. Instructions of the board whose accordance with the instructions of board, the board is accustomed in accordance of whose services directions and instructions the board of directors of the issuer is accustomed to act, so he is the chairman of the board of directors. As promoter

means normally, he also has the control over the management of the company by holding the position of a chairman.

So, if somebody is whose direction instructions the board of directors is accustomed to act, then he becomes a promoter, not that he has to hold shareholding only. Even if he is somebody who is controlling the directorship of the company, majority of the directors then also he becomes a promoter. All these definitions are coming because to hold the promoter also responsible for insider trading. Then you are a designated person, you are access to information, be careful that there is any trading in shares which is violation of insider trading regulations then you will be penalized for that.

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This is exactly what was disclosed; I mean discussed that in possession of access to unpublished price sensitive information. Now we will go to unpublished price sensitive information, what is the price sensitive information and what is an unpublished price sensitive information? Basically, a price sensitive information would mean something which can affect the share prices of the company in the bosses.

Any information which can affect, have an effect on the prices of the shares in the market, that is called a price sensitive information. Now when it becomes unpublished, when it is not published in the public domain? And how it remains unpublished, we will discuss as we unfold. Trading,

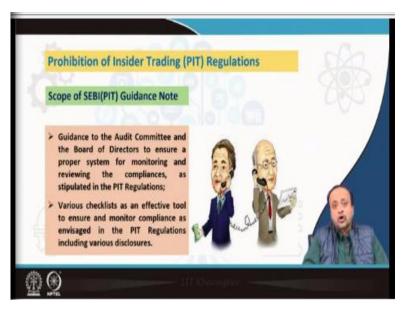
trading actually means buying, selling, dealing, agreeing to subscribe even agreeing to subscribe, agreeing to buy, agreeing to sell that happens to trading.

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PIT regulations clearly specified certain do's and don'ts for the companies, what the company would do? What the company would not do? The first thing the company would do is to prepare a code of conduct; we call it a model code of contact. For all companies should have a code of contact for the employees to know when they can buy the shares. When they cannot buy the shares? What they will do if they buy the shares? Whom they would inform if they buy the shares? So, this is called a model code of contract, it is a duty of the company secretary is the compliance officer to have this circulated. And also have it in the company's website, so that all employees can have access to that information.

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The audit committee of the board again very important provision of 2015, the audit committee and the board of directors should ensure there is a proper monitoring and reviewing of the compliances. So, is no longer restricted to the managing director and the company secretary and the KMPs, the board of directors are now looking into it. The audit committee is now looking into to ensure that there is proper monitoring and reviewing of the compliances.

Various checklists have been given have been prepared by the regulator and also have been recommended by the regulator, one of the checklists also consists of the trading plan. If you want to buy the shares of the company on a regular basis, no harm, give in advance notice that this many numbers of shares I will pick up in the first 3 months, 6 months this many and the next 1 year I will pick up these shares, your trading plan should be there. Now you might say, sir, why do I pick up the shares or why should one pick up the shares if he is not knowing how the company will perform?

Well, that is speculation, you are an employee of the company, you have access to price sensitive information if you want to buy, give your trading plan in advance. You cannot see the performance of the company and then have information in your hand and then buy and sell. Anybody who is a designated person having access to price sensitive information should give a trading plan to the company. Come whatever may this is what I am going to buy during the year and that trading plan is to be disclosed to the stock exchange.

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Connected persons, the new concept which is brought in, example I was giving you have got access to unpublished by sensitive information as per your role say company secretary or a CFO. Now he shares that information with his team, team meaning the team of accountants of the team of compliance officers. The designated person list into the 1992 would have restricted themselves only to the company secretary.

Now 2015 act says all the connected persons, if he is sharing this information with the registrar, the registrar also becomes an insider. If he is sharing this information which is secondary the secretary also becomes an insider. If he shares his information with his junior management trainee his management training also becomes, now why he is sharing? What profile is like that it has to be shared?

All information cannot be kept by 1 person and then compliance can be done, somebody has to be, some 1 or 2 persons have to have also that confidential information along with that company secretary, so all these persons also become connected persons. Same in finance department, accounts are prepared, results are prepared, you cannot think the CFO only has the information and the number 2, number 3 or further people down the line do not have the information, the treasury head does not have the information, cannot happen.

A finance of a manufacturing company at least 10 to 15% have privy to that confidential information, what is coming out, what is the result going to be, what will be the PVT, what will be the pat, what will be the dividend amount? Some kind of idea they will be having, may not be the exact amount because dividend is never known before it is recommended by the board of directors.

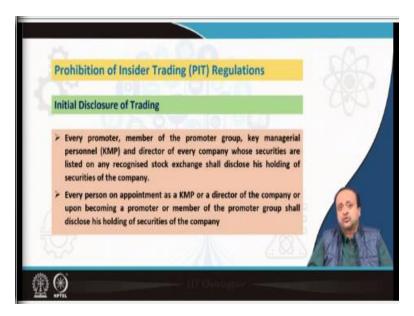
But looking at the PPT they can find out, everybody has that much maturity in the finance department to find out what is going to happen. So, they always have that information, the person who is preparing the cost records of the company. The cost accountant the entire internal audit team for example. The entire internal team including that junior most employee has privy to that information, so he is also a connected person. He will be also considered a person who is an insider and has access to unpublished price sensitivity information.

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Where trading plans is a new concept which is common but has not become very popular. Trading plan has not become a very popular, people are shying away from buying the shares of the company, they are saying it is better I do not buy then I disclose what I am going to buy because they are also feeling that it might lead to further investigation.

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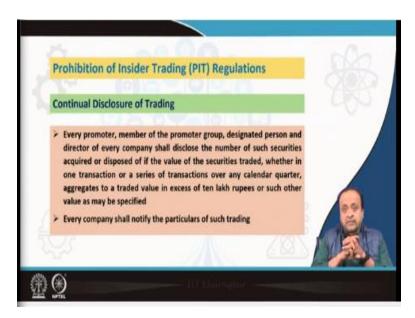


This is something very important, every promoter member of the promoter group, key managerial personnel, who is the key manager personnel? 3 persons are key manager personnel, the managing director, the company secretary and the CFO. They have to declare their shareholding to the stock exchange. On a particular date they will disclose and if there is any increase or decrease, they have to inform.

Because they are considered to be the most important insiders, they are privy to the core unpublished price sensitive information. The core, the results are prepared, the final results are deliberated, recommendations come from the board, chairman has his observations, senior most independent director may give his observations, chairman of the audit committee who is an independent director may give his observations, all these observations are restricted only to 3 persons.

These do not percolate down, these are restricted in all companies' large companies to 3 persons the managing director, the company secretary and the CFO. So, since they are the truest, I try to call them the truest insiders of a company. So, these truest insiders have to disclose their holdings. And if there is any change in KMP anybody taking **of** over the position of a KMP has to disclose that, change in a promoter group has to be disclosed.

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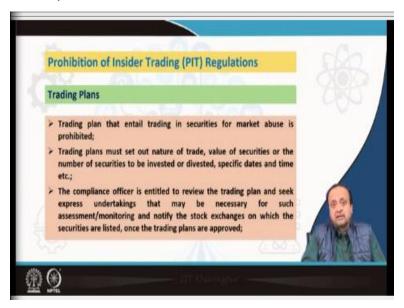
Restriction is, the cap has been given 10 lakh of shares or such other value has been specified. Now these 10 lakhs is what the semi has prescribed, some companies has restricted it to 5 lakhs, value of shares, it is not the face value, it is the market value of shares, traded value of the shares. So, if a share value is 1000 rupees traded in the market it is face value can be 10 rupees, so it is talking of the traded value 1000 rupees, any calendar quarter, then you have to inform, disclose or even if you dispose of that also is to be disclosed.

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So, trading plan is something as I told you the reasonable period in which the trading will take place, normally it is a period of 1 year. You have to trade; you have to give a plan of what you are going to do or buy and sell of the shares in the next 12 months.

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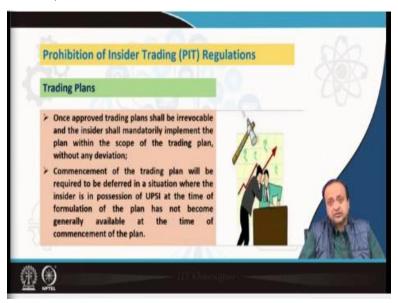
The compliance officer is entitled to review the trading plan, so it is not very rigid, some companies may make it 6 months, some companies make it 3 months. But whatever is made known to all in the company, this is where the company and the management can be at a risk. If it can be proved that this trading plan or this model or this code of conduct has not been disclosed properly.

It is not available in the website of the company, any new joinee who joins an organization. It is the job of the HR to ensure that he takes a declaration from him that he has read and understood all the provisions of various regulations which are prescribed and mentioned in the website of the company. Companies have strong HR basis, they get a tick mark from them, giving a box where he has said I have read regulation, this I have read regulation, that, so all the regulations are to be actually made aware and he should also give a declaration that I have read.

Not only that, these designated persons every year, month end, every year end that is by 31st march have to give a declaration in the code of conduct that we have abide by the prohibition of insider trading regulations, every year, religiously. Some companies do it even 6 months, that compliance of the prohibition we say, what happens? The moment given a paper to you to sign, a senior most employees may be the vice president marketing or the executive data marketing or the director, manufacturing, they are busy in their own way, whole year.

But when you give a paper to him that this declaration has to be given to the board of directors of audit committee, he becomes alert. His conscience also picks him, have I bought any shares? Have I sold any shares? I have to disclose that. It is very common in corporates it happened and being the compliance officer, many times people come and running at you that I purchase certain shares I forgot to disclose, what should I do? So, it is always better to get a declaration from them, so that they do not miss out and later on end up into difficulties.

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Because SEBI is tracking, SEBI has a robust tracking mechanism, earlier people were thinking that if I buy and sell who is going to track me? Now it is being tracked and therefore you are fine, so many companies are coming out with disclosures given by their own employees saying that yes, a mistake has been made. I have purchased the shares, I have not informed, I have sold the shares at this price, is the profit I have made.

Sometimes they pay back the amount, sometimes the penalty amount is paid and everything is informed to the stock exchange, this action the company has taken. There are plethoras of examples in the stock exchange information site where companies are giving this kind of information, good companies; companies who are rated highly even there these cases are misses are happening.

I understand category b, category c, rating category I am talking of but even category a rating companies are also giving disclosures, yes, they have been slips and misses. What was the need of giving that? The need is it is being tracked.

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It is always very important to understand that insider trading regulations has proved to be extremely useful in disciplining corporate. From my personal experience I can say that I have come across lot of case studies in which I have seen a discussion in the board instead of getting into both discussions goes sometimes into decision of how a particular company is doing? What is the worth of that company? Is it being it good to remain invested in the company?

Board meetings are earlier years in the board meetings normally discussions used to take place religiously on investments. Today that has stopped totally, because first of all board meetings discussions are recorded, second this type of discussions are totally prohibited. Board of directors are actually persons who have got huge insider information, why? Because it is not, he is sitting in the board of that company only, he is sitting in the board of various other companies.

He may be a banker, he may be a charter accountant, he may a management consultant, he may be a lawyer, he may have so many clients, he may be so many other areas to a specialization. So, he is a reservoir of information and most of these informations are unpublished information.

Many times, inadvertently this is shared but that inadvertence can never have an effect of an exemption.

So, many cases we have seen even to the extent of a very senior legal counsel of a multinational company, she has sharing information with her husband. On a case in which she guided and on her guidance the company came out victorious in that matter. But while sharing she passed on some information which was not known to the public, that they were trying to acquire some shares of another company. Acquisition is one of the most confidential informations.

Husband while discussing with his friend who was a broker, pass on this information whether inheritably or deliberately is immaterial. But that broker made lot of money from that transaction and it was also shared with that husband. The lady lost the job, not only the job both the husband the lady and the friend faced investigation, penalty, image, social status, all. So, as they say then even information like this cannot be shared with your partner, we have today employees working in different competition.

Husband working in one company, wife working in another company and they are in competition, it can happen and is happening, so what is the case? Will the husband resign or the wife resign or both of them resign or both of them continue? Now legal advice would be considering prohibition of insider trading regulations, very clearly specifies, you disclose that. Both should disclose that my spouse is working in competition in this position for so many years and the other also would say my spouse is working in that.

By giving the disclosure they have protected themselves. Even after this if the company allows them to work in their respective fields, it is the responsibility of the company to create that ambience of that circle of security of confidentiality that they do not have access to unpublished price sensitive information. But this couple would always run under the scanner of the SEBI, why because if there is any inadvertence also from their side, their disclosure would not help them.

They have to ensure that no disclosure takes place and even if the disclosure takes place ensure that is disclosed to the stock exchange immediately, today there is no choice. On prohibition insider trading regulations, there are discussions which are going on even to the extent of whether it is at all required for the employees of the company who are having a certain designation or at a certain level at all invest or by the shares of the company.

Why go into any kind of unnecessarily investigations of the company as well as the employees? One end makes it a policy that if you are an employee of the company, you will not buy the shares of this company as long as you are the employee neither you nor your spouse or your near relations. By the process the company is not affected, it is otherwise a healthy pool of liquidity, the company is no problem; company has no problem if 10, 15, 20, 100 or even 1000 employees do not buy the shares.

But the company avoids the risk of insider trading to some extent. Prima facie it has done of a good policy, it has come out with a good policy, some companies are coming out. At a certain level all companies have mostly come out. Senior management, departmental heads, board of directors stay away from the shares of the company, do not at all buy the shares of the company.

And if you are already holding hold on to that share, do not sell it. If you really have to sell it, take the permission sell it once and then again do not buy it. So, this is how the act is becoming stricter and stricter. Even to the extent of not only buying the shares of the company, shares of the company of the sister companies, associate companies. I know of a case of a conglomerate, where the managing director of a particular company wanted to buy the shares of another company which is in the same group and he sought permission from the compliance officer of that company.

And the compliance officer said as per law you are absolutely ok to buy but as per our company policy you cannot buy the shares of the company. But since this is not a company, however this is a sister company or associate company in which there is common shareholding, common control, hence it is advisable to stay away from the shares of the company.

Few days back SEBI has come out with another amendment stating that persons who are at the board level and who are at the decision-making level particularly the promoters and directors should stay away from the shares of the group companies or sister companies. It is advisable SEBI has used the same word, should stay away, ideally, not forcing them but giving them a guidance, stay away.

So, buying shares or selling shares of other companies in which you are not connected is absolutely fine. But in the company where you have got information unpublished price sensitive information, information which has got impact on the share prices can have. Example, some expansion plans, some diversification plans, some acquisition plans, some raising of fund's issues, some mergers, some amalgamation.

Even information like closing down of a unit, negative information but still an information, resignation of a CFO or a managing director is an information, very important price sensing information. It is not that only increase in prices, even decrease in market prices would have a crash on the market prices. All these would remain unpublished unless you inform the stock exchange immediately on happening.

Many times, this information are not immediately informed because there is a concept of informing those informations which are material for price sensitive, material to have a material effect on the price. If the board of directors feels that it will not have a material effect on the price then they can still say, well, it is not a material price sensitive information, hence no need to disclose.

But though it is not material but it is a price sensitive information and you are sitting on that information you are only privy to that information. Therefore, for any reason if you trade in the shares or your relations trades in the shares during that time you are actually violating the law. When a company thinks of expansion or diversification or acquisition the process starts much before the happening, it may take 1 year, it may take 6 months.

But in the board meetings these discussions takes place maybe 1, 2, 3, 4 board meetings happen and then the company enters into an MOU or company enters into some kind of understanding and then the company thinks this is the right time to inform the market. Before that the company also was not sure whether it is going to happen, it was a stage of deliberation, negotiation, information gathering.

When you go for acquiring a company the first thing you do is do a due diligence. And due diligence of the financial matters, due diligence of the business matters for that time you create an own core group and ask them to find all information about the company. And then after getting that information you place it before the board, board of directors are apprised that this is what you are planning, shall we go ahead? Give direction.

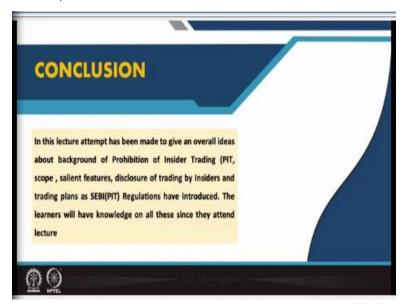
Nowhere it is informed to the stock exchange that point of time because it is not required to also, why? Because it will create a false market because only you are trying to create, you are trying to understand whether at all you will go for that acquisition or not. Now if you inform that unnecessarily share prices might go up and finally it does not happen then the share prices will go down and you will be charged with giving false information to the stock exchange, knowing fully well it will not happen you hike the prices.

So, either way it is a challenge, so you cannot give that information which is not right, which is not material, which is not something which can have really have an impact. It is more of a searching information but the searching when it starts the board of directors come to know or few of the employees of the core management comes to know. Like the finance guy, the chief financial officer, the managing director, the marketing head who will be marketing the products of that acquired company.

So, all these becomes information to them but that information is only to them but it does not go to the market, it will go to the market only after it is actually becoming something of a solid nature when it can be informed maybe it takes 6 months, maybe it takes 3 months. But during that 6 month and 3 month they are custodian of that unpublished price sensitive information.

So, it is very important that they take care of that information hold it till such time. Therefore, unpublished price sensitive information is what is the guiding factor in prohibition of insider trading regulations.

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We will discuss more as we go forward, thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-3: PIT (Prohibition of Insider Trading)

Lecture-12 Investigation and Prohibition on Dealing, Counselling

Good morning, we are on lecture 12 investigation and prohibition on dealing and counselling relating to PIT prohibition of insider trading regulations.

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Now we have discussed this insider trading PIT's guidelines, now it is also important that we understand that how the SEBI the authority looks into this. End of the day if this regulation has seen the light of the day is because of the securities and exchange board of India. It has been doing all that possible to ensure that this menace of insider trading which is a very, very difficult proposition.

It is not at all easy to put a blanket ban on this, because like one cannot prevent 1 person from joining competition by carrying information. One employee leaves 1 company and joins a competition then many companies have the contract written while taking him on employment

that he cannot join competition. Well, that is not law, that law we absolutely will fall flat before

the court.

Therefore, what companies have done, they have taken a cooling off period that you cannot join

for 1 year or maybe 2 years maximum, even 1 year is more than enough. Now even after 1 year

he joins if he carries information with him which is not in laptop, which is not in pen drive,

which is not in any form but only in the brain chip, I call it the brain chip. If in the brain chip he

carries it then nobody can stop it, same in case of insider trading.

To what extent one can put a blanket control, how come it can be made totally full proof? That is

what the journey SEBI has undertaken. It is almost an impossible task considering the corporate

scenario; however, the step SEBI has made the awareness level SEBI has done, the action SEBI

has taken, the penalty SEBI has imposed and the kind of tracking SEBI has started doing is

extremely important to understand and to be appreciated.

Corporate India has taken cognizance of prohibition of insider trading regulations. And it is also

important to understand that many discussions nowadays when takes place in the board, the

independent directors voice their concerns to note that these are all very price sensitive

information which we are discussing now gentlemen. So, this should remain unpublished for

some time as per law, as per requirement.

So, we should all ensure that this information does not pass even by inadvertence nor any of the

recipients of the information if at all on a need-to-know basis, there is a word called need to

know, somebody has to be shared this information. If that be the case to ensure the person to

whom we are sharing the information also is guided by this oath of not passing the information

to anybody else or to trade in the shares of the company during possessing this information. So,

SEBI has done that job quite well in making corporate India understand, that they are under

scanner.

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The various powers of SEBI in this direction is first of all to make a suo-motu inquiry without anybody informing SEBI, any investor informing SEBI, any whistleblower informing SEBI. There are instances where employees of the company have informed SEBI about insider trading violations. There are whistleblowers blowers within the organization who ensure that unpublished price sensitive information is not passed on and also unpublished price information is not used for buying and selling of shares.

SEBI may make it on it is own and enquiry, many times it happens that chairman of a board in a press conference when media asks question, this is a common thing. Many times, media go on asking probing questions and the chairman of the board, most time nowadays they are fully aware that if they say something which is beyond what is available in the public domain then that tantamount to breach of insider trading regulations.

Say they do not normally speak but if for any reason at any point of time, if he makes a comment stating that certain such companies being looked into for acquisition or such and such person is being looked into as head of operations or even such and such person is joining our board as independent director when there has been no information given to the stock exchange and that is published in the media.

It is for sure the next day morning before 10 o'clock the surveillance department of either Bombay stock exchange or national stock exchange or both the stock exchanges by 10 o'clock sharp a letter or the fax will come, not a fax, email nowadays will come from the surveillance department of the stock exchange asking for the clarification whether the chairman has exactly said this on what basis because no information is available in this respect in the market.

This has happened, this happens random used to happen all random now it has reduced. It has reduced because awareness has come up; it is the duty of the compliance officer the public relations head to ensure nothing goes to the press which is not going to the public, press and public together. If it goes to the press or the press gives it in the newspaper without going to the stock exchange that is violation.

Board investigates even in cases where the share prices suddenly goes up in a company, without any reason there is a certain spot in the prices of the shares and it continues for few days. Then the SEBI writes to the company, the company secretary saying that your share prices have gone up this much in the last so days and the volumes have also gone up, request to find out the reasons and let us know.

Very innocuous answer can be that we do not know anything about this, we do not control share market, it is all the case of demand and supply, if investors are demanding my shares the prices are going up, yes, there you know a straightforward answer, no one can touch you. But the question is not like that, the question is awarding you, making you aware that we are noting this.

And therefore, you on your turn make all your persons who are privy to the unpublished price sensitive information that during this period you are under double scanner do not ever try to trade down the shares of the company. Warning you, SEBI is giving a warning that we are watching your prices are going up and your volumes are going up. Even when the market exchange the Sensex is going down, your prices are going up, what have you done?

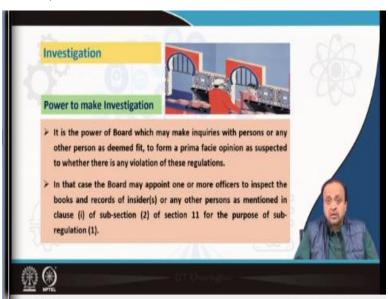
What information you are sitting on? What is that information which you have shared with few people who are buying the shares of the company? Whereas, the other retail investors are not

aware of, they are not buying, SEBI can find out also who is buying the shares of the company. So, investigation from SEBI can come for various reasons and once it starts it is quite time consuming and extremely provocative and also it brings out more than what actually has gone to it.

Because they start then digging for information, so no one actually would want an investigation from SEBI for a case like this rather they would like to comply in (()) (10:46) what SEBI has said. And when the investigation starts if you do not cooperate then it will be a criminal breach, the directors may be prosecuted. And it is a time bound investigation, it is not an investigation will go on.

The registrar should be also under question, it is almost like a CCI investigation while they check the mails, they start checking the mails of the insiders what kind of information has been passed on. So, investigations by SEBIs on their own on information from whistleblowers, on information from the market, various sources are there.

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Even on a prima facie basis SEBI can start information investigation, SEBI might find out that this is just a prima facie case, like prices are going up, volumes are going up but there is no reason, the company has not made any disclosure, what can be the reason? Then SEBI must start

investigating who are buying the shares, is it a cluster of investors who are buying the shares? Is a few institutional investors who are buying the shares?

Then you will try to find out what was the investor conference said last time? What was shared in that investor conference because whatever has to be shared in the investor conference has to be shared with the stock exchange? Now if they find out we want to go through the recordings of the investor conference, all investor conference April 22 onwards has to be recorded, now it is a voluntary period, you may record, you may not record.

From April 22 all investor conferences have to be recorded, so many companies already have started recording investor conference. Now if you have given in the investor conference 20 slides, while making the presentation before the investors you have deliberated on the 20 slides but while talking on the slides you have passed on much more information than what you have contained in the slides, very common.

When a person starts talking on a slide if he is not always very aware that I may pass on price sensitive information, he may go on giving more information than what is contained in the slide. So, SEBI starts recording the slides, checks those recordings and if they can find out that the chief financial officer or the managing director has given more information to those 10 investors who have been invited in that investor conference.

Then what has been given to the public in the form of a slides 20 pages or 20 slides, then it is a clear case why this people are buying the shares of the company. And why the volumes are going up or the prices are going up, then the entire company, management, the CFO, the managing director can be show cost, can be penalized and the image of the company takes a meeting.

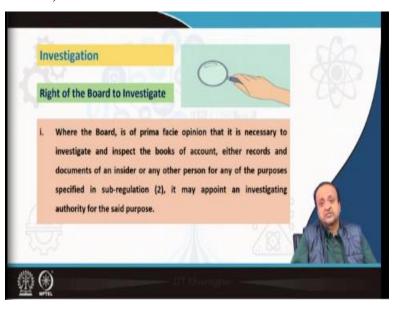
That you have held a press conference, investor conference, you have invited selected investors, you have passed on information much more than what you have given to the stock exchange, a clear case of breach. So, from a simple case of a share prices going up, volume going up without any reason SEBI may started investigation. Then the company will be totally at the receiving end

because company would fail would feel I have given the information to the stock exchange; I have given the slides.

But while giving the slides you have passed on more information while meeting, while giving the slides you have certain information but while meeting the investors you have passed on more information that is what we call sharing unpublished price sensitive information, a clear case of breach. SEBI has today offices almost in all metropolitan cities, SEBI is a robust body now though do not directly come in contact with the corporates, it contacts only through the stock exchanges.

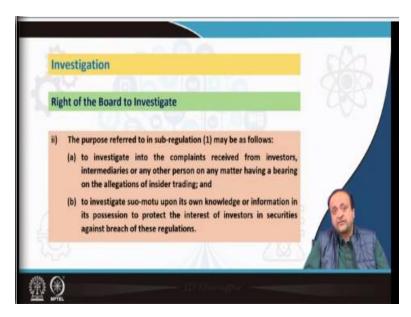
But and even the corporates cannot directly approach SEBI, they can only approach the stock exchanges to keep that independence arms lengthening, SEBI does not come in direct contact with the corporate only through the stock exchange. Unless an investigation starts where it calls the corporate in it is office for submission of papers, for discussions, for deliberations, for inquiries, otherwise no.

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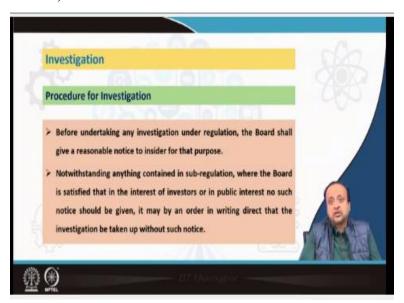
It has all the powers like a quasi-judicial body, it can summon, it can inspect, it can cease, so all those powers it has got. It is an investigating body totally authorized, empowered that can take even help of the police.

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Complaints receive from investors, intermediaries, brokers, banks, even employees as I told whistleblowers and of course in it is own suo-motu. On his own knowledge like price is going up, volume going up, nobody is informed but SEBI starts on it is own.

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Well, an opportunity of being hard is something which is to be given everywhere, SEBI is not come on a fine morning like a CCI dawn raid, no, SEBI does not do like that, knock your office, seize all everything not like that, they will give a reasonable notice to the insider for that purpose. Unless something is that important that it can be destroyed or something like that, normally does not happen, it is not like CCI. Normally gives notice and where in exceptional

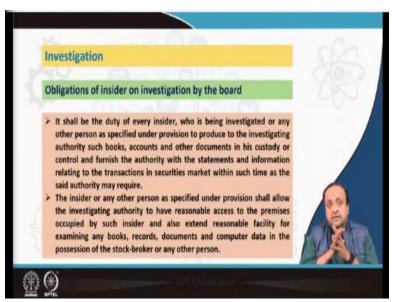
cases where there may be a chance of the investors or public interest may be sabotaged, they may do it without giving such notice but these are rare cases.

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And total cooperation, any non cooperation is something of a violation and criminal violation.

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Any document that they are taking, any document that they are keeping with them they will give a recedes, they will record that. All the information, premises, computers, laptops, mail exchanges, server, everywhere they have to have access, all the data they need to know. Because mails are very important sources of information, extremely good sources of information, even mobiles, WhatsApp messages. There is a case where a finance guy of a company, young person

he got to know the results of the company, he took a photo of that and shared with his friend who

was actually a broker.

Broker not a broker is an employee can broker because many employees become trader. Many

employees at their young minds who after discharging their official duties of course not

compromising, have lot of spare time and they trade in the shares. So, he has no way connected

with that company, his friend is a finance guy, he gives information to him. He buys the shares,

sells the shares and his friend and him share the money, it was caught, caught unfortunately the

finance guy there was a camera. Now in most companies these are cameras and, in that camera, it

was shown that he was taking a photo of the financial results.

There was no need for him to take a photo, why should a finance guy take a photo of the

financial results which has not yet been adopted by the board? The young man took a photo in

his mobile and that ended up in his losing the job and also his friend under investigation. So,

these are all instances where small child like innocent I would call it but still unpardonable. So,

although mobile informations, email exchanges, even sometimes telephone calls or recorded

numbers are investigated to find out what?

If they zeroing that here is the information flow then they will do all this. But in a phishing

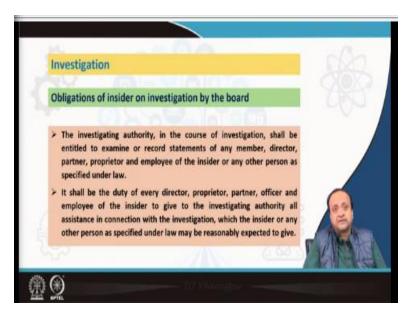
expedition normally they do not go for checking all the phones and all, first the zeroing who can

be the person? Who could have done it? Maybe 1 or 2 heads, the head of department or someone

like that, then all the information of those 2 persons, from there they will find out all the routes.

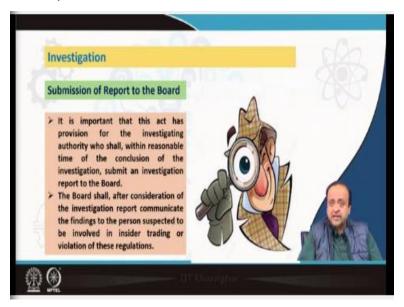
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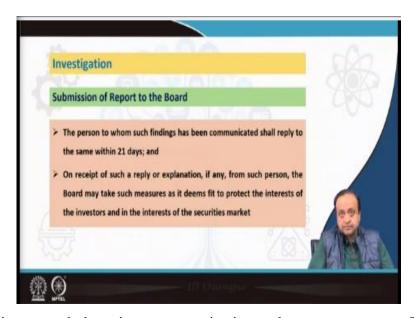
They can approach anyone, any member, any director, any partner, any employee, total authority and full cooperation is required.

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They will prepare a time bound report, it is not a report like it will go on doing for years or months; normally they do it within 30 days to 60 days. They submit a report very fast on prima facie evidence is what is coming out and depending upon the report the higher authorities have SEBI take a call, what should we do? Shall we go for further or shall we close or shall we impose a fine right away?

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Once the report is prepared, they give a communication to the person to report. Of course, he will also have an opportunity of being heard, that this is a report against you, this is what we have gathered against you, so you give a reply that is also time-bound reply. Normally no one replies without a legal counsel whenever an employee or a senior director or somebody is getting a letter for show cause notice or something like that from SEBI or investigating report.

The first thing it does it speaks to the legal counsel and based on the legal counsel he drops a reply and gives it. Now most of the time it is seen will have case laws after this where case studies will find out. Then so many cases people have come on their own immediately getting the report admitting everything without fighting even, without contesting even, so many cases. Because the legal council must have advised him no point fighting this because case is so clear you have traded, you have violated the law.

So, your council will not give you a wrong advice that yes, you fight I will ensure that you will be in the case because he will never win the case. Because he knows the investigative report were clearly shows that he has violated the provisions, so what is to be done to pay the penalty, huge amount of parenting to the extent of crores, they pay and they accept that there has been a violation which we call compounding.

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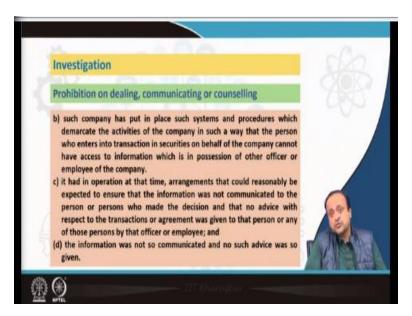


So, communication also even if you are not traded, if you have communicated, we have a famous case where only communication led to so many things. You may not have done anything, you may not be even the party to the booty the profit you have made but you only passed on the information to anybody or even your known, unknown anyone. But he has made money, you have not made money, still you are responsible, connected person and you will be charged.

You might take the please sir I have not done anything me lord, innocently I have given that information, thereafter what he has done I am not aware of, 2015 act very clear, no way. Because it is correct unless that is done you will not be able to stop the menace it has to be, the person should never pass on information whether you make money, whether you make loss, whether you do any trading or not is immaterial.

You are the source who has passed on the information you will be responsible, no company shall deal in the securities are another company associate of that other company while position of unpublished price sensitive information, this is again correct. Dealing in the shares of an associate company, that also is another menace; you invest in shares of a company knowing all the inside information about that company that also is a prohibition of insider trading regulations because you have access to price sensitive information.

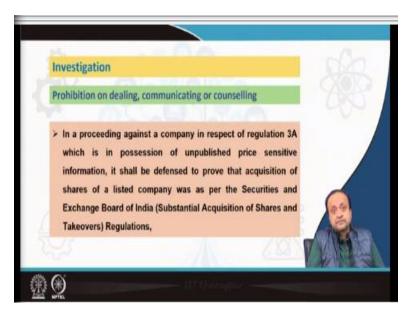
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Only thing it has to be ensured that as a corporate which I started by saying ensure that you have enough information in the website and any employee can go through the website and find out the dos and don'ts. It should not happen the people are not made aware of; it is the duty of the company to make them aware of the entire prohibition of insider trading regulations and from there derive the code of conduct of the company.

Every company would have his own code of conduct what is to be done, what is not to be done? Broad guideline is given by SEBI but detailed one has to be given by the company, like many companies totally banning employees after a certain level to deal in the shares of the company. Model code of conductor SEBI has never said that but you can do it, you can make your own company like that or even companies now thinking why any level? At all levels let us stop buying shares of the company, even associate companies.

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In fact, defenses of the companies or the employees many times it seems are totally under kind of admission. Defence is not really a defence, it is a kind of admission, yes, there has been, we have taken this action and going forward will ensure must sister compliance, is a clear case of admission, no defence. Because when SEBI comes out this kind of complaints or investigation reports very little can be done.

Because these are very clear, these evidences become so clear that it becomes defenceless. It is therefore very imperative for the corporates and the senior management and the board of directors to do a review of the cases happening if any in the company and the policy. Whether further stringent measures are required, whether further review of the policies are required and also on a test case basis have interaction with some of the employees to understand how they are looking into this prohibition of insider trading regulations whether they are facing any challenges or not.

Because all companies have not stopped buying and selling of the shares of the company at all levels. There are still 90% or more than 90% of companies which allow their employees to buy and sell in the shares of the company. The concept of trading window has come up by SEBI saying that this is the window, this is the time when the company's employees can buy the sale and shares.

And buy and sell in the shares of the company, rest of the time they cannot. So, when the trading window is closed, no employee who has access to that information should buy and sell the shares irrespective of the fact whatever the company says. Now trading window closes when? Normally the trading window closes whenever some financial results are to be disclosed to the stock exchange, before that all companies normally do is close it for a period from the quarter end.

Say for example if it is January, February, March from 1st of April till the results are out, now we get quarterly results. Earlier used to get annual results then 6 monthly, now it is quarterly, so every company comes out with quarterly results within 45 days from the end of the quarter. The law says 45 days from the end of the quarter; every company has to come out with his results.

So, SEBI has prescribed a common trading window closure for all companies, we call the closure of trading window which is from 1st April till the date your board meeting is held for consideration of results and 48 hours beyond that. So, it is a standard practice, every employee should know that I cannot trade with the shares of the company during the period of 1st April till the board meeting 48 hours after, similarly 1st July till board meeting in the month of august or 45 days thereafter.

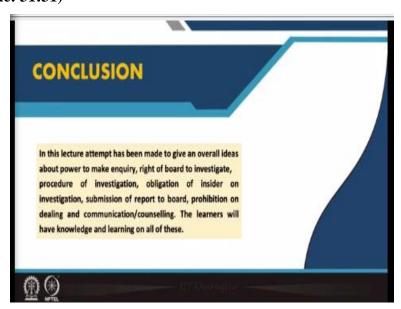
Similarly for the next quarter ending, this is the 4 blocks of around 40, 45 days when the trading window is closed, rest of the time you can buy and sell of the shares as per SEBI. Now the model

code of content of the company may further tell no you cannot any point of time, unless you disclose to the company or you have a trading plan or you are at a certain level below, above you cannot, so these are further restrictive code of conduct.

But SEBI says trading window closure very clearly from quarter end first day till 48 hours from the conclusion of the board meeting. No employee can buy and sell of the shares, trading window totally closed, employee having access to unpublished by sensitive information, they should not, designated employees. Insider trading definitely the privation, regulations is still unfolding, not for a moment I am saying that it is again a test of time as and when further developments in technology will take place.

More and more cases will come out where people are trading of shares, if it is found out then most stricture provisions will come in. I have taken references to some of these books but mostly as I always say is that from my experience and from my readings and other articles that I go through from there this is what I normally make present my cases. I do not restrict myself only to the bare acts and others, I share what I find happening actually in reality.

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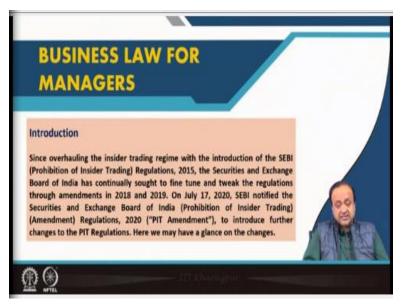
Thank you so much, wish you all a very good time ahead, thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-3: PIT (Prohibition of Insider Trading)

Lecture-13 Key Changes in PIT Amendment, 2020

Good morning, we are now in lecture 13 on key changes in prohibition of insider trading amendment, 2020 which comes after 2015; initially it was for 1992, then 2015 and now 2020.

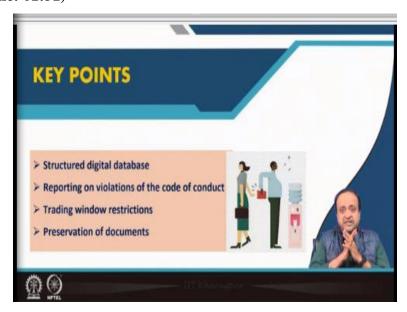
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What is the need of so many changes happening in insider trading regulations, securities and exchange board of India, has so many other regulations, why a particular regulation is repeatedly getting changed after every 5, I mean 92 then 2015 and again in 2020? There are other regulations substantial acquisition takeover regulations, CCIs all are there, then they do not require so fast changes.

Fast changes are required in SEBI insider trading regulations because what is experience now was not experienced before. More and more digital based violations, more and more violations of insider trading regulations by connected persons rather than by insiders. So, these are basically the need, these were the need to have a quick amendment of the regulations 2020.

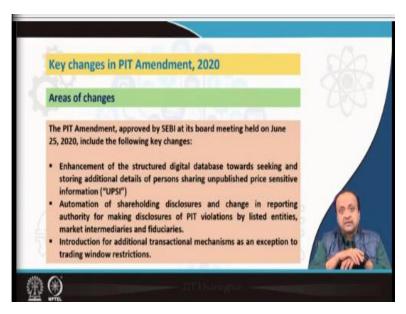
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Some of the landmark provisions in these regulations is a structural digital database was created. This is created for all companies listed, the company does not know perhaps the company employees does not know perhaps but SEBI has a structural digital database which has been collected from the company asking for basic information including the PAN numbers to which the linking can be done of the transactions as and when recorded.

Further improvisation of the trading window restrictions have been done, very important is reporting on violations of the code of conduct. It is the duty of the stock of the companies to report any violation of the code of conduct to the stock exchange. No longer is an action to be taken by the company inside the company only, stock exchange also going to know who is that; person who has violated the code of conduct of a company and what action the company is taking on that. And preservation of documents, SEBI can ask for those documents any point of time when which requires to investigate.

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Now this is important, enhancement of the structured digital database towards seeking and storing additional details of persons sharing unpublished by sensitive information. This was not there earlier, there was a lot of reservation in this, there was a lot of reservation even a person has been given the position of designated persons. Inside the companies many said no, I am not a designated person, I do not have privy to unpublished licensed information, why should all my details I should give it to you?

Though the answer was you are a designated person and as per designated person this information is sort by SEBI. The question then came who has made me a designated person? So, board came to the rescue and the board said we have made you the designated person. We consider you to be a designated person, designated person means person having access to unpublished price sensitive information.

A nice example can be I mean this has been a problem for many companies which are conglomerates. Now in a conglomerate there you have different companies, separate legal entities and then there is a concept of a group. The group controls not by shares but management wise, direction wise, now there is always a concept of a group CFO or a group HR head. Now they might feel that for a particular individual company how I can be a designated person?

The group CFO might still argue that I do not have information unpublished as such, it is only when the published information comes, it is the CFO that particular company who has unpublished price sensitive information. Similarly, HR might say. I am a group HR I do group directions on HR policies why I will be designated as a person having unpublished price sensitive information. And if you have made it till day it was ok you have made it, now you are asking all for my information about my digital database about my name, my employees, my spouse, my next kids and kin their pan number, their shareholding all these details why should I give?

So, they are challenging their own designation as designated persons, why because it has to be shared with SEBI and that digital database has to be created. So, lots of internal disagreements were there on this on the very concept of designated person. Finally, of course everything settle down, it takes little time to settle down, so finally it settles down and it have been accepted that all these persons are designated persons and since they are already named as designated persons.

Now they cannot say they are no longer designated persons just because information has to be given about their kith and kin and their shareholdings, their relation's shareholdings, their PAN numbers etcetera. So, all this digital database gathering was a huge exercise finally to a large extent done and therefore you see lot of tracking happening through SEBI. Disclosures of PIT violations by listed entities, this also has started coming, there is an internal code of conduct for all companies if there is a violation of that the company used to take action against the employee.

But now only not the company only if your company is taking action fine, what action it is taking, what violation has happened has to be reported to the stock exchange. Stock exchange wants to know how many cases in a year happen to that company of violation. So, all this will give enough information to the company, the employees of this company are either they are not aware of or even if they are aware of why these violations are happening so much in this particular company? Just to keep track monitor put pressure to build up a robust system in particular companies.

This is called actually monitoring the company very closely, earlier SEBI was not doing this, now SEBI is doing is please disclose. Trading window restrictions were all along there, additionally certain transactions are also coming into trading window. Earlier it was only results, quarterly results, now SEBI is saying any price sensitive information, any agreement you are entering into, any contract you are entering into.

If you have information and you are going to sign an agreement, then have a trading window closer also for that. Period you decide but have a trading window closer, during which time? All the persons who are having information will not trade in the shares of the company, additional trading mechanism.

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This is exactly the structural database which were talked of, what are the kind of unpublished price sensitive information that normally is generated from that company that is also captured. UPSI means unpublished price sensitive information. So, a particular company these are the insiders, these are the details, these are their shareholdings, this is the trading that has happened in the last 1 month, 1-week whichever way SEBI wants to see.

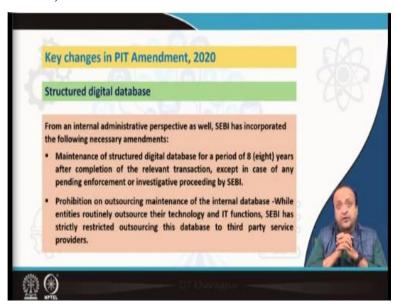
And what kind of unpublished price sensitive information they were privy to when this shareholding happened, how SEBI comes to know that it was an unpublished price sensitive information? Because after disclosure of that information it becomes public information, so prior

to that it was unpublished price sensitive information, SEBI tries to track that, that this is an information they have given about the results of the company.

So, these results before we have been prepared must be in possession of this persons, they are aware of for a period of maybe 1 month when the results were coming out, they have information for everything. During this period how much the shares were traded by them? What trading they did? Look at the kind of investigation that SEBI is doing by gathering information. Did their kid and kin of the head manufacturing buy and sell shares during the period before.

Say for example 1st March to 31st March when the results were getting prepared or any relation of the CFO or it is connected persons in the treasury department, finance department any of them bought and sold shares. Trading window closer is from 1st April but before that from 15th of March or 1st of March when results were prepared because they had information about what is going to come. So, at that point of time it was unpublished by sensitive information.

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The database has to be maintained for a period of 8 years, after completion of the relevant transaction 8 years is as per the company said also, all records are to be maintained for a period of 8 years, so SEBI has also mentioned that it will be for a period of 8 years, all documents would be had to be maintained. Unless there is any enforcement investigating proceeding started if it has already started and the investigation report is already going, it may even cross 8 years,

10 years, 12 years, really it happens. But if it happens in that case those records are to be maintained even after 8 years.

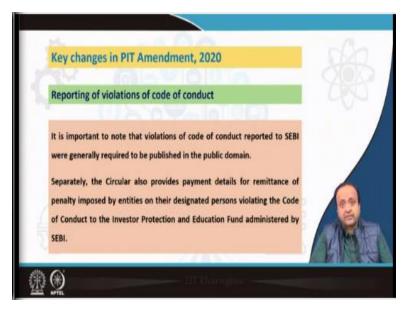
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Reporting violations format SEBI has changed, it is basically a format of reporting which SEBI has changed and we have now made it clear in the format it is mentioned. What was the nature of violation? How many shares the company particular employee was holding? How many shares the company the particular employee was holding after the particular incident? Did he increase the holding or did he reduce the holding? What was the price before, what was the price after?

Did he make any profit? Did he make any loss? When did he disclose to the company? Was the disclosure voluntary or on the enquiry of the company? So, all these parameters have to be made, finding out whether the control mechanism of the company caught him or he himself disclosed it and he disclose it when?

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So, there is a format of disclosure, penalties are imposed by SEBI depending upon what action the company has taken. If the company has already put a penalty, then SEBI will say if it is a just penalty if it is okay for them SEBI might say okay, fine, the penalty amount is alright. If the company has not imposed a penalty only a warning, SEBI might say no, a warning will not do, whether a loss or a profit, normally company seize the company employee has not made any profit, it is a loss, so company just gives a warning to him. SEBI says even it is a loss, it is a penalty has to be imposed, SEBI might ask the company to impose the penalty, just to debar him to do this from any further.

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So, these are the additional when SEBI has said other than financial results when you have to put

a restriction on insider trading and have a trading window closer. Now introduce certain

restrictions which would be exempted from trading window this list includes, differences to

allegations of insider trading covered under regulation 4 of PIT regulations out of statutory

obligation. Subscribing to a rights issue; tendering of shares in an open offer.

Now subscribing to a rights issue will not come under trading window restrictions because rights

issue is something which is given to the shareholders as a rights entitlement. So, when you are

making an issue of shares to the right shareholders and they are subscribing to the right shares.

So, it is not a case of any trading window restrictions, it will not come under trading window

because it is a rightful right of a shareholder to subscribe to the rights issue.

And it is again determined at a price through a process described by SEBI only SEBI has a

mechanism for issue of right shares. The price is we determine by the merchant banker in

accordance with the formula. So, that formula has to be followed, for that if somebody is

subscribing to a rights issue it will not come into trading restrictions. Tendering of shares in an

open offer, when does the open offer happen?

When somebody acquires shares more than 25% or more than 75% in a company before

acquiring, he has to give an open offer to all the shareholders. So, this when the tendering of

shares in an open offer happens that also there is no trading restrictions for that. So, these are the

only restrictions which are given but restrictions like acquisition of shares, restrictions on

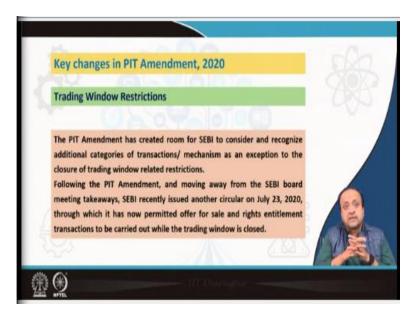
expansion of the company, restrictions during amalgamation or when QIP issues are going to

happen, qualifying institutional placements. All those times the trading window closures will

take place and it will be informed the trading window will be closed from this to this.

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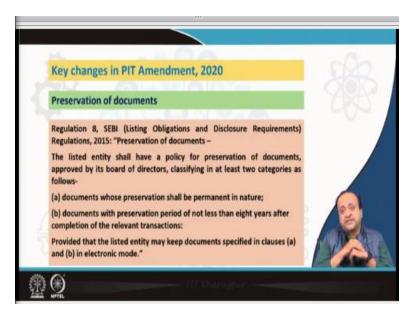
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The amendment has further given power to SEBI to bring in additional categories of transactions mechanism and on exception to the closure of trading window restrictions; some additional power has been given. Overriding power has been given to include but also power has been given to exclude certain trading window related restrictions which are statutorily an employee is required to do, ESOP for example.

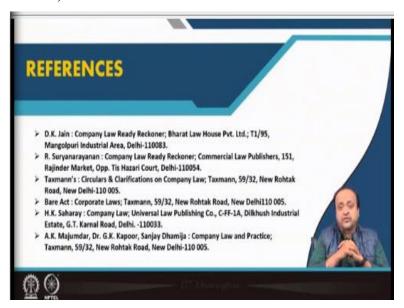
A company is giving ESOP to its shareholders; employee stock options scheme, any employee buying those shares does not fall under the prohibition of insider trading regulations, there is no trading restrictions on that. Accepting the fact when he stops are given to you in ESOP itself it is stated that you have to have a lock-in period of 1 year, 2 years depending on what is the nature of ESOP. Some companies have a 1-year lock-in period, some companies have a 3 years lock-in period that is it, no further prohibition can be there from SEBI side. So, statutorily certain restrictions are given separately, rights issues, open offer, ESOP which are permitted.

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Preservation of documents is very important because later on it happens the documents are not there; SEBI might sue the company for not preserving the document. It is a very easy way of trying to escape, documents are not there, beyond 3 years we do not keep documents that will not do, for 8 years you have to preserve the documents and investigation starts it can be n number of years once investigation starts within 8 years, then that those records are to be kept permanently.

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SEBI as regards this trading window is concerned and restrictions are concerned is still evolving; it is not something basically which has come to any kind of a conclusion like that. SEBI has kept it open and also inviting suggestions, there is a forum of SEBI which invites suggestions from investors particularly the retail investors, not only the institutional investors, retail investors what

kind of information flow is preventing them to have information, further information of the company.

Is there anything which is preventing them? What further information they want from the company? And if there are instances where they find that the large investors are privy to more information than the retail investors, SEBI is reaching out to the retail investors which has not happened in the past. It was more concerned with the disclosure requirements, the prohibition of insider trading by the employees of the company and designated persons.

And to some extent; information flow to the large investors, the institutional investors, the foreign portfolio investors but what about the retail investors, the investors who really need the liquidity in the market. Many times, their information flow to them is restricted; they get a neglected attitude from the corporates. Well, these are small investors, they do not may add up too much on the market demand and they cannot increase the market cap neither they can reduce the market cap.

So, information flow to them does not become the primary target, all the institutional investors presentations, all that the company does is only to the big investors. The small investors hardly get an opportunity to meet the MD and the CEO on the investor presentations. They look for only the results that come out in every quarter, how much they understand from the results is a difficult thing.

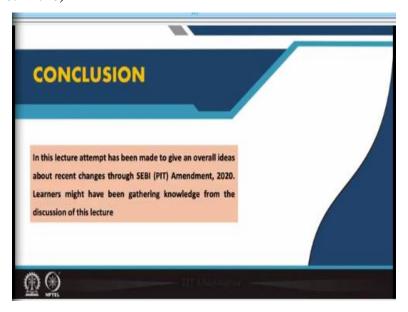
Because financial results understanding, itself is very difficult, they depend on the annual report which comes in once in a year and they go through the company website. Again, going through the company website and understanding the company is may be difficult from investors who are not financially that literate or aware of. So, what is this large number of institutional I mean retail investors how do we address their need for information?

So, SEBI is looking into that and has already started approaching the retail investors to inform what kind of information flow from the company would help them to take an informed decision about investment in the company. So, that is what is going to come in days to come when maybe

a portal may be opened up by SEBI asking retail investors. It is also a fact some of the retail investors are gradually becoming mid level investors, they are no longer 100, 200 shares may hold even 1000, 10000, 15000 shares. So, it is not a question of the 100 and 200 shares, so those 15000, 20000 shares obviously whole shareholders obviously would require some information flow from the organization.

Maybe a retail investor meet we may see in coming days, where the retail investors maybe 100 or 200 of them are met. And company gives information, shares information which are there in the public domain but in a more explainable manner to them. Understand what their queries on the company get their views. So, that may be what may be the order of the day coming from SEBI. These are some of the references that I have taken but mostly again I repeat from my experience in this field.

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We will discuss more as we go forward, thank you.

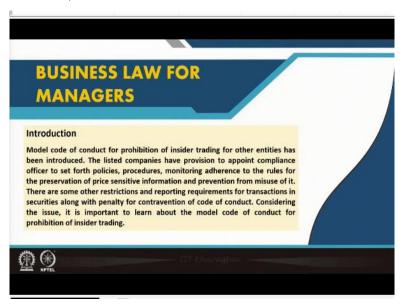
Business Law for Managers Mr. Kaushik Mukherjee **Vinod Gupta School of Management** Indian Institute of Technology, Kharagpur

Module-3: PIT (Prohibition of Insider Trading)

Lecture-14 **Model Code of Conduct for PIT, Trading Initiatives**

Good morning, we are on lecture 14 on model code of conduct for PIT and trading initiatives, PIT stands for prohibition of insider trading.

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The model code of conduct is basically a guiding tool prescribed by SEBI to be followed by the corporate, to be adopted by them as per their requirements. It can be stricter than what is mentioned in the model code of conduct, but ideally should not be easier than what has been stated. So, depending upon the circumstances of the company the company may further tighten it, regulate it, but not loosen it up. That is the purpose of this h model code of contact for probation of insider trading.

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Now whose responsibility is this to do? The first and foremost responsibility arises from the compliance officer of the company, it is his responsibility, he has to ensure that the prohibition of insider trading regulations, the model code of conduct is understood and then a code of conduct for the company is prepared. And then that is made known to all the employees, deliberated with some of them on a test check basis to understand how far they have understood.

If required make a presentation before them and also make a presentation before the board of directors the audit committee, get their approval consent and finally put it in the company's website, this is the introduction part of it. But while introducing this itself is a challenge because there may be observations given by the employees and others of fact that. When the model code of conduct is saying this why the company is putting so much h interpretations and making it so strict for the company for the employees to do.

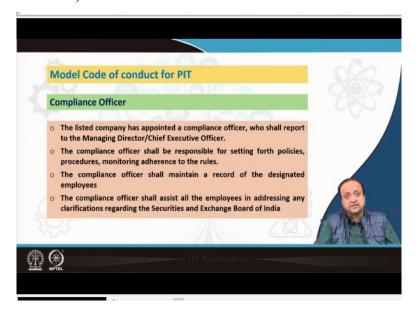
Why not allow the employees to do exactly as per the model code of conduct. So, this debate was going on in all companies. Now it all depends how the board of directors feels; what is the mindset of them? An example of this can be that the board of directors of the company may allow employees to trade in the shares up to a certain designation beyond that no. Or they may totally ban all the employees, model code of conduct has not said anything about that, all employees can trade only not during the trading window closure when persons having price sensitive information will not trade, other persons even during that time they want to trade they have to disclose.

But most of the companies have made it very clear to the employees not to trade during the closure of trading window. Even then there was reluctance of the employees that what is the problem if I disclose even lot of young GTs when they are recruited, they said why is the company's policy is not to trade in the shares? Do you not feel that the employees also to have been the owners of the company ownership, they bring out stewardship or ownership of the company which is largely right; there is nothing wrong in that asking.

But again, the company's policy depends, but as of now most of the companies allow their employees to trade in the shares during the non trading disclosure, I mean non trading closure period up to a certain level. This is the position as of now. Preservation of price sensitive information is very important; it is important that this does not get by any chance disclosed to others other than on a need to no basis. Reporting requirements, we will see as we unfold and penalty for violations of code of content very stringent, very stringent violations are there for code of conduct and even the fine can be quite high in certain cases, some companies have asked employees to go also.

Modern code of conduct does not say it leads to the company to take the disciplinary action and some companies have taken the extreme action of even asking the employees to go for repeating violation in prohibition insider trading not one single case but repeat. It has been happening again and again for employees; those employees have been asked to leave the organization because of violation of prohibition of insider trading regulations.

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Now this compliance officer as we are taking is the internal custodian of implementing, insider trading prohibition, insider trading regulations in the company. He is the sole internal custodian. He will be responsible for setting for the policies, procedures, monitoring and errands. So, while setting for the policies he will take the help of the board the audit committee, get invaded by them. And also, some companies likely do to the risk management committee because there is a huge risk of insider trading.

So, the risk management committee of the board also is taken into consideration and is involved in setting force the policies, the procedures and also time to time the risk register is placed in which any violation of the insider training regulations are highlighted to the risk committee of the board and their suggestions are taken. There should be a clear-cut record of all the designated employees of the company, by designated employees means employees who are privy to or who have access to unpublished price sensitive information including connected persons.

So, all this list has to be mentioned any particular point of time if somebody asked who are the designated employees? Now again if a designer employee leaves the organization it has to be updated. If somebody joins as a designer employee it has to be updated also. So, continuous monitoring and updating is required for the list of designer employees. The compliance officer will be the single point of contact for addressing all clarifications regarding the sequence exchange board of India's model code of conduct.

There will be lot of questions on trading plan. There will be questions on selling the shares, how long I have to hold the shares? If I buy the shares, can I go for a reverse transaction the next day? No, the law says minimum 6 months holding. If you buy the shares, if you go on buying first buy, second buy, third buy, there is no gap in that, you go on buying, but once you buy to sell there should has to be a gap of 6 months. So, the holding has to be 6 months. That is the model code of conduct saying. Some company makes is 1 year.

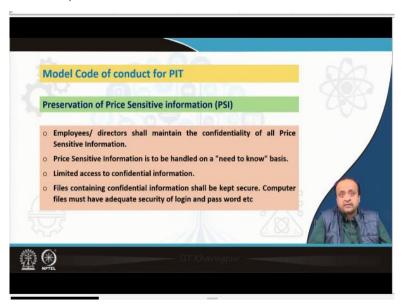
Employees disagree, if the model says 6 months you can make it, why should you make it more than 6 months? So, fair enough 6 months, but from the last buy. So, the first buy may be in on 1st of Jan, the second by may be 30th of Jan, the third by may be 5th of February. So, from 5th of February 6 months you cannot sell, not 1st of January in a series of buying. Similarly in selling, if you are selling first, second, third and the buy will come after 6

months. So, there is to a lock-in period of 6 months, both in case of selling and in case of buying.

This is a model code of conduct, some companies make it 9 months, some make it 1 year, but again employees of the companies sometimes they have deliberations with the compliance officer, why are you making it more sector, what is that purpose is to be served? So, it all depends but again the compliance officer if he feels that it should be done then he will place it before the risk committee and the audit committee to decide. Now if the risk committee, audit committee is convinced it has to be 1 year then the employees have to agree because that is the policy making of the board.

So, compliance officer has to balance between these 2 requirements the employees needs and what is the law saying and how much to really put it in the code of conduct of the company. It requires lot of deliberations, it requires understanding. Unnecessarily it should not be forced upon the employees, at the same time the code of contact should look robust, strict and something which is also exercisable, doable.

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Confidentiality of information, it should be actually a culture in an organization, today in many companies they do not even talk to any vendor, any consultant, without signing an NDA, a non disclosure agreement. This is the culture of an organization, the moment you enter to a company they say hello, hi, have a cup of tea and then let us start talking on the subject on consultancy.

What do you do? I do this, I can help you in this, fine hold on we have a standardized NDA agreement, let us sign that first and then we talk. The company gives the NDA to the consultant. The consultant goes through and gives these observations on the NDA, non-disclosure agreement based on which they start talking. So, it has to be something of a process that no information flows to anyone unless and until we sign some kind of a confidential disagreement.

Because I need to give it that information to you, I need to tell you certain information which perhaps is confidential in nature; I am not sure but can be confidential in nature. So, why not enter into an NDA that is also a very good step, where you have ensured that you enter into an NDA. Now if the vendor discloses that to another party, he will be responsible not you, but you have not entered into an NDA and he discloses that you will be also responsible.

So, as a corporate you need to ensure that the system is robust in an organization, it is a culture that we do not share any information which is unpublished and any information which we think can be confidential in nature. Even if it is published it is not no longer confidential, but if it is unpublished, it is confidential and some people only know. So, I cannot share that information with you?

Yes, you need to know, a consultant need to know many information before he can give a consult, it is right, if he is not given that information how do? You give you the advice, for example somebody is making a strategy for you, say for example ESG environments societal and governance is a buzzword now. So, you create an overarching strategy for that. Now that group or gentleman or person who is leading the consultant he might or she might ask for information from each of the departmental heads including the management committee members, the board.

He will interact with the vendors, he will interact with the customers, he will interact with the employees. So, if he asks for information which are absolutely confidential. Then if you cannot share that information no strategy can be formed. So, how to share that information? You share the information by entering into an NDA non disclosure agreement. Now if you enter into an NDA in that case you are protected, you have given the information very clearly that he will you use it only on a need-to-know basis.

He will not disclose this information to anybody unless he ensures that person also maintains confidentiality of that information. If there after he trades, if there after he does anything you are protected that NDA protects you, need to know basis, price sensitive information is to be handled on a need-to-know basis, by PSI here we all mean unpublished price sensitive information, if an information is known in the market, then no need to know, unpublished price sensitive information is to be handled on a need-to-know basis.

I have to give you this information. Say for example the CFO has to give this information to the treasury head on the results of the company. Now he gives it on a need-to-know basis only to him and only when it is required to him not before that. He is not required to be given 10 days before, he has to be required to be given just 1 day before, even to the board of directors many companies are sending the financial results along with the board agenda which is as per law the agenda has to be sent 7 days before the board meeting.

So, 7 days before the board meeting even if the results are ready no one sends to the board of directors, they send without the results to the board of directors' agenda. Now the board will be asking, the director should be asking, send me the result so that I can come and make a deliberation on the results, you give it to him only a day before and that too after the trading hours. Trading hours ends on 3:30.

So, 4 o'clock you send him the results. He goes to the results and comes next morning. He might be unhappy, but if the company policies we share the results with the directors only a day before after trading hours that is also a practice. Because many times in the board there are not only directors, there are also nominee directors. Now nominee directors are directors who are nominees of the financial institutions.

Any information to them also would be definitely confidential, they are all directors but why take a chance in providing information any beforehand, you provide it when it is absolutely essential, need to know. He needs to know on the evening before the board meeting because reading a financial result for a financial literate person does not take a whole night and that to an UFR which is a limited version of the results.

Annual report we all understand it takes time. In any case that is sent 21 days before. So, for 21 days one can study that big fat document, but this is a one-page UFR it does not take few

hours than to in fact an hour is more than enough to study the result. What is the point giving

it 10 days before, 7 days before, 5 days before? So, companies have stopped it and they are

giving it only a day before night after the trading hours.

Even some companies are doing it on the table, as soon as the meeting starts the results are

displayed and let us deliberate on the results for the whole 2 hours, 3 hours, no problem but

then and there only not beforehand. This practice also has come in limited the access, it

should be extremely limited and only on a need-to-know basis. Today nobody can take from

the computer, a pen drive, most companies have stopped it.

Some companies even have stopped taking camera photos from the laptop, you cannot take

mobiles are kept outside the office, while you are entering in the reception, any emergency

calls numbers are given, manufacturing companies still not, but IT companies most of them

trying to do that. So, much information is passed on, may be manufacturing companies also

would be doing it.

Because pilferage of information, sharing information, data is so powerful, data is the

costliest thing under the sun. If you have information about competition, you have everything

in your hand. So, that is what everybody is looking for information on the competition. All

unpublished price sensitive information they are looking for. At the same time this is

something we need to be shared on a need-to-know basis.

How do you protect the files of confidential information, how protective is your environment,

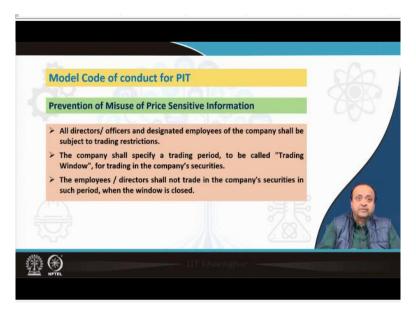
what kind of security you have got? All these are bonding questions and need to be looked

into because confidentiality of information sharing your information sometime happens to

hacking also.

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Trading restrictions, applicable for all, all designated employees, director's officers. Now data's officers are fully under the definition of designated employees. No director can say I am not private or unpublished by sensing information, he is always privy to unpublished by sensitivity information, it cannot be a ground for him, he is knowing all the unpublished by sensitivity information, he cannot escape that.

Now somebody may not attend the board meeting, somebody say I am not attending the board meeting therefore I was not aware of this. No, he is supposed to know even when he is not meeting the board to get the agenda of the board and after the agenda to get the minutes of that board meeting, what happened, what discussed? Minutes of the board meeting is something which is recording of the proceedings of the board meeting.

A member of the board who has not attended the meeting he also gets the minutes of the meeting, because he continues his journey as a board member. So, he cannot escape that, trading window is always open, accepting when it is closed, when it is closed their instances when it is closed, we will discuss that. No trading in company shares when the window is closed of whom of the designated employees. Please understand. Not all employees of the designated employees.

Now if one is not a designated employee then he can trade in the shares but he runs the risk actually. If it can be proved that though he was not a designated employee but still he was for that particular month or year or period private to unpublished prices in information and therefore he made the buy. Then in that case he is he will also be prosecuted. And it will be

the owners on him to prove that he was not private to unpublished price sensitive information just because he was not the designated employee will not save.

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Now this is where inter alia; the word inter alia means amongst others, this is not an exhaustive list, this is an inclusive list. So, trading window shall be closed at the following times, declaration of financial results. This is perhaps one of the most information bearing document, earlier company used to come out with annual results. Now it is quarterly and then halfway when the 2 quarters March it becomes half year that is 30th of September. And finally, 4 quarters it is becomes annual.

Each quarter contains host of information, it contains the revenue for the period, it contains the materials consumed for the period, it contains the total employee expenses for the period, it contains the total depreciation for the period, it contains the total tax for the period, the profit for the period before the tax for the period and profit after the tax for the period. Detailed breakup not only that, it contains for the quarter, it contains for the preceding quarter last year or corresponding quarter last year and the preceding quarter as well as the whole year.

So, it contains a total box of information in a comparative analysis basis. Say for example we are preparing quarterly results for 30th September 21. Now 30th September 21 will include 30th June 21 that is the preceding quarter. And the corresponding quarter last year that 30th September 20, so that you can make a comparison quarter and quarter and preceding quarter

and it will also contain since it is 30th September it will contain half year for 30th September 21 and half year for 30th September 2020 and then the full year for 31st March 21.

So, all this information competitive analysis will come in one page to you with the total revenue, the other income, the total raw materials consumed, total expenses. Expenses on employees, freight, insurance, interest, detail expenses come, may be freight and insurance will not be able to get in one shot, may be clubbed but interest will come, depreciation will come, tax will come. So, all these information you are getting. Now supposing all this information will be placed before the board of directors and adopted by them then only it becomes public.

And this is done within 45 days from the end of the quarter. So, supposing 30th September the board meeting can be held within 14th November any date, now supposing board meeting is held on 10th November. So, from first October to 10th November you are sitting on that document which is getting prepared and all the designated employees may be privy to that information or a cluster of that information or some information in that document.

Therefore, to safeguard all this trading window has been closed, no buying selling can be done by this designated employee from 1st of October till 48 hours from the conclusion of the board meeting. That is on 10th member is a board meeting, so another 48 hours 11, 12, on 13 only they can trade in the shares. This is the law, trading window closure for financial results quarterly and half early same for annual. 45 days you can have the board meeting, supposing you have it on the 30th day or 40th day. So, from first to 40th plus 48 hours no trading by then employees of the company.

So, that is the law, but the question still remains here is little understanding is required that even before that say the period from 15th September or 30th September? Many of these guys have their information and they can trade in the shares during that time. Therefore, SEBI makes all those kinds of investigations when they are actually getting the digital database and they say movements in the shares, huge up and down movement in the shares during this period because trading is taking place from fast trading window is closed for this employee to trade in the shares but other public are always buying and selling, so there is up and down in the share prices.

If there is too many up and down SEBI will start seeing these persons have not bought and sell during this period is okay, but what about the preceding period. 15th March to 30th September is actually the red period, the period of caution, the red flag period when if you see that any of these designer employees at port purchase the shares and has made money then that employee is gone. He will be definitely prosecuted that you had unpublished price sensitive information and you have traded in the shares.

Now you prove you do not have, owners will be on you to prove, same declaration of dividend very important interim and final. Interim is dividend, dividend declared, any time before the final dividend during the year from 1st of April to 31st March anytime you can declare dividend, interim on the financial results of the company for the 1st April to 31st March.

No company does it before 6 months because unless you cover 6 months you do not get a picture line of sight for the whole year and you are declaring dividend on the proposed profit for the whole year, proposed profit. So, 1st April to 31st March your proposed profit you have to anticipate you can only anticipate when you have done a journey, you have done a run. Run should be at least more than 6 months, so what happens really 99.9% of the companies they declare their dividend after the 9 months that is after 31st December.

In the third quarter meeting which again has to be held within 45 days from the end of the 31st December say within 14th of February. In that meeting they declared interim dividend same. When the interim dividend is declared there has to be a closure of trading window. The moment our intubation goes you close the trading window, but again the question comes before closing the period that is the red zone, I call it.

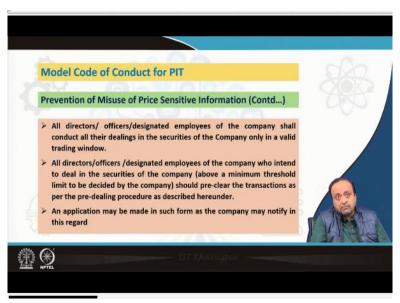
That is that zone when you have not told to close the window but you are aware of, you cannot say we are not aware of. Now you prove you are not aware of, if you have traded in that shares same for final dividend, issue of shares by public rights and bonus is another trading restrictions. Major expansion programs I have already discussed. Marginal amalgamation I have discussed, disposal of whole or substantial whole of the undertaking again you do not dispose whole of substantial, whole of the undertaking selling and undertaking overnight.

There is a preparedness for that, there is a discretion for, that there is a deliberation for that, there is a due diligence for that and that takes months, months and months and who is privy to that? The boards of directors are privy to that. Now the board of directors cannot say we were not privy to that, you are very much aware that this is going to happen the company is going to sell that undertaking; you sold all your shares when the prices were high.

And you made huge profit, it has happened, a live example is there in a big company and that director was caught, penalized fine, he sold of the shares having distinct information the company is selling and undertaking and knowing fully well the share prices will nose dive, he sold the shares when the prices were quite high and made good money. Whereas, the poor investors, the retail investors came to know much later when the prices were low, they could not even sell the shares because there are no buyers, you can only sell the shares in the market provided there is a buyer.

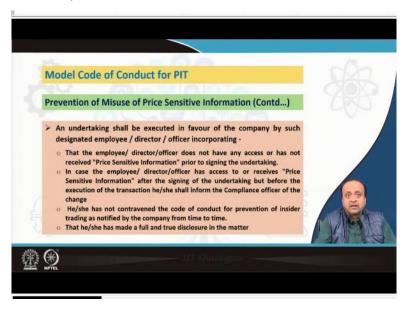
People say I can make, I can sell the shares, I can buy the shares, you can neither sell the shares, you can neither buy the shares unless there is corresponding seller or the buyer. So, it is a meeting of minds. So, this gentleman sold the share smartly having this piece of information, any changes in policies plans or operations of the company who comes to know? This designated employee comes to know first.

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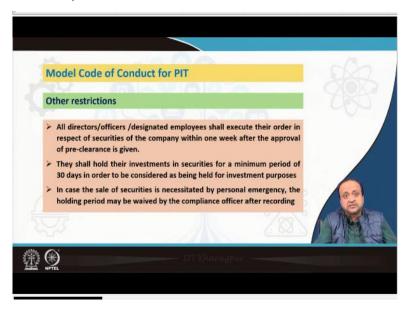
So, prevention or misuse of price sensitive information is one of the areas which semi-insider trading requires a regulation is looking at. Applications are made to the company for preclearance; permission is taken from the company to trade the shares.

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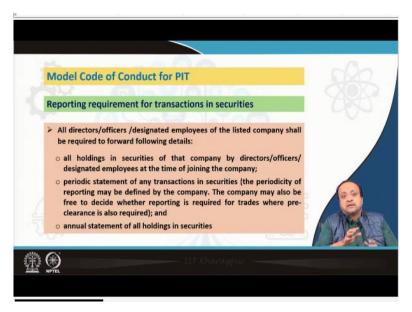


Disclosure undertaking in favour of the company by such decision employees are always taken that he has not done it, as I say yearly annual ritual, where he has to write that he has not traded, he has not done any violation of insider trading regulations because it will not be possible for the company to know whether he has really bought and sold the shares or if Keith and Keen has sold the shares if it does not disclose. SEBI can track for the company is difficult to track, in fact.

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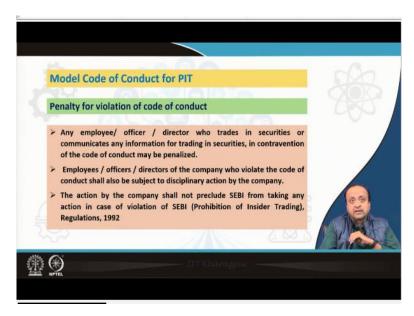
They cannot report requirements, annual statement of all holdings and securities, periodic statement of buying and sell. All holding securities of the company directors at the time of joining.

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These are all regular routine compliances, responsibly goes to the compliance officer to ensure that it is done. Any annually he has to report to the audit committee and the risk management committee.

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Penalty is huge, all employees' directors who trade in shares conservation and securities so they may be penalized.

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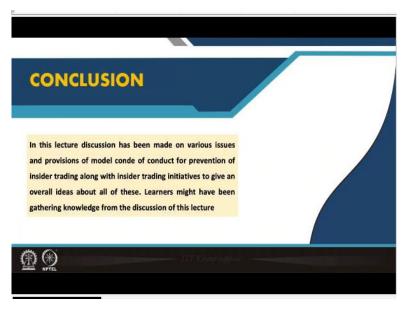
And sometimes the penalty is so high that companies ask the employees whether they would like to continue or not? It is better that they discontinue, penalties imposed by SEBI for violations are extremely high, company model code of conduct leaves it to the companies to do that, some of the companies have levied, some of the companies have given warnings first offenses. Most companies do that unless he has made a huge profit in the very first offense.

If he has made a loss in the first offense normally it is waver, but if it is repetitive then the penalty is so high it is better for the employee to leave and with the conditional undertaking.

That in case SEBI puts any blame on the company for this the entire thing has to be paid by him, that kind of undertaking is taken from him.

He may join, he may go, he may be paid his dues also, but with a clear undertaking if SEBI imposes fine on the company, it will be borne by him. So, these are some of the references that I have taken, but if you can to go through my lectures you will find mostly it comes from my experiences and interactions in different forums. But these are definitely some of the references that I have taken.

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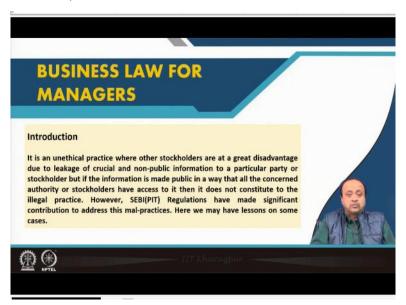
Thank you so much, wish you all a very good time ahead, thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-3: PIT (Prohibition of Insider Trading)

Lecture-15 Insider Trading Examples, PIT Recent Cases and Insider Trading Initiatives

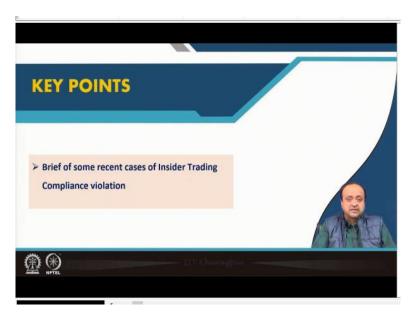
Good afternoon, this is lecture 15 insider trading examples, PIT recent cases and insider trading initiatives, prohibition of insider trading initiatives.

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Well in this lecture I will take you through some recent cases which I have jotted down in different disclosures in the stock exchanges and as well as some of the incidents which I have come to know from different quarters. So, basically these are all live cases which have happened of course for the sake of confidentiality all these names etcetera cannot be taken.

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But I have shared some of this taking fictitious names and customers etcetera. So, let us take some of the examples of insider trading how it happened and how it really hit the nail and it was caught and it was a clear kit of violation. But see the inadvertence in this each one of this you will find a bit of inadvertence, a bit of innocence but however that cannot be given an exemption.

Here is an example where a major customer during the marketing heady meeting with marketing head Mr. Abhishek names obviously are taken the way I want Abhishek maybe comes to me first because of various other reasons so many Abhisheks around. A major customer during the meeting with marketing head Mr. Abhishek learns that the company is planning to set up a new carbon black plant outside India.

Now the customer purchase 100 shares of the company because he knows the stock prices

has to go up on news or setting up a new plant outside India. Now you see marketing people

normally they market products, they have to sell the business of the company, they are going

to talk you cannot ask them do not talk. Now what the gentleman did is he gave exact

location of the plant and not only that even the capacity which was not disclosed anywhere.

He was private to that because he was sitting in a meeting with the managing director and he

was explaining to him, talking out to him how this business would be done. This are a case

study, what will be the strategy when the plant is taken over a new plant is set up which

customers to be built? So, he went and advertised about the company the customer asked how

the company is doing?

He could have answered by saying the company is doing well, we are looking for growth, we

are looking for expansion, we looking for brownfield expansion, we looking for green field

expansion and to a specific query if he has asked, we are hearing that you are trying to buy a

new plant or setting up a new plan you could have answer would have been yes. We are

always in the lookout; we are always for growth.

Instead of that you wanted to be pallier to the customer, he has to wanted to give more

information, he wanted to show that you are my confidant, then he passed on that information

and the customer did a quick buck and he ended up in and inside a dating violation. Reported

case, second again the board of directors of a company knows the merger is going to be

announced in the upcoming board meeting because in the agenda there was one item of to

discuss on the merger of a company.

These are all reported case laws and therefore I can discuss but only thing I could not give the

name though it is disclosing the name but a name I cannot give. The company stock likely to

go up obviously; one of the directors Mr. Aman buys 1000 shares of the company stock in his

mother's name. So, that he can make a profit under his insider knowledge without getting

reported to the compliance officer without news or purchase. See mother's name buying also

will not help, even mother-in-law's name buying also will not help, they will all come under

connected persons. But the mindset is making a quick buck, violation obviously is there.

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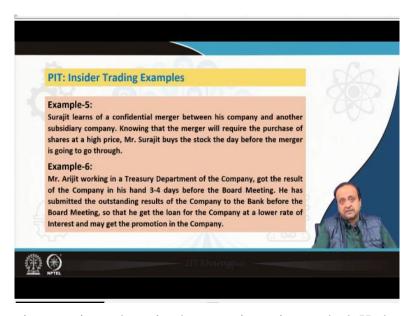
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Now again this is another case of a CFO. He is a finance head of a multinational company based outside India. Now he was talking to a banker and he tells him that how the company is going to be in the loss in the coming quarter as a result of market slowdown of a particular industry. Now this is shared with his friend again, but the friend holding on to the shares which he purchased long time back sold the shares, knowing fully well, the company prices have to go down.

Another case of insider trading where you are passing on information to a friend and friend is selling the shares based on your information. In another case an R and D center will be sent up somewhere in Berlin or Netherlands or Europe somewhere and this was disclosed to a person, the head disposed to an employee in the organization and he bought shares of the company. There is a whole saying you are doing everything fine unless you are caught. Now when you are caught only these things happens to your digital database tracker, inside information, red zone all these are cases which can land you into difficulty.

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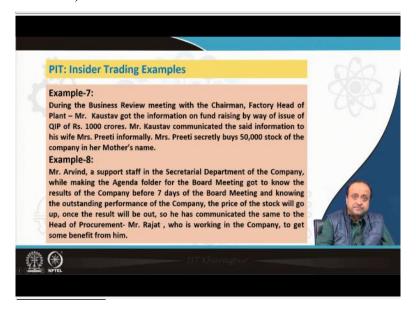
You are not knowing; one is not knowing how one is getting tracked. He knows an officer in a central department comes to know of a merger and by that time he has picked up the share one can make money in the share market; he buys the stock and sales is after. Without knowing as a secretary officer, he is a designated person and his pan card is already in semi tracker, pan number is income tax number.

And the person in his jill to influence and get a loan at a low rate of interest from a particular bank; one day before the financial results were made public to the board shared the results; almost got a copy out from the printer and hand it over to the AGM of the particular bank to sanction the loan at a favourable term. He thought he did a brilliant job, he thought he did a brilliant job innocently by sharing the results with the banker because the banker was enquiring repeatedly what about your results.

The perhaps the DGM or AGM of the bank was not that much interested in the results of the loan but wanted to make a quick buck. Many of the banks' employees, senior employees are quite a do are in inside the trading because they are ply with so many information about corporate, they lend money and therefore they are bound to know the information about the company much before it results are out.

They have some information, may not be in writing but orally, verbally they have information. But this young guy in his jill wanted to win that extra I mean favourable interest rate for the loan and shared the results. Before it could go even to the board for approval, one day before the board meeting and lost the job. This is again a multinational company.

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Another case of a particular passing on information to spouse, another case example where things can go wrong, this is another case where a suppose staff in the secretarial department comes to know the agenda paper that outstanding performance of the company was doing a photocopy and he communicated the same to the head of procurement who is working in the company to get some benefit from him. This kind of things happen this is common insider training examples.

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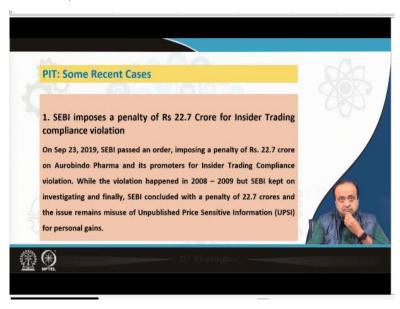


During the analyst or an institutional investor meet CFO of a company informally informed analyst or institutional investors the company, exactly what I was telling in some I think a lecture before that if you give more information to the institutional investors than what you

are giving to the retail investors. That is a clear case of violation of insider trading. These are all examples of insider trading which are nothing to do with any particular company.

All basically accumulation of different incidents and showing what can happen, trying to create that these are the gaps or ways or means how insider trading inadvertently may happen, but then again whether it is inadvertent or deliberate is not the question. Question is it is a violation. Once a violation you are under the scanner.

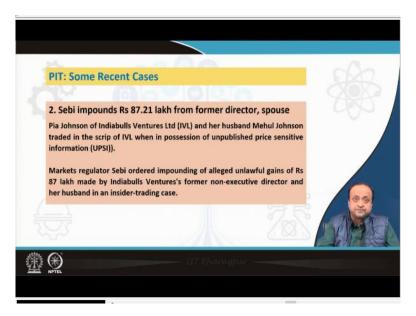
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These are the recent cases 22.7 crore penalty on 23rd September 2019 on Aurobindo pharma and its promoters' reported judgment for inside trading compliance violation. The violation was in 2008, 9 but SEBI kept on investigate and finally see that kind of investigation 2008, 9 getting in 2019, 10 years; whereas the records are to be get for 8 years as I told in the last lecture also.

Though it is 8 years but the investigation starts then it will be n number of years, till investigation ends. So, 2009 SEBI kept on investigating finally SEBI concluded with the penalty; it was a compounding, they agreed to pay a penalty of 22.7 crores. Misuse and unpublished price sensitive information, lot of your human cry with this Aurobindo pharma one of the leading companies not 2.27, no typo error 22.7 crores.

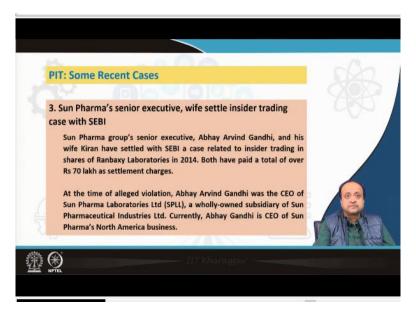
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This is the case I was telling director and spouse, passing on information; I created all these because these are the examples which happen. The last few examples which I have given before this I have taken different names, different units etcetera only to create it is a creation of mind to show what kind of information flow and insider trading examples can come in. That was creation but these are actual.

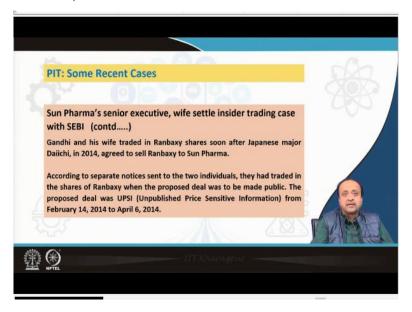
There are all evidence, facts, you can find out by Google, all these the case studies I am given, well the other you will never find. But these are all the others were 9 examples for my creation; I created these examples for ease of understanding. Now here market regulator SEBI ordered impounding of allied lawful, unlawful gains of rupees 87 lakh made by Indiabulls former non-executive director and her husband in an insider trading case. 87 lakhs not a small amount.

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Sun pharma senior executives, wife settle insider trading case with SEBI. So, wherever you find this wife coming into the picture it is a clear case of husband passing on information to wife or wife passing on information to a husband either way. These relationships are good but confidentiality has to be maintained as far as insider trading regulation goes even in husband-wife relationship. So, PIT regulations said above a husband-wife relationship, otherwise you will land up paying crores or lakhs of rupees; 70 lakh both have paid a total of 70 lakh as a settlement charge.

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So, this is the case.

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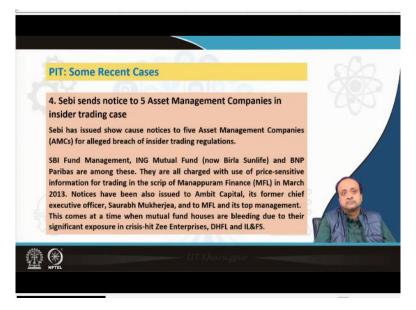
Detail is here given; SEBI has said that 2 individuals sought to settle the agitation processing. So, initially they went for an adjudication means a legal battle. Finally, when they found that so strong is the evidence in the hands of SEBI as I told I think a lecture before or 2 before that SEBI were investigates and comes and finally gives an order to you remain rest assured the ground is fully there. Otherwise, SEBI will not pass an order to you; it will either exempt you or give you a low penalty.

But when gives an order and then the order quantifies the amount the best thing to do is to settle because SEBI comes with very strong evidence on that and any education before appellate tribunal perhaps would be footless, unless there is strong evidence against it. I am not saying for a moment there can be but mostly it is seen, whenever they pass an order the receiving party though initially may educate like finally has to come and settle and SEBI settle, SEBI also understands that unnecessarily running a court case and getting a settlement means 2 things, one SEBI wins, 2 awareness wins, 3 money comes in.

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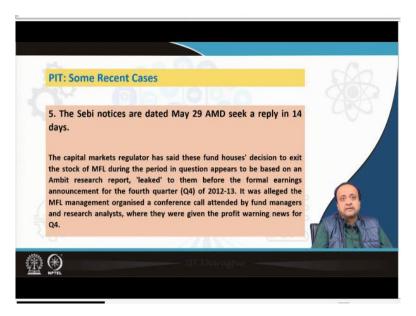


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So, this is notice to 5 asset companies in insider. Five asset management companies AMCs and all of them had to settle.

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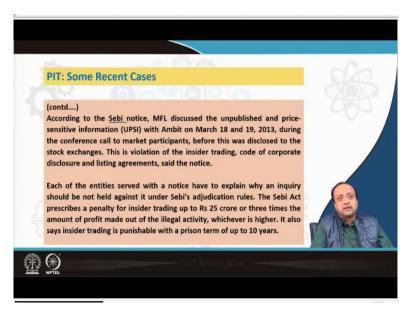


And let me also say that though I take a disclaimer but I state this that my personal experience is various asset management companies, mutual fund investor, advisors merchant bankers they have huge information. Say a company is going for an issue, whether rights, bonus, public, QIP, preferential issues. One person is thoroughly there from 0 date till the issue becomes a success is the merchant banker.

And while he is there, he prepares the document based on which you go and make a road show, win the investors, their confidence and finally make a successful bidding and issue. In the process while preparing the document the company has to share all its information to the machine banker, yes confidentiality is done by oath. His business is to maintain confidentiality, a merchant banker registered with SEBI.

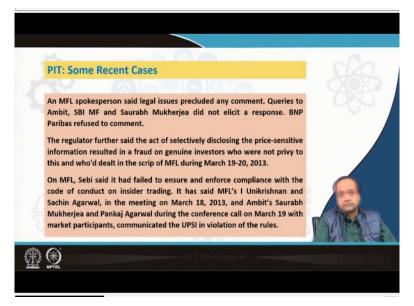
But merchant bankers also have asset management companies, meaning not the merchant bank the same company control ownership; this is something also SEBI needs to look into. I would only say this much, somewhere when so much investigations deep diving are being done it is also important that SEBI looks into this aspect also, same group ABC, ABC having a merchant banking division and ABC having an investment division. May be totally separate at arm's length but SEBI also needs to look at that with the scanner.

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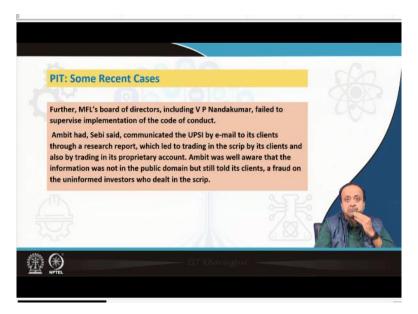
Research analysts who does the research on companies' performance, finance they are also store house of huge information, reservoir of information for various companies, they are also insiders. So, the penalty amount 25 crores or 3 times the amount of profit whichever is higher and the punishable with the fine up to 10 years.

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So, this was the case of SBI mutual fund, queries to ambit, ambit is also one of the advisors the merchant banker, on MF SEBI said it failed to ensure enforce compliance with the code of conduct on insider trading.

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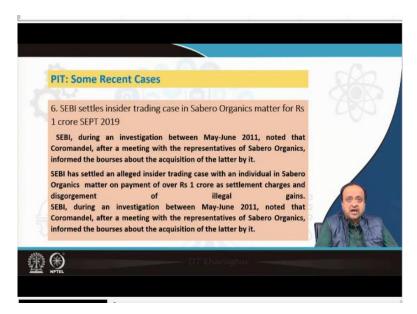
See Ambit was well aware of the information was not in the public domain but still told its clients a fraud and uninformed investors who dealt in the script is the reporting.

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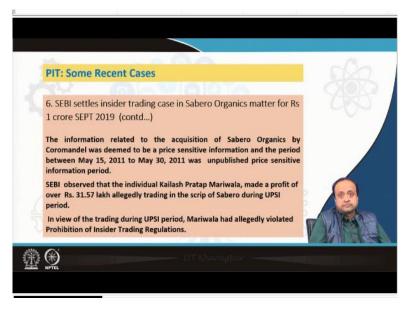
Various times the financial analysts they are also under the scanner of SEBI, many times it happens, this investor **conferences** conference with the financial analyst.

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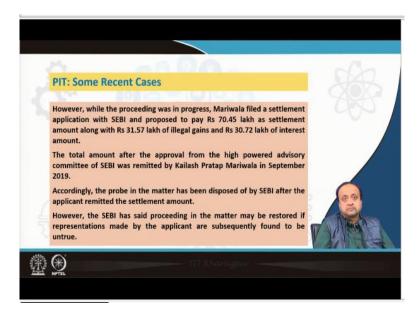


Or in the scanner of SEBI, SEBI settles a trading case in several organics matter for which 1 crore September 2019 before COVID. Settlement means settlement on SEBIs terms after investigation SEBI cyber organics accepted and therefore came to a settlement.

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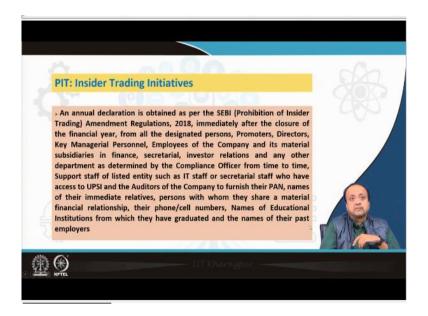


These are all details of the cases.

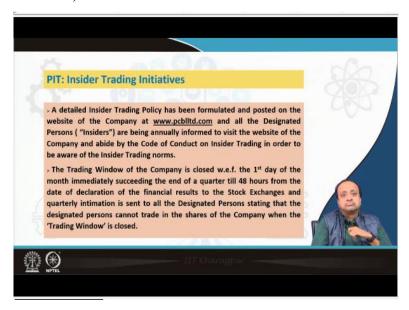
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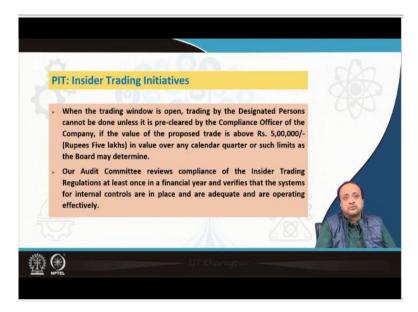


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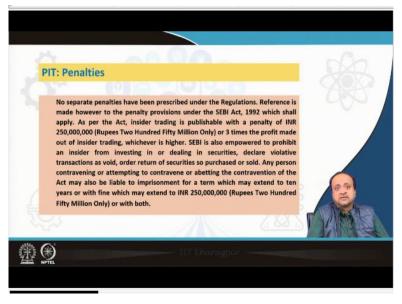
These are all good practices which good companies do, 48 hours from the date of declaration financial results which already discussed.

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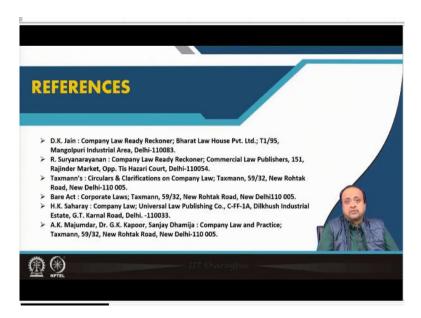


Audit committee reviews the compliance of the insider trading regulations at least once in a financial year; verify the systems of intel controls.

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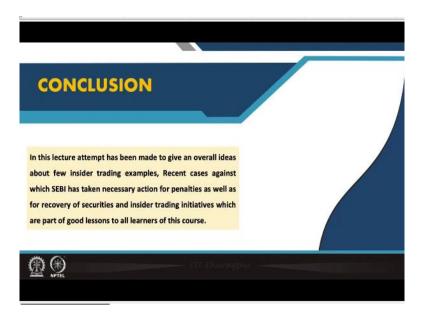
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So, these are basically the references that I have taken, but I created certain case studies on my own just to make the things simpler and also what can be the model policy some companies can follow based on best practices that are also captured here. Rest this is something more of a mindset, this is more something of a culture, this is more I repeat top down, it has to be ensured that information does not flow unpublished price inspiration does not flow, everybody's responsibilities.

Because information is what is most important in today's scenario and that is why SEBI is taking so much care of this prohibition of insider trading, yes senior most persons designated persons would be private to confidential information, they would be but at the same time they should be held responsible to keep it confidential and not trade in that share for monetary gain at the loss of the company, loss of the innocent retail investors. This is something which SEBI is trying to do and has come a long way but it is more like it can never be made full proof, no one can make it full proof, only the drive and strongest of measures, awareness and cooperation of the corporates can only make it happen.

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We will discuss more as we go forward, thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-4: Law of Contract

Lecture - 16 Concept, Elements, Importance and Forms of Contracts

Good afternoon, we are now on lecture 16 on Concept, Elements, Importance and Forms of Contract.

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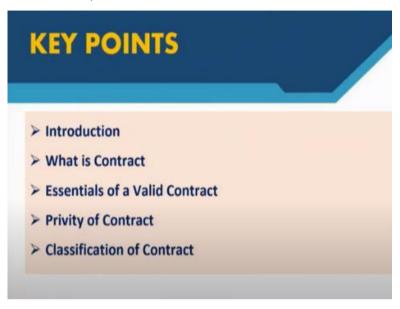


Law of contract is the one of the oldest and still surviving law, 1872. So obviously, it has stood the test of time. Very basic requirements were there which has been captured in this law of contract. Basic Elements of a contract, what are the essential ingredients of a contract? The good thing is even now, we so much depend on this act and it has been all the more visible and came to more limelight I think during the pandemic.

Because everyone was referring to, the best of lawyers were referring to the sections in the contract, when it can be enforceable, what situations it cannot be enforceable? What is that pandemic can be termed as force majeure? Force majeure means something beyond reasonable control. What happens in case of a force majeure? So, law of contract was referred to time and again, an act of 1872.

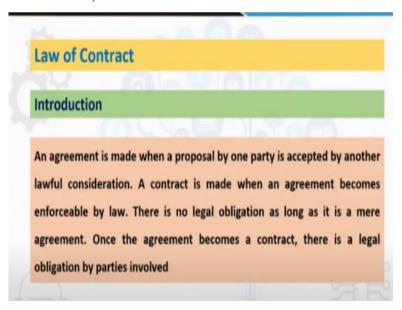
So, so live even now. Because the fundamentals of that law of contract is so strong and so basic that it has stood all the test of time and even today is referred to.

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What is contract, essentials of a valid contract, privity of a contract, classification of contract, we are going to see in these few slides.

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Basically, an agreement which is enforceable by law is a contract. An agreement which is enforceable by law. Now when does an agreement become enforceable by law? An agreement becomes enforceable by law when it has certain characteristics and these characteristics are called the essentials of a contract.

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Law of Contract

What is Contract?

An agreement enforceable by law.

In other words... " A promise or set of promises which the law will enforce".

The agreement will create rights and obligations that may be enforced in the courts. The normal method of enforcement is an action for damages for

breach of contract, though in some cases the court may order performance

by the party in default.

The normal method is, perception is, all agreements are contracts and all contracts are agreements. No. Though loosely we say so agreement is a contract but by contract we mean something which is enforceable by law. Therefore agreements, having all the criteria, characteristics as we discussed right now will only be enforceable. And then when it becomes enforceable, it becomes a contract.

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Law of Contract

What is Contract?

Examples:

Contract = Agreement + Legal Obligation

- 1. A agrees to sales a flat to B at a consideration of Rs. 25 lacs.
- 2. A invites B for a party at his place
- 3. A promises his son to give a Bi-cycles on his Birthday.

There has to be a legal obligation in general agreement. Certain examples are given. Somebody invites B for a party at his place is not a contract. There is no obligation, there is no legal obligation. Even giving a bicycle to a son on his birthday is not a contract, there is no legal obligation. A agrees to sell flat to B at a consideration of Rs. 25 lakhs is a contract because it is an agreement to sell.

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Law of Contract

Essentials of a Valid Contract

Consensus-ad-idem: It means identity of minds. There must be two parties to a contract. The minds of both the parties to the contract must

be ad-idem.

Legal Relationship: The agreement must create legal relationship between the parties. If there is no intention on the part of parties to

create legal relationship, there is no contract.

Lawful Consideration: Consideration means "something in return". In

other words, it means "something in exchange for something".

Now what are the essentials of a valid contract? The first is consensus-ad-idem. It is

all Latin. If you look at law, you will find lot of Latin jargons, which is coming from.

It means identity of minds. There must be two parties to a contract who are looking at

it at the same time in the same way. I am going to sell you a Maruti second-hand car

and you are thinking I am going to sell you a Maruti first-hand car.

The concept is totally different. You are thinking I am going to sell you a Maruti a

particular brand Alto and you are, I am thinking of or I have communicated to you, I

feel I have communicated to you Maruti Alto. But you are thinking, no it is a Maruti

Dzire. So, there is no contract. There is no identity of minds. The contract falls flat. A

legal relationship, it must create a legal relationship on the parts of the two.

If there is no legal relationship creation, then there is no contract. Consideration. Most

important, perhaps the most important in these essentials of a valid contract.

Something in return. It can be anything. It can be money or money's worth. But

something has to come in return. Consideration is always a two-way traffic and

consideration is maybe past, present or future.

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Law of Contract

Essentials of a Valid Contract

- Lawful object: The object or the purpose of an agreement must be lawful. It must not be immoral or illegal or oppose to public policy.
- *Competent parties: At least two parties are essential for every valid contract.
- Free consent of parties: The consent of the parties to the agreement must be true, full and free.
- Certainty of terms: The terms of the agreement must be precise and certain. They must not be vague or uncertain. If so, the agreement is not enforceable.
- Possibility of performance: The agreement must be capable of being performed. An agreement to do an impossible act cannot be enforced

Lawful object. The objects for the purpose of agreement must be lawful. Unlawful, immoral activities, which are against public policy, even if you enter into a contract for that, that cannot be enforceable. If you go to enforce you may be pushed into the jail for entering into a contract which is unlawful. Parties must be competent to the contract. Competency of contract, competent parties, we will discuss little later when we go to the other slides.

One of them is a minor cannot enter into a contract. Anybody below 18 years cannot enter into a contract. That is the competency of parties. A person must be of sound mind, then only we can enter into contract. There are other parameters which requires competency of parties. Free consent, very important again. The consent must not be coerced, forced. It must be free.

Certainty of terms. The terms of the agreement must be precise, clear. Ambiguity in the very beginning of an agreement, the agreement may become unenforceable, because it is not clear. No one can make out what was the intention of the parties to enter into this agreement. The certainty of the terms are missing. Possibility of performance. Can this contract be performed?

Something which is not possible to be performed from day zero cannot be entered into a contract. Subsequently it becomes impossible to perform is a different aspect. But from the very beginning if it is, the contract is incapable of being performed, then the contract cannot be enforced. It is not a contract at all.

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Law of Contract

Essentials of a Valid Contract

- Agreement not expressly declared void: The agreement must not have been expressly declared void by any law in force in the country.
- Compliance with the legal formalities: According to the Indian Contract Act, an agreement may be oral or in writing. Where the agreement is to be in writing, it must comply with the necessary legal formalities as to writing, registration and attestation.

It should not be expressly void. We call it contract void ab initio. Contract with a minor is void ab initio. Contract against the law is void ab initio. So, agreement not expressly declared void. Compliance with legal formalities. Indian contract has certain agreements, maybe overall maybe writing. It can be very much oral agreements, but certain agreements have to be in writing.

So, in those cases registration is required, attestation is required, sale of immovable properties cannot be oral agreements.

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Law of Contract

Importance of Contracts

- Legally binding.
- Legally enforceable promise or set of promises.
- Between two or more competent parties.
- Law recognizes a duty.
- Law of contracts affects all aspects of daily life.
- Commercial Law Contracts having to do with commerce.
- Common Law Contracts derived from the judgments and decrees of

This we have just covered.

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Law of Contracts

Classification of Contracts.

- In writing
- Oral- Contract
- Inferred from the Conduct
 - > Hiring a Cabs
 - Purchasing an Item from Shop (ENETRING A MALL SUIT FILED FOR NON PURCHASE)
- Advisable to have written contract. Mandatory written contract is -
 - > Application for transfer of share
 - > Application for purchase of share
- Memorandum of Association of Company
- Mortgage or sale of immovable property

Classification of contracts can be in oral. So many oral contracts are examples of their hiring cabs, purchasing items from shop. Hidden contracts, transfer of shares, purchase of property, memorandum of association, articles of association, mortgage.

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Law of Contract

Other forms of Contracts

- · Formal vs. Informal Contracts.
- Unilateral vs. Bilateral Contracts.
- Valid, Voidable, Void, and Unenforceable or illegal Contracts.
- Express vs. Implied Contracts.
- Executory vs. Executed Contracts.
- Quasi Contracts vs. Contracts Implied in Fact.

Forms of contract can be formal contracts, informal contracts, unilateral contracts with one party, one-to-one contracts, bilateral contracts, trilateral or three parties' contract can happen. Valid, voidable, void, and unenforceable contracts. Void contracts we have seen, contracts which cannot be enforced by law. Void ab initio is right from the beginning.

Even there are contracts which are voidable, at the option of the sufferee, the one who suffers, one at the receiving end. He takes a decision whether it will be void or not. He

can still continue with the contract. A valid contract which is neither of these it becomes a valid contract. Anything which is out, all the elements are present, it becomes a valid contract.

All the elements we have explained starting from consensus, identity of minds to the contract being in writing contracts. If all these are present, it becomes a valid contract. If any of these items are missing, it can be either void, it can be voidable or unenforceable or illegal contract. So basically, two criteria, valid contract and non-valid contract. Non-valid contracts can still be under void, voidable, unenforceable or illegal.

Now voidable is a contract where its option is of the sufferee. Supposing there is a contract to use a supply car of a certain type. Now you have not supplied the car but still you are okay with the contract. I will take the other car also in place of this, then that becomes a contract. You amend the contract, make a fresh contract. You did not make the, you did not make the contract void.

You made it voidable. It could have been void but you have not accepted, you have still accepted the contract and you have not made the contract void. Express contract, implied contracts. We will express this. Executory executed contracts. Quasi contracts, we will see the examples one by one.

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Unilateral contracts means contracts where it is one sided only. Those contracts normally can lead to lot of disputes. Somebody changes some terms in a contract without checking with you, where there is an agreement, full-fledged agreement. One of the terms of the conditions was changed by the other and he is trying to enforce that on you. That is a unilateral contract.

Unilaterally you cannot do that. Or even if you do it, I do not accept it, then you cannot do that. If I accept that unilateral change it becomes an amendment.

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Law of Contract

Valid, Voidable, Void, and Unenforceable Contracts.

- If a contract has all the essential of contact then it is a valid contract.
- If any of the essential are missing the contract is either void, voidable, illegal or unenforceable.
- Voidable contract is voidable at the option of the effected parties but within a reasonable time (it can happen when a contract is entered by misrepresentative, fraud, coercion, undue influence).

This we have just explained. If all the elements are there in a contract it is a valid contract. If any of the elements are missing, it became void, voidable or illegal, unenforceable. Voidable at the option of the affected party, the sufferee.

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Valid Contract an Agreement is Void ab initio, for example Contract with a minor is void ab initio, Wagering agreement, An agreement to enter into agreement in future, Agreement in restraint of trade Agreement to engage child labour Agreement not to pay bonus to worker

Now void ab initio contracts. Wagering contract. Wagering means speculative contracts. If you have entered into a contract on speculation, based on something happening based on which you will pay somebody something. So that is a wagering contract. Agreement in restraint of trade. If it imposes a restriction on trade, free trade is not there, then in that case, it is a contract which is not a valid contract it is void ab initio.

Agreement not to join competitors

There can be examples where business operations are getting restrained, because of certain restrictions been put by a particular state government. If that is the case, one can go to the court, file a writ petition, go to the court and ask for relief that is a restraint of trade. So that can be a case for relief.

Anything that is putting and similarly, if an agreement is there in which there is a restraint of trade, they will not be allowed to trade or you will not be allowed to do any business in a particular area, that kind of restraintment is there, then that is a void agreement. Child labor is not allowed in India. We find factories engaging child labor in some cases.

However, you will find those contracts are never with the child. Child labor contracts are never intended, with all contracts are entered into with contractual workers with others and they in turn, employ child laborers. But as a principle you are responsible, corporate is responsible. The big industry house is responsible not to engage child labor. Agreement not to join competitor.

You enforce an employee to not to join competition. That is a void ab initio

agreement. Employee if I freely join competition. Nobody can stop an employee in

joining competition. There can be a cooling off period of one year, two years

maximum. But one cannot stop an employee in joining competition. A person who is

a mechanical engineer, a chemical engineer, or specialized engineer he cannot join

anything other than the competition only.

A person who specializes in pharma can join a pharma company only. So, you cannot

stop somebody from joining competition.

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Law of Contract

Express Vs. Implied Contract

Express Contracts the parties set forth their

intentions specifically and definitely in writing

or oral.

Implied Contracts is inferred from the actions or

conduct of the parties.

Express contracts are written contracts. Implied contracts by your virtue by your

action you are entering into contract. The moment you are entering into a cab or you

are entering into any transport then you are entered into a contract to pay for the

services.

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Quasi contracts are contracts, which are implied in law. Implied in fact contracts hold that sufficient evidence exist for the court to determine that the parties were meant to contract with each other.

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Offer and invitation to offer. These are two concepts which are important to understand that something can be an offer. And something can be an invitation to offer. When you are when a company offers shares, he gives a prospectus, he gives details of the company. He is giving an invitation to offer. It is not an offer. Now you make an application to the company.

It is not that the company will accept that application. It can be oversubscribed, it can be less subscribed, the company may withdraw, many things might happen.

Application does not mean allotment. You are now making an offer; company has to accept that offer. Then it becomes an allotment. So initially when the company is making you aware of something which is coming out, is making a prospectus, IPO.

It is an invitation to offer, inviting to give offer to us. We are not offering. We are offering only awareness to you about the shares that is going to the public. It is for the general public. It is not specific to anybody. It is not marked to Mr. X, Mr. Y, Mr. Z. It is an invitation to all. Similarly, a person who wants to sell a car. He gives an advertisement in the newspaper; I want to sell my car.

So, it is not an offer. It is not to a specific individual. It is a general notice he has given, interested parties may contact. Price range he has given. Even within that price range if I come and quote and say you have to give me the car, there is no way you can enforce the car to you. It is his selection. You are now coming with an offer within that range. Now it is for him to accept or not to accept.

So that is an invitation to an offer and how invitation to offer and acceptance happens in case of a share issue, in case of an advertisement in newspaper.

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We have taken, I have taken certain references to this whole thing. But I think we need to understand one thing that law of contract is more of cases, how it happens. It does not happen only like we are engaged in few words, certain terms we have used

and that is how the contract takes place. It is basically an intent. Many contracts happen where nothing is written by oral.

And I have experience of that, where oral contracts are also becoming binding in nature. It is purely based on trust and faith. Many times, over phone contracts are being finalized. There is no record of that. Even two parties are having the same intent, purpose, objective, consideration, possibility of performance, all things are present. Only thing it is not in written.

Still, the contract holds good. The question come what happens if other party does not agree? Well, that risk is always there in those kinds of contracts. Evidence to find out they enter into a contract then making a case against this in the court of law is a huge task, but trust and faith is a guiding principle for those kinds of contracts. But incorporates, normally written contracts are always welcome.

And in contracts, we want all, we ensure that all the elements of the contract is there. One of the most important elements in that is consideration. Consideration need not be adequate as we say. Consideration need not be adequate. Two parties may enter into a contract where the consideration maybe even one rupee. No one can challenge that contract as long as the two parties are not challenging the contract.

Not only that, consideration can be in the present, past or future. It can be paid immediately; it can be paid in advance and it can even be paid in future. The other aspect of consideration is though it is important that consideration is an element of contract, there is also cases where no consideration no contract. That is, we always say without there is any consideration there cannot be a contract, but there are exceptions to that.

So, no consideration, no contract is right. However, there are exceptions in case of natural love and affection. Father passes on property to son or parents pass on property to a son or a daughter. There is no consideration for that other than natural love and affection, but that is enforceable. That is a valid contract. A will is a valid contract. A registered will is a valid contract, is enforceable by law.

What is the consideration given by the other party? Nothing, only natural love and affection. Only for that this is given. So that is enforceable by law. Similarly, for past deeds, if somebody does something and accepts that, that also becomes a valid contract. Gift is a valid contract. A gift deed is a valid contract. So principal and agent relationship, again is a valid contract.

Maybe no consideration is there between them when they are entering into a contract, appointing him as an agent. He may not give any security for that. The contract may be between the principal and the agent based on principal giving that business to him. Agent right now not paying anything to the principal. But the contract still holds good, because the agent is only an extension of the principal.

The primary responsibility lies with the principal. So past deeds, which were past dues also which are time barred, if after that also some action is taken because of which you give a letter saying that I acknowledge the due. Yes, it is time barred. Three years have gone. After six years, seven years, you revive that, give a letter saying I acknowledge the dues.

And I owe that money to you, will pay that money. I will pay that money within such and such date to you. Then a fresh call of action arises and a fresh contract arises. And this contract is a valid contract, can be enforced against if you do not pay within those days. Though, at that particular point of time, no consideration flows because consideration has flown in the past and that become time barred.

But you have revived that after 3 years or 4 years or 5 years by a letter by a contract that I would pay you that money back. So that also becomes a valid contract. So, no consideration no contract has got its exceptions. But important point is consideration need not be adequate. Many times, we have felt that consideration has to be adequate, but there are ample cases where consideration need not be adequate and that cannot be questioned unless and until the parties question it.

And they sometimes question it afterwards, when they bring in issues like undue influence, coercion, force. So, it was not a free contract. It was not a free consent. So, these are the challenges in a contract. When you draft a contract, it has to ensure that

the contract should if it is not for adequate consideration, it should not hit the free consent button.

That should be very well captured, that it has done with free consent, with absolute knowledge of all, and there is no coercion in case of coercion or any kind of influence. Freely, we are giving this property to you or I am giving this property to you at this price determined by us mutually. No one can question. But however, if it is something to do with the property, then in that case, the property maybe valued two crores, you may give it at 10 lakhs or 50 lakhs.

But when it comes to stamp duty registration, the market value will be taken, not the value that you have entered into with him for any reason. So that is more or less but the consideration part of it goes. Free consent again is something which is very debatable after issues happen with that. Later on, realization comes that this contract has not been done with free consent.

There was some kind of influence. To establish that is a challenge. There has to be evidence to establish that and more so when you are doing it after few years after execution. So, it becomes very doubtful that why after so many years this question of undue influence comes. If it actually would have come could have come within reasonable time, but may not be after four years, two years, five years like that.

Contracts, corporate contracts also contains another important clause which we always look into is force majeure. Why this clause is so important. Because the contract force majeure means, the word force majeure means beyond the reasonable control. So many times, the wordings of the force majeure needs to be carefully looked into.

Other party may get away by a force majeure, in which it says anything beyond the reasonable control of the either party and which may include even technological failures, maintenance of the plants, disruptions because of unforeseen circumstances. Anything and everything, any kind of disruption, lack of demand, unplanned shutdown of plants, these are all failures of performance.

Means your plant is not up to the mark. And that inefficiency of yours you are trying to get into or recover or you know insulate through force majeure. You are trying to say it is beyond reasonable control because I am inefficient. So, if you are inefficient in running your plant, why you are entering into business with me and make me also in the process inefficient.

So, force majeure is something which is to be looked into, not from the angle of only beyond the reasonable control. Whether this is really a situation of force majeure or not, that has to be seen. And if it is a critical material for you, if it is very critical supplier for you, if it is a critical item for you, the force majeure has to be carefully looked into. The pandemic has brought in the word pandemic also now in force majeure.

Epidemic and pandemic are part of force majeure now. When the pandemic happened, the first thing the contractors were unable to supply, even it went to the extent of payment. The debtors were unable to pay. The vendors were unable to supply. And then you are also unable to pay, you are also unable to supply.

So, you know, it was a situation where everyone is facing the same problem. And everyone is trying to send the same clue of a force majeure beyond reasonable control, which is partially right, it was beyond reasonable control. But performed activities, already performed, there also you are not paying the money, or asking for delay or asking for credit, asking for extension of time, citing force majeure.

Force majeure cannot delay the payment. That cannot be a force majeure reason that I will not delay I will not make the payment in spite of providing the receiving the services, because of force majeure. That cannot be accepted anywhere. Payment should be outside the purview of performed services, of services delivered.

But the question of delivering the time plan, time schedule if a situation like this arises, everyone has given time. Everyone, I mean more or less the enormity of the decision of the legal luminaries, the debates, the discussions that went, everybody said the same thing, that what the court will decide would be seen later on.

But right now, one should give time and not take any severe action like penalizing the contract or severing their contracts, or for that matter, taking somebody to court. It will not help because it is a situation beyond the control and nobody predicted this situation. So that is the role of force majeure. The other important thing in the contract is conditions precedent.

Very important to find out what are the conditions preceded in a contract. A contract cannot take place if the conditions precedent does not happen. For example, if the contract to supply power or a contract to establish storage tanks for storing materials. All these would require prior approval, prior approval of the regulatory body. Whether selling power or whether establishing storage tanks in the port area.

Environmental clearance is required, port authority's clearance is required. On the other hand, regulatory authority's permission is required to sell power, respective areas, wherever you are trying to sell power that respective electricity regulatory commission has to give you the power. So, you are entering into contract to sell power to a particular party at a particular price, everything is determined.

And you are saying I am going to supply this power and there is a minimum quantity clause also. The minimum this many powers I will supply. If I fail to supply then I will ensure that you get this supply. If I even cannot ensure you will buy this power. Any differential price I will pay. So, you are writing everything in the contract.

But you are not considering one thing that your power sale is subject to the clearance from the regulatory commission or the regulatory board, whatever it is, the whose permission is required. So, you put very clearly on the condition's precedent that this permission, this contract will take effect only when the permission is reached is number 1.

Number 2, as and when the permissions are reduced and not given are not be able to generate power and therefore the question of supply minimum power will not happen. So, the buyer also would know that he is running that risk, that here is a body he can only supply when he gets the approval, obviously. Without the approval I cannot

supply. Similarly, for tanks, storage tanks at ports etc., environmental clearance is

required.

So, unless the EC comes you cannot enter into the, contract cannot take effect. We

call it the effective date of a contract. The effective date of a contract is important in a

contract because the contract will not have any liability for anyone unless and until

the condition's precedents compliance is done. Contracts one important thing also has

to be seen is that there is an exit clause in every contract.

That either party may terminate the contract without assigning any reason with

sufficient notice. It should not be that you are just shuttled up in that contract, you do

not you cannot come out of that contract. True for either party. But important that

give reasonable notice and important that whatever has been performed till that time

of the contract is honored by all, till the time of termination is honored by both the

parties.

Both parties should honor what is done till such time. That is called you know, free

exit clause. You should exit, you should have a free exit clause. It is not that you

cannot exit till the other party gives consent or till such time all this happens, you

know, or there is a particular breach. If the breach does not happen you cannot

terminate. No, there should be a free exit.

Even if there is breach or no breach, we can terminate the contract by giving notice of

say three months or six months. The other important point in a contract to be seen is

jurisdiction clause, arbitration clause and dispute settlement. Because if there is an

arbitration, then it has to be neutral arbitration. There has to be arbitrator for both

sides and both sides then prepare a third arbitrator will be a neutral arbitrator.

That is normally the procedure. And if there is arbitration, you cannot go to court

directly. Only after you exhaust your rights of arbitration, then only you can go to

court.

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CONCLUSION

This lecture session has covered various aspects of an agreement or contract including- introduction, what is contract, essentials of a valid contract, privity of contract, classification of contract. Learning all about will help learners generate their knowledge and capacity.

So, these are the basic points, which need to be considered in a contract. I thought of highlighting the basic points which are there, which needs to have as a business law professional, we should understand that a contract can have various minute details in its wordings. However, it is important that we also understand, we are not may not be legal experts per se but we also understand the nuances of a contract.

Force majeure, condition precedent, termination, arbitration, jurisdiction clauses are very important. We will discuss more as we go forward. Thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-4: Law of Contract

Lecture - 17 Concept of Offer, Valid Offer and Essentials of Valid Offer

Good afternoon. It is model 4 lecture 17, Concept of Offer, Valid Offer and Essentials of Valid Offer.

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BUSINESS LAW FOR MANAGERS

Key Note

In the context of an offer to be valid, generally assumed that it must be clearly communicated, giving the offeree a chance to accept or reject it. Clear communication can include actions, oral communication, or in writing. A valid offer can be made to a group, a single person, or the public at large. Valid offers are definite in their substance. We will learn various aspects of valid offer from this lecture session

An offer is basically the starting point of a contract. In fact, much before that we have invitation to offer. So, as we go along, we will understand the difference between offer and an invitation to offer but the starting point of a contract is an offer. And then comes the other aspect of offer, which is called acceptance. So, if the offer and acceptance is in place, the contract starts moving, and if that is not in place, the contract is, has not made any start at all.

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➤ Concept of Offer ➤ Essentials of Valid Offer ➤ Elements of a valid offer ➤ Capacity to Contract ➤ Free Consent

We will see concept of offer, essential for valid offer, elements of valid offer, capacity to contract and free consent.

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Concept of Offer Introduction Contracts play an important role in our daily life and living. It may be ranging from insurance policies as well as to employment contracts. In Fact, we enter into contracts even without thinking, and the whole process of contract starts with an offer by one party and acceptance by another party. We may have a brief discussion on the issues relating to offer and acceptance.

Now contracts play an important role that we all know. But you know initially it starts with the process which we called basically offer and acceptance and that is the importance of this module is to understand how the offer and acceptance takes place.

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Proposal or Offer

According to the Indian Contract Act 1872, proposal or offer is defined

in Section 2(a) as "when one person will signify to another person his

willingness to do or not do something (abstain) with a view to obtain the

assent of such person to such an act or abstinence, he is said to make a

proposal or an offer."

When one person will signify to another person his willingness to do or not to do

something, even abstain from doing something, with the view to obtain the assent of

such person to such an act of abstinence, act or abstinence, he is said to make a

proposal or an offer. Now it is signifying important what one person will signify to

another person. So, it is person to person.

The moment it is person to person to a specific person, then it is an offer. But when it

is not to a specific person, but to a general then it is actually an invitation to offer.

And later on, that person makes a specific offer to the person who originally given the

invitation to offer and therefore, that person becomes an offeror.

And the person who has given information to offer becomes an offeree or the

acceptor, offeror, offeree. Or person who gives the offer is called offeror, who accepts

the offer is called offeree. Acceptance for the one who gives the acceptance. So

important thing is signified to another person, his willingness to do or not to do

something with a view to obtain an assent of such person, with a view to obtain, it is

not a generalized thing.

To obtain the assent, the consent, the eyes of such person or an act of abstinence as

well not to do something.

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Essentials of a Valid Offer

- * The terms of the offer must be definite, unambiguous and certain or
- · Capable of being made certain.
- An offeree must have knowledge of the offer before he can accept it.
- An offer cannot contain a term the non-compliance of which may be assumed to amount to acceptance.- free credit cards first year no fees – second year huge fees
- If a person makes a statement without any intention of creating a binding obligation this does not amount to an offer. A made an advertisement for sale of car in the newspaper, B travelled 50 kms to purchase but it was sold off. No compensation is legally payable.

It is important that the terms of the offer is very definite, unambiguous and certain. Unambiguous means no leave, do not leave any scope for interpretation. So, if I am making an offer for selling a house, I should make it very specific, what is that house about? What is the specific area of the house? How old is the house? What is the length of the, I mean the area of the house?

Whether it has a compound or not? Whether it has a garage space or not? Very specific unambiguous certain terms should be given. If that not if that is not the case, then it is not a valid offer really. It is a generalized offer. The offer is not very specific to the property. So, the offer is not complete. Because offeree can only give his acceptance, provided he has knowledge of the offer.

If he does not have the knowledge of the offer, complete knowledge, then that acceptance has got no meaning and there is a scope of the contract not being enforceable. Basically, the example that is given in the next is a free credit cards first year no fees, second year huge fees. This has been a case which has been happening random. Of course, after the Supreme Court intervention, it has got reduced.

Credit cards were sent to the houses without even any offer being made. Without any call being made that we need a credit card. The moment you accept that credit card, first year it is free, next year huge fees are charged. And if you do not pay the fees, then it goes on as your dues. So, it was not at all a healthy practice. Banks were

pushing the credit card sales by not even ignoring the very basic contract of invitation

to offer, offer and acceptance.

There was no acceptance. Mayor sending a card to somebody's house by courier and

courier delivering the card and signing does not mean it has acceptance, number one.

Putting a condition that if you do not accept reject the card send the card back.

Otherwise, it will be deemed acceptance is again wrong, utterly wrong. My action will

only prove that I have accepted.

My non-action you can never prove that I have accepted. Here the reverse. To prove

your non-acceptance, you take an action. And if you do not take an action it will

assume to be you have accepted the fact. Total bypass of law, but it was being done

rampant by various corporates, I mean banks to sell their credit cards. If you do not

accept, you return the card back at this address.

Prepaid envelope whatever is there, but you have to return. You have taken action for

that. But if you do not take any action, sit on it, then it is acceptance, that cannot

happen. So, it has to be foregone. Same way if an advertisement there in a car for sale

of a car in newspaper. A person may travel 50 kilometers, 500 kilometers, 200

kilometers, but cannot come and force you give me the car because I have complied

with your offer.

It was not an offer. It was an invitation to offer. He was inviting offers for his car.

And it is clearly rated rates are negotiable, terms are negotiable. So, one cannot come

and demand that since you have given an invitation to offer, we will take it as an offer

and here is my acceptance. Once I have complied with your terms you are bound to

give it to me. No, it cannot.

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Essentials of a Valid Offer

- ♦The offer must be made with a view to obtain acceptance thereto.
- ♦The offer must be made with the intention of creating legal relationship.
- The offer must be communicated to the offeree before it can be accepted.
- If no time is fixed by the offeror with in which the offer is to be accepted, the offer does not remain open for an indefinite period. Reasonable time concept. Tenancy agreement, alterations in flat-should not be unreasonably withheld.
- An offer must be distinguished from a mere invitation to offer.

The offer must be made with a view to obtain acceptance thereto. The offer must be with the intention to create a legal relationship of a buyer and a seller. You become an offeror and offeree. There is a transfer of ownership between the two. The offer must be communicated to the offeree before it can be accepted. So, communication has to be complete. Offer again cannot remain indefinite period.

Though if it is given in advertisement that the offer is given inviting quotations, if it is not mentioned the time, it does not mean you will be indefinite period. Reasonable time concept is always there. Importance is differentiated between an offer and an invitation to offer.

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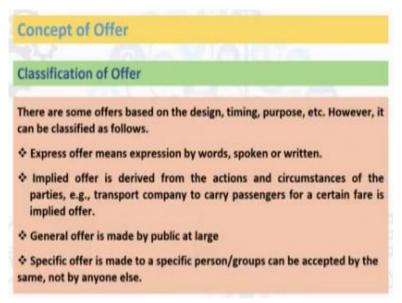
Concept of Offer

Elements of a Valid Offer

- There must be two parties.
- The offer must be communicated.
- It must create legal relations.
- It must be certain and definite
- It may be specific or general.

There must be at least two parties. The offer must be communicated. It must create legal relationship, transfer of owner, ownership. It must be certain and definite, not unambiguous. It should not leave anything; ambiguity should be avoided. It must be specific or it will be it may be specific or even general but in case it is general it is more likely to be an invitation of offer.

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There are some offers based on design, timing, purpose etc. However, it may be classified as follows. Express offer means expression by words spoken or written. Implied offer means derived from actions and circumstances. Transport companies carrying passengers. Somebody boards, he is an implied offer that he will he has accepted the offer that he will pay the fare.

So, transport company is offering the services. Somebody who is taking their services he is accepting that offer. General offer is something which is made by public at large. General offers can be that we are offering spaces in a particular place. These are the terms and conditions. Well, that is an offer. You have to go comply with the terms and conditions and then you get an acceptance.

Specific offer is made to a specific person or groups can be accepted by the same not by anyone else. So specifically, I am giving an offer. For example, when you are offering shares to a qualified institutional buyer, we call it QIP. So, it is only going to the QIPs, nobody else can buy. Meaning the mutual funds or institutional investors they can buy. But general public cannot buy. So, offer can be made very specific to

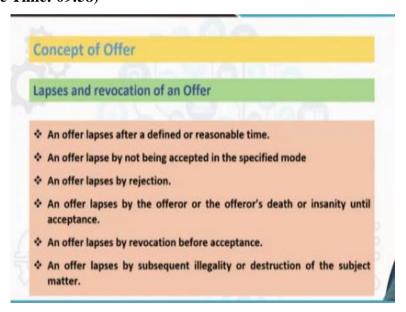
groups. But when I am giving an offer to a general public like an IPO, it comes by the public issue. It is a general offer which has been given to all.

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Counter offer is you have made an offer, I do not like that. So, I give another offer. Your price is 40,000. No, I give an offer of 30,000. You give me that price. So that is called a counter offer.

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An offer lapses after defined or reasonable time. Any offer we cannot have a time immemorial kind of acceptance. I mean, it cannot be remained open. An offer lapses by not being accepted in the specified mode. That is also important. You have to accept it in a mode which has been specified there. If it is stated that it has to be accepted in a particular form given by it, it has to be accepted in that form. You just

write a mail and give and I accept the offer, it will not happen. Rejection offers are

common.

It may not take place. Nothing is important that you have to give an offer somebody

has to accept that offer. Offer can be rejected. There is no compulsion that somebody

has to accept. Similarly, and person if he has given an offer and accepted, then it

becomes a contract.

But if it is in the nature of an invitation to offer, and it can be shown that it is an

invitation to offer, then it can be, the offeror cannot be compelled to accept the

acceptance. He will have to you know he has the option to use his discretion to whom

to give that, finally to whom with whom to enter into a contract. Offer can lapse by

subsequent illegality or destruction of the subject matter.

It is very common; it happens in real estate many times. You have entered into

contracts, building up a property, the land is acquired. Now what happens after some

years or maybe few months the land is shown to be something which is an acquired

land, it requires, government has acquired that land. So that property cannot be built.

So, you cannot take the promoter for a cause for that.

It is almost like a force majeure situation. Subsequently illegality has happened in

that. The promoter cannot be held responsible for that. He will pay back the money,

maybe the interest also. But you cannot be enforced for a specific performance that

you have to build at that place the property and give me my quota of two flats because

the subject matter, the whole land on which the property will be built is has been

acquired by the government.

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Capacity to Contract

♦ Age of majority

♦Sound mind

Not disqualified from contracting by any law.

Can a Minor enter into a contract?

Point to note is that : Minor may be a party to the contract but not bound by that contract, however the minor make other party bound by the contract.

A minor can be pledgee or mortgagee or payee, can derive the benefit under the contract but he is not bound by that contract.

Capacity to contract. This is another important concept of contract. Anybody cannot enter into a contract. A person who has got majority. And what is that age, 18 years. Somebody below 18 years cannot enter into a contract. It is only after the age of 18 years one can enter into a contract. He has to be of sound mind. What is a sound mind? Person who can make his own decisions.

He should not be dependent on somebody to take his decision then he cannot enter into a contract. And he is otherwise not disqualified from a contract, from contracting by any law. There may be provisions where somebody cannot enter into a contract for certain reasons. Like if you are a whole-time employee of one company you cannot enter into a contract of another employee for employment.

So, you are disqualified from contracting by law. You cannot be an employee of two companies at the same time. That is when you say he is not disqualified for contracting by any law, then that contract cannot be enforceable. That capacity you do not have to enter. You are a full-time employee of one company you cannot be an employee of another company.

Can minor enter into a contract? Minor can be a party to the contract but not bound by that contract. He can be a beneficiary to the contract but he cannot be held liable for the contract. But he can bind other parties by the contract. He cannot be bound.

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Capacity to Contract

Can an agreement with a minor be legal and enforceable after he/she attains majority?

❖Is the minor allowed to cheat by falsely stating his/ her age?

Can minor be a partner in a partnership farm?

◆Can minor act as an agent?

A contract with a minor is void, and a minor, therefore cannot bind himself by a contract. A minor is not competent to contract.

Reference: Mohiri Bibi Vs. Dharmodas Ghosh case.

Can an agreement with a minor be legal and enforceable after he or she attends majority. No. When he entered into a contract if he was a minor, after attaining majority that cannot be enforced because the contract is void ab initio right from the beginning. Minor is never allowed to cheat by falsely stating his or her age. Can

minor be a partner in a partnership firm?

No, he cannot be because he cannot take a decision. He is incapable to enter into a contract. So, he cannot be a partner in a partnership firm. Partner in a partnership firm has the capacity to contract. He does not have the capacity to contract. Minor also cannot be an agent. Because he cannot contract. A contract with a minor is void and a minor therefore cannot bind himself by a contract. Minor is not competent to contract. Mohiri Bibi Vs. Dharmodas Ghosh, very famous case. This case is referred almost

everywhere.

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Capacity to Contract

- Can a person who is drunk enter into a contract? Definition of drunkard and habitual drunkard.. Test is whether it can be proved that the drunkard was incapable of understanding the contract.
- Permanently Unsound mind idiot
- What is an alien enemy & what is an alien friend?

Benevolent lady, Mohiri Bibi, he helped Dharmodas Ghosh the young boy because he was financially in distress. And he helped her to give some money as loan, quite amount of money as loan for him to use his, you know daily needs, education, many other things she helped her.

And in the process what happened, since it was a quite a sum of money, Dharmodas Ghosh mortgaged the property, whatever he had to Mohiri Bibi. Later on, when he became minor, I mean he became major, then, and he was finally asked to pay the debt he said he is unable to pay the debt. Then Mohiri Bibi tried to enforce the property of the minor, which he has given some point of time when he was a minor.

But he Mohiri Bibi could not enforce the property, because when the property was mortgaged to her, given to her, then that point of time, Dharmodas Ghosh was a minor. So, at the time of minor if he has mortgaged the property that contract is void ab initio. So, it is just a piece of paper, it cannot be enforced. So Mohiri Bibi gave loan, helped Dharmodas Ghosh with all the time during his difficult times, etc.

But when the turn came to repay, he could not repay and she tried to enforce the property, could not enforce the property because contract with a minor is void ab initio. So, when she entered into a contract with him, he was a minor and he mortgaged the property which is of no value, he cannot mortgage. She cannot take a decision on mortgage. So, the decision was considered to be wrong, void ab initio.

And therefore, Mohiri Bibi could not realize the money. So, this is a famous case of the Mohiri Bibi versus Dharmodas Ghosh in a nutshell. Now can a person who is drunk enter into a contract? Well normally a drunkard is somebody who is not in his senses and cannot enter into a contract. But again, it has to be proved, that when he entered into a contract, that the person was incapable of understanding the contract.

The important is drunkard or not is not important, whether he was in his senses or not. If he was not in his senses because of whatever be the reason, then that contract is not enforceable by law. Permanently unsound mind is idiot. Of course, he cannot enter into a contract because he can never use his mind, his senses to enter into a contract.

Foreign company, yes, you can enter into a, with a foreign company you can enter into a contract, with a foreign friend you can enter into a contract, but not with an enemy. So today, you have entered into a contract with a country which is not an enemy country, tomorrow, if for any reason it is declared as an enemy country, all the contract that you have entered into prior would be enforceable, but after that it will not be enforceable.

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So, contract during the time of when they declared as enemies are not enforceable. Free consent. This is one concept, which is largely debated in court to prove that a contract is not enforceable by law, because if it can be proved the person has entered into a contract was not in his will, he was not willing to enter into a contract, but you are somewhat forced to enter into a contract.

In that case, the contract will fall flat, it will not be enforceable. Lot of times these case laws this circumstantial evidence are taken to prove before the court that it was entered not with a free consent, but with coercion, with any of this undue influence, fraud, misrepresentation and mistake. Examples of coercion, threatening to kill, threatening to commit suicide.

Examples of undue influence can be example of matters under will where many times after death, when the will is read out or will is disclosed, it is found out among even brothers, that sisters whatever it is, this they try to find out that the father or the parent who has given that property, the will that has been signed was under influence.

This is a very common phenomena which is found in family feuds, that will be not done with free consent, but it was threatened, undue influence, coerced or some kind of influence was there to make that will otherwise this will would not have been done by my whatever it is by father or mother whatever, who has given this, made this will.

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Concept of Offer

Presumption of undue influence in following cases

Parent & child
Guardian and ward
Doctor & patient – Hernia operation suggested by Doctor
Spiritual guru & disciple (Great profession – no impact on downturn)
Lawyer & client (Derivative transactions – cases in Chennai – corporate heads pleading ignorance and taking plea of undue influence) legal covenants containing clauses of understanding the contract in full
Trustee & beneficiary

Now undue influence. Undue influence is something which is there, which cannot be seen, but can be felt from the relationship. A parent and child, there is a presumption of undue influence. A parent will always influence the child. Child will also influence the parent. So, the presumption of undue influence in any contract between them is always there. Guardian and ward. Again, undue influence.

Doctor and patient. Many times, it happens that doctors are now being taken to court

by for reasons like you know they have not used their due diligence or they have not

done their proper study or they have not done their medical examination properly

before taking a decision of asking for some operation or some tests etc. So, the onus is

always on the doctor to prove.

Why it is important? Because doctor sits in a position of undue influence. So,

whenever it goes to the court, court assumes that here is a body who is stronger than

the other body. Between two contracts one body has a power to influence the other. It

is always presumed that a doctor can always influence the patient party. Patient does

not know anything, so he can be influenced by the doctor.

Now it is for the doctor to prove that he has not unduly influenced. It was justified,

the operation was justified, the investigation was justified. Lawyer and client also.

Sometimes this case is to come up where companies take this plea that we have given

this, we have taken this decision based on the opinion of the lawyer. So, lawyer does

influence the client.

His understanding of law of course is much better than the client and the client comes

to him for proper understanding. So, whatever the lawyer says, he goes by that. And

sometimes clients take this as a plea and you know present accounts with a note

saying that this provision has been done this way or this liability has been disclosed

this way, based on an opinion taken by your company solicitors or whatever the legal

counsel has advised.

So, this is how, you know companies do at times represent or for the matter even try

to take the protection of the opinion of the lawyer because lawyers always have, it is

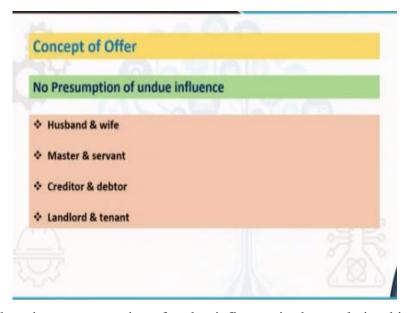
assumed will have a presumption of undue influence over the clients. Trustee,

beneficiary same way. The beneficiary will be influenced by the trustee because end

of the day, the beneficiary is benefited by the trust.

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However, there is no presumption of undue influence in these relationships. Husband and wife of course not. Who can influence whom? Master, servant. Again, there is no presumption of undue influence. Creditor, debtor. There is no presumption of undue influence. And landlord, tenant also it is taken that there is no presumption of undue influence.

Though they try to show in each of these cases there is some amount of undue influence which is master, servant or for that matter between the landlord and the tenant, but law per se does not presume undue influence. So, it will not be for the court to prove that the landlord has influenced the tenant. It will not ask the landlord to prove that you prove that you have not influenced the tenant.

Rather the law will ask, the judge will ask that you prove that you have been influenced by the landlord. It is the onus on the person who is bringing the allegation and not on the other person. Same with the debtor and creditor. The debtor brings an allegation of undue influence, debtor will have to substantiate. It is not the creditor will have to say that no I have not unduly influenced.

This is the basic difference between presumption of undue influence and nonpresumption of undue influence. Where there is a presumption of undue influence, the person bringing the charge does not have to prove. The person on whom the charge has been brought, he has to prove that he has not influenced. Wherever there is no presumption on undue influence, the person who is bringing the charge has to substantiate where there is undue influence.

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We have taken references to various editions of the books, which are there. You know these are all old books and I mean, all running commentaries are there. Law of contract, I think the best would be the bear act to see. However, references have been taken for illustrations and deliberations.

And in offer and acceptance and in undue influence, free consent, one thing comes out very clearly is that each of them have a in their capacity or right to make or mar a contract. Whether a contract will stand or the contract will fall, each one has his own state. It is not that anyone is more important or less important. Exclusively each one has got important.

Free consent is extremely important. Establishing the act is important. Bringing charge against it depending upon the kind of influence you have, who will prove who will not will prove, that will depend. Capacity is another important thing. To prove whether he has got the capacity to enter into a contract.

And of course, there are other aspects in a contract which we will see in the next slides like consideration we have discussed in the earlier slide, which is another important of the contract. Then performance of the contract, whether at all the contract is performable or not. Whether the subject matter is something which is at all doable or not.

One case we saw where the subject matter subsequently has become illegal, it cannot be contained because the promoter has taken a land, the land has been acquired by the government or by the state or for other reason land has become a disputed land. In that case, he cannot be held responsible. Of course, he was taken advance that has to be returned.

So, each one of these in a contract are very essential ingredients to prove that the contract becomes a valid contract. Each of the factors are to be present in a valid agreement to make it a valid contract. We will see in the next slides further, how it unfolds other aspects of the contract.

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CONCLUSION

In this lecture, attempt has been made to give an overall idea of offer so that discussion has been held on various aspects of offer and valid offer including -concept of Offer, essentials of Valid Offer, elements of a valid offer, lapses and revocation of offer, capacity to Contract and free Consent

We will discuss more as we go forward. Thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-4: Law of Contract

Lecture - 18 Concept of Fraud, Misrepresentation and Consideration

Good afternoon. This is model 4 lecture 18, Concept of Fraud, Misrepresentation and Consideration.

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BUSINESS LAW FOR MANAGERS

Key Notes

Periodically, the latest major fraud hits the headlines as other organisations sit back and watch, telling themselves that 'it couldn't happen here.' But the reality is that fraud can happen anywhere. While only relatively few major frauds are picked up by the media, huge sums are lost by all kinds of businesses as a result of the high number of smaller frauds that are committed. Here various aspects of fraud and considerations will be discussed.

In contracts, frauds and misrepresentations obviously are two sides and it is not desirable, but it happens. If it happens, then what happens actually that is what we need to discuss. How we need to treat. And frauds does make the contract void no doubt, but misrepresentations make the contract voidable at the option of the sufferer. So, these are the basic two ingredients of fraud and misrepresentation.

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KEY POINTS

➤ Concept of Fraud

Remedies in case of Fraud and Misrepresentation

> Consideration

> Restraint of Legal Procedure

Now we will also touch upon consideration which is a big subject, consideration of different natures. And we will also look into restraint of legal procedure. That is something which needs to be understood because many things arises from restraint of legal procedures when a contract comes to a standstill, further it cannot be developed. And why it happens?

Whether it is avoidable and if at all it is avoidable, what is to be done to make this avoidable. But most of the times it happens that we do a postmortem, before that it cannot be stopped. It has already happened and then we are doing a postmortem because of situations. Not anything else, but because of situations there is a restraint on the legal procedure.

But while entering the contract, if we draft the contract, and if we check all the nuances of the wordings in the contract, to a large extent it is avoidable.

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Concept of Fraud

Introduction

The evidence reveals that the incidence of fraud and financial scandal to be historically contingent and skewed towards certain sectors, particularly banking and finance, international capital mobility, and mediated by managerial incentives and ownership concentration.

In the development of interconnected and international business networks, which, combined with wider financial deregulation, has led to a resurgence of fraud and financial scandal.

Fraud is deliberate. Fraud is something we should deal with the mindset. Purposeful, done with an intent to cheat, that is a fraud. There is no other definition. Is a clear-cut intention being there to cheat and in Latin it is called men's area which means a mind to cheat, a mind which is clear, identifiable. Mala fide intention is totally there to cheat. That is a fraud.

It is not innocent, it is not inadvertence, it is not misrepresentation, it is not mistake. It is a clear cut delivered action.

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Concept of Fraud

What is Fraud?

- Fraud means inducing any other parties to enter into contract to deceive other parties.
- ➤ Section 17 of the Indian Contract Act defines fraud in contracts that —
 Fraud implies and involves any of the following acts committed by a
 contracting party or his connivance or his agent with the intention of
 deceiving or inciting another party or his agent to enter into the agreement.

Inducing any other parties to enter into a contract to deceive other parties. Now intent is to deceive, to cheat.

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Concept of Fraud

Ingredients of Section 17 of Indian Contract Act

When analysed s 17(1) shows the following ingredients:

- i. There should be a suggestion as to a fact;
- ii. The fact suggested should not be true;
- iii. The suggestion should have been made by a person who does not believe it to be true; and
- iv. The suggestion should be made with intent either to deceive or to induce the other party to enter into the contract.

The various instances what happens ingredients there should be a suggestion as to a fact. The fact suggested should not be true. Knowing fully well it is not true the fact will be placed before that. The suggestion should have been made by a person who does not believe it to be true. He does not believe it to be true, yet he does it. So, if he believes it to be true, and he does it, then it becomes actually a case of misrepresentation.

The suggestion should be made with the intent either to deceive or to induce other party to enter into a contract. So, induce other party to enter into a contract is also a fraud because he will then enter into that liability knowing fully well, that this is not going to happen.

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Concept of Misrepresentation

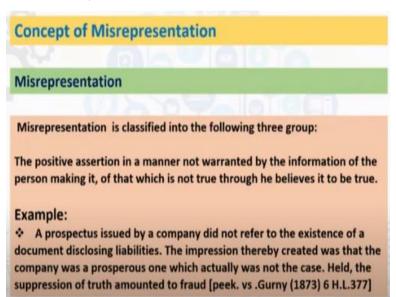
Misrepresentation

A misrepresentation is an untrue statement of a material fact made by one party which affects the other party's decision in corresponding to a contract. If the misrepresentation is identified, the contract can be declared void and depending on the situation, the unfavorably impacted party may seek damages.

A misrepresentation on the other side is an untrue statement of a material fact, made by one party which affects the other party's decision in corresponding to a contract. It is material. It is an untrue statement of material fact. If misrepresentation identifies the contract can be declared void and depending on the situation, the unfavorable party impacted may seek damages.

So, there is no penalty here. Because there is no intent to cheat. The moment there is an intent to cheat, a fraud, the penalty word comes in, it is damage. The other party has affected damage on the other party, and therefore has to compensate for the damage. But nothing more than that. Penalty is an over and above damages.

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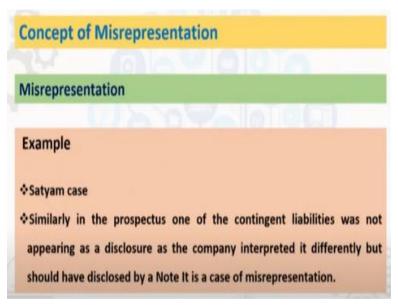
Misrepresentation can be classified in the following group, the positive assertion in a manner not warranted by the information of the person making it, which is not true, though he believes it to be true. That is the point. He believes it to be true. In case of fraud, he did not believe it to be true. So here he believes it to be true. And therefore, he is passing on that information.

However, that is a material wrong information. Maybe he has not used his due diligence, he has done his due diligence property. Maybe his competency level is less but it is still not a fraud. A prospectus issued by a company did not refer to the existence of a document disclosing liability. The impression thereby created was that the company was a prosperous one, which actually was not the case.

Held the truth, suppression of truth amounted to fraud. So, document disclosing liabilities purposefully or suppressed, so that a loss-making company looks like a profit-making company and duping others to enter into a contract by buying the shares of that company knowing fully well there are documents, we should clearly show the company is in red.

But you are showing the company is in black by removing those documents or not disclosing those liabilities so that others can come and buy the shares. It is a clear case of fraud to deceit or cheat the other party.

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Satyam case was a clear case of fraud knowing fully well he siphoned the funds from Satyam to Maytas. He cannot say that it was a misrepresentation, it is a mistake, they can never happen. A misrepresentation and a mistake cannot take the place of a fraud in a situation given like this.

And anyone would, any sane person would understand that it cannot happen, that you will give the money to another group company and send all those money without any interest, without any record, without any logic, without any business decision making just to help the other company. And you are saying it is a misrepresentation, it is a mistake.

It cannot happen. Similarly, in the prospectus one of the contingent liabilities is not appearing as a disclosure, as the company interpreted it differently, but should have

disclosed by a note is a case of misrepresentation. Now here is a question of interpretation. Here is a clear case of interpretation. What is a contingent liability? A liability which can happen in the future but however, today it is not a liability.

For example, there is a huge tax demand on the company. However, the company is contesting the tax demand. The company is saying that no this tax demand is not payable. Therefore, the demand that has come from the income tax authorities is now, the company is engaged lawyers, solicitors and it is being placed before the judicial authority, the process of law will decide what is the right what is wrong.

But we have challenged and that has been challenged and that is laying in the for the decision of the court. And there are series of hierarchies for that. If you lose in one court, you go to the higher court, then you go to the higher court. So, it will take time. Even the first stage we have not come.

So, in such a case, if the company feels and there is a legal opinion backed, saying that no it is not a case of contingent liability, the company is clearly within its right not to pay that tax, backed by a legal opinion from a company solicitor. In that case, if the company has not disclosed that in the prospectus, even by way of a note, now can it be taken as a misrepresentation or a fraud is really a question debatable, depending upon the amount then.

The amount will be immaterial. If the amount which he is been talking of is only a small amount compared to the profit the company is showing, and it will not eventually make the profit into loss or reduce the profit by more than 50% then it can be still be taken as a misrepresentation.

But if the profit can be loss because of this demand, and still it is not being shown as a note at least in the prospectus, then there is a serious doubt whether it is done deliberately or it is a misrepresentation. Because if it is shown, the entire prospectus will go to red from black.

So, you know this fine thread of difference between misrepresentation and fraud many times will depend on the situation, on the quantum, on the impact it will have.

So, by clearly saying that it is a misrepresentation and is not fraud may not be possible, case to case it will vary.

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Fraud and Misrepresentation

Difference between Two

Fraud is deliberate whereas Misrepresentation is innocent.

Fraud – remedy is voidable & damages where as in case of misrepresentation it is voidable only.

Misrepresentation is normally innocent. Misrepresentation is normally not intended. It is unintentional. Whereas fraud is deliberate. Fraud remedy is void and damages, not voidable it should be void and damages. Whereas in case of misrepresentation, it is voidable only, and damages also and in case of fraud damages plus penalty. Damages would include penalty as well.

Misrepresentation is voidable and damages. If can be negotiated. But it is definitely voidable and the other one is void.

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In case of misrepresentation, the party aggrieved or wronged has two remedies viz,

(i) He can avoid the performance of the contract

(ii) He can insist that the contract shall be performed and that shall be put in the position in which he would have been if the representation made has been true.

In case of fraud he has an additional remedy i.e., he can sue for damages.

In case of misrepresentation a party aggrieved or wronged has two remedies. For example, he can avoid the performance of the contract that is voidable at the option of the sufferee. He can insist that the contract will be performed that is he goes on in performance of the contract specific performance, please perform the contract. I am okay with that aberration or error.

And he will be put in the position which should have been if the representation made has been true. So, it is called specific performance. You do it, but either we accept it or you put me back the position I was there had the representation been true. Meaning, if you have said you are telling, you are selling this car to me, you should sell me only that car which you have told me.

So, I am not taking the contract as void. I am asking you to specifically perform the contract. So that becomes a specific performance contract. He can ensure that that is voidable at the option. But if it is something of a fraud, it is void at the very instance, at the very beginning it is a contract which is void. In case of fraud, he has additional remedy for damages. Damages, which means damages include penalty.

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Consideration

Salient Features

Something in return

No Consideration No Contract

Consideration from both side i.e. Promisor & Promisee.

Exception to the rules:

Natural love & affection - Probate

A promises without consideration is valid if it is a promise to compensate wholly or in part a person who has already voluntarily done something for the promisor or something the promisor was legally compellable to do. Thus, where A finds B's purse and gives it to him, and B promises to give A Rs.100, this a valid contract.

Now consideration. Something in return. We have heard this before also in my lecture back. No consideration no contract. That is another important connotation which always comes. If there is no consideration there cannot be any contract. Consideration has to be there. That is the basic of a contract. Consideration need not be adequate, but the consideration has to be there.

And consideration has to be from both sides. If you buy a car, you pay money, you get

a car. So, consideration is not only cash, the money that you pay, consideration is also

the car that you get. So, consideration happens from both sides. But if there is no

consideration, there is no contract. Exceptions are the first one, natural love and

affection, probate or a will that is given by the parents to a son or daughter, discussed

I believe one or two classes before.

A promise with consideration is valid if it is a promise to compensate wholly or in

part a person who has already voluntarily done something for the promisor. Is a case

where a person finds a purse and gives it to him and B promises to give him Rs. 100 is

a valid contract. So, when he did that the whole thing, he did it voluntarily. He found

a purse gave it back.

He found a laptop in the taxi he went; the taxi driver went and gave back the laptop.

When he is giving, I mean laptop back, when he is giving back the laptop back the

taxi driver is not accepting anything, voluntarily he did it. But after that, you promised

to pay him something for that for the good job, then that becomes a valid contract,

which says a promisor without consideration is valid if it is promise to compensate.

Compensate wholly or part a person who has already volunteered on something for

the promisor of something. So, he has done it voluntarily. Now if you have made a

promise that becomes a valid contract.

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Consideration

Salient Features

A promise to pay wholly or in part a debt which is barred by the Limitation Act can be enforced if it is in writing and is signed by the

debtor or his authorized agent. A debt barred by limitation cannot be recovered. Therefore, a promise to pay such a debt is strictly speaking,

without any consideration. But if a written Promise to pay is made by the

debtor then the same is enforceable by the creditor.

Agreement between principal and agent

This is another case, a debt barred by limitation. Cannot be recovered. What is the

limitation act, three years from the date which becomes due. So, promise to pay

wholly in part a debt which is barred by limitation can be enforced, if it is in writing

and signed by the debtor or its authorization.

If he writes gives in writing that yes, I will repay the debt even after three years, four

years, five years, when the debt is no longer there, if he wants to repay the debt if he

writes a note or a contract or a letter stating that I will repay that debt of yours along

with interest or without interest whatever it is, then that letter becomes a contract and

can be enforceable.

Gift is another example of no consideration no contract. An agreement between

principal and an agent.

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Consideration

Rules of Consideration

Consideration need not be adequate

Consideration must be real & competent

Example:

* A contract to build the home in moon for Rs. 2 cores

Consideration must move at the desire of the promisor.

Consideration must be legal

Consideration may be present, past or future.

I have time and again said consideration need not be adequate. Adequacy of the consideration is not a case for making a contract valid or not valid. However, when it comes to immovable property, it is important as far as the stamp duty is concerned,

what will be the stamp charges they will not consider the consideration amount they

will consider the circle rate, what is the rate going at that point of time in that area.

Consideration must be real and competent. And consideration should not be

something that would be something which is unreal, which is not possible to be given.

Like a contract to build a home in the moon for Rs. 2 crores is impossible to perform.

So that kind of consideration. And it is also some consideration which is incompetent

and not real, home in the moon, even now today perhaps.

Consideration must move at the desire of the promisor, yes. The promisor should be

willing to give that consideration. Consideration must be legal. Consideration may be

present, past or future. You can give the consideration right now. You can give it

later. You can give it before also and it has to be a legal consideration.

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Agreement Declared Void

Agreement against Public Policy

- * Trading with enemy
- Agreement for sale of public offices.
- Agreement in restraint of trade.
- Agreement employing child labour
- Agreement interfering in the court of justice.
- Is agreement to prevent a person to engage to any employment or service during the period of employment in a company is a case of restraint of trade?

Agreement against public policies, again void. Trading with enemy. As I told you, if an enemy country you are doing business that business is void during that period of time. But again, the country is no longer declared as an enemy all contracts you entered thereafter would be valid contracts. Only that period when it is declared as an enemy. Everything comes to a standstill. Agreement in restraint of trade.

If you put some taxes which is forbidding others to do business in a particular area because you are protecting one industry in that area by putting huge taxes on the entry of goods in a particular state, it has happened. Then you are actually doing agreement you are doing something which is in restraint of trade.

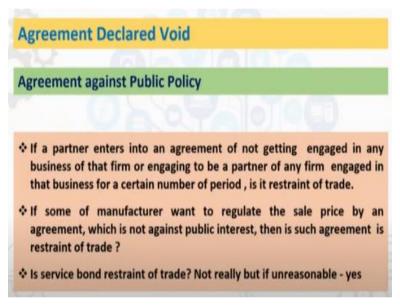
So, if that be so in that case, you have entered into a contract by virtue of which you are stopping somebody to enter into a business, which is kind of cartelization we call it in CCI parlance. Four, five companies, they have entered into a contract to reduce the price as soon as somebody wants to enter the market, so that he cannot enter and after they stop him from entering, they again raise the prices, they control the market.

So that is a kind of agreement in restraint of trade. Those kinds of agreements are avoided illegal agreements. Agreement employing child labor is again an illegal agreement against public policy. Agreement interfering in the Court of Justice is again a wrong precedence of agreements against public policy. As I told earlier also, you cannot stop any person from joining competition.

If you enter into a contract or an agreement with an employee that he cannot join competition after leaving this company that contract is unenforceable. What maximum can be done is basically keeping a cooling period of six months or one year. But if an agreement to prevent a person to engage in any employment or service during the period of employment is definitely not a case of restraint of trade.

If you are an employee of a company, you cannot work for another company. So that is not a case of restraint of trade. What happens in restraint of trade is when you are stopping others to enter the market by forming a cartel is restraint of trade.

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If a partner enters into an agreement of not getting engaged in any business of that firm or engaging to be a partner of any firm and engage in that business for a certain number of periods, is it restraint of trade? Yes, you cannot do that. You cannot stop him from joining other firms. That you cannot do because that will be restraint of his fundamental right to join competition or to do whatever he wants to do.

Right to job, right to apply for his you know livelihoods and income. So, you cannot do that. If some of the manufacturer want to regulate the sale prices what happen is called cartelization. That is restraint of trade surely, by an agreement which is not against public interest, then such agreement is restraint. Yes, again which is not against public interest.

Even if it is not against public interest, but he is reducing the price, stopping others to

enter the market, that is a restraint of trade. Is service bond restraint of trade? Service

bond is something else. Service bond is you are being trained in a company, you are

being nurtured in a company, your money is spent on you for your development.

In that case, the company can ask you that you should work for such many numbers

of years in the company. And if you want to leave before that you can leave but you

have to compensate the company back with the kind of money that the company has

invested on you. A proportional amount should be returned to the company. It is a

kind of bond which is done. See basically these things are very under the scanner.

You cannot do much on this because if he applies to the, if an employee goes to a

court of law and raises all this issue, I think more embarrassment is there in the

corporate then on the employee. So good corporates do not do much on this. There is

no question of bonding an employee or restraining an employee from joining any

company. So those kind of you know practices are not done in big companies.

Some companies do keep this kind of checks and balances that you do not join

competition. That is done by almost all companies but in a balanced manner so that it

does not hit the law, the procedural aspect in any way. It is more of saying that it is a

cooling off period because you have lot of inside information. You are the key

architect of this designing or manufacturing.

Therefore, you should abstain yourself from joining competition for a period of one

year or two years. You know they give a prelude to the whole thing and then this

comes in.

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Restraint of Legal Procedure

- An agreement between A & B in which agreement state incase of any dispute A's decision shall be final & binding on B, moreover not to take any legal recourse, is such agreement enforceable?
- A & B enter into a contract in which stated all dispute shall be mutually settled within 15 days of occurrence, and if it cannot be settled, it shall be referred to arbitration. One arbitrator to be appointed by each party, who will jointly appoint the third arbitrator, And it states that the decision of the arbitration will be final & binding & no party to take any legal recourse. Is such agreement enforceable? Yes as legal recourse has to be there unless specifically ruled out after arbitration.

Restraint of legal procedure. An agreement between A and B in which agreement state any dispute A's decision shall be final and binding and B moreover not to take any legal recourse is such agreement enforceable? This is not a case, which will be really looked into or done by a lawyer would approve this.

Because it clearly shows that you are using your power on another party and you are also saying any agreement between this and this in case of any dispute you are saying that my decision will be final and binding. Moreover, you cannot take any legal recourse. This is absolutely unjust. And this such agreement will not be enforceable because free consent is definitely questioned here.

It cannot be other than where you have free question has been you have been coerced; you have been forced to enter into that contract. Prima facie on the face of it is very clear. That if A and B enters into a contract, it says that if there is any dispute between A and B A's decision will be final. Moreover, B will not be able to take any legal recourse. Meaning B cannot go to the even to the court to apply for relief.

So, this is a clear case of coercion and you know force. So free consent is affected in this. Now the other way is A and B enter into a contract which stated that all disputes shall be mutually settled within 15 days of occurrence, and if it cannot be settled it shall be referred to arbitration. One arbitrator to be appointed by each party who will jointly appoint the third.

This is a perfect example, how arbitration takes place. Now decision of the arbitration will be final and binding and no party to take any legal recourse. Is such agreement enforceable? Well, this is a yes and no both. Why? Because you are yourself saying that I will appoint one arbitrator, the other party will appoint one arbitrator. So, these are our own arbitrators.

Now these two will appoint a third arbitrator called the neutral arbitrator who has no connection with me, no connection with you. And it will be he who will decide the fate of our dispute or our case. Now if he gives a decision, that decision will be final and binding. And no party can take any legal recourse on that.

Now though it can be documented like this and it can be enforced also but mostly it is seen that if this award which is given by arbitrator, the single arbitrator when he gives a judgment, it is called an award. If this single arbitrator gives an award which is prima facie biased or prima facie lacking evidence, prima facie missing important points, which has been argued by the two parties.

In that case, one can go to the court of law and ask for justice, even though it is written legal recourse cannot be taken. If you go to the court in that case, and the other party says My Lord he cannot come to the court because legal recourse is not there, then the court will still allow him to hear.

Because the judgment of the award given, he has brought out a case which clearly shows there has been a bias judgment or award or certain evidence have not been considered. Normal course you cannot. If you enter into contract, if the award is clean award, there is no prima facie evidence of being biased and that he has not, you know also considered all the points what has been done, no evidence is lacking in that case, no court will interfere in this kind of matters.

They will say no, you have yourself said you will not come to take any legal recourse then how can you come to court. So, in this particular case, it will depend on the judgment of the arbitrator. If prima facie the judgment of the arbitrator is biased, if it can be shown that it has been a one-sided judgment and the evidence provided by the other party has not been even considered in his judgment.

In that case, he can still go and take the legal recourse. Otherwise, since you have agreed, it will not take a legal recourse or court it cannot go to the court of law. Arbitration will be the final verdict in this type of matters.

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Actually, arbitration and dispute resolution these are in a contract have to be very carefully drafted and considered and more so in international arbitration, international contracts. Because if you are entering into a party in UK and here is one party is in India, then obviously the venue of arbitration is very important.

One party is in India, the other party is in UK, the venue of arbitration if he is England UK, then obviously the other party has got an advantage. Now if it is in India, the other this party has got, Indian party has got an advantage. Therefore, they say keep it at a neutral place, maybe Singapore.

So neutral place of arbitration is very important in this kind, in contracts like this, where you have got international contracts entered into and party is also new, you are not very much you know not been doing business with him for long number of years, it is an initial one or two contracts. So, in that case, it is always advisable to keep the venue of arbitration in a neutral place, number one.

Number two, what would be the law? Whether law of India or law of UK, which law will prevail? So, it is again something which is need to be discussed, deliberated.

Normally if it is international arbitration, if it is as a neutral place like Singapore, maybe laws of Singapore would prevail, because you are accepting that arbitration would be in Singapore, why not accept the judiciary also in Singapore.

Or if you want to challenge in India, you can do the challenge in India, he can do the challenge in UK also of the award. Because in that nobody will write that the award would be final and no legal recourse would be taken, that will not be written. If that is not written, you can challenge the award anywhere you want. So important that arbitration factor is decided.

Lot of contracts in which arbitration points are there finally when dispute happens, people look into the arbitration contract and say it could have been drafted better. There is scope for further improvisation in the contract. We will go to the next slide and see what is there in the other aspects of contract.

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CONCLUSION

The lecture session has briefly discussed on the concept of Fraud , remedies in case of Fraud and Misrepresentation, consideration and restraint of Legal Procedure. Learners might have learnt and get enhanced their knowledge.

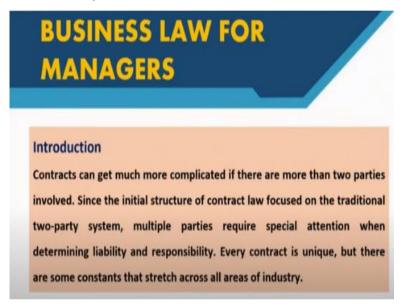
We will discuss more as we go forward. Thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-4: Law of Contract

Lecture - 19 Major Issues Related to Contract

Good afternoon. This brings us to the model 4 lecture 19, Major Issues Related to Contract.

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Well, there are lot of issues related to contract, but we are only concentrating on the major issues. Multiple parties are there. Various liabilities are there. Various considerations are there. Various objectives are there. Various purposes are there. So there will be issues and a contract without issues is no contract if you ask me.

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KEY POINTS

- > Wagering Agreement
- > Quasi Contract- Responsibility of finder of goods
- > Quantum Contract
- > Assignment of Contract
- Discharge of contract due to Impossibility
- Circumstances and discharge of Contract

So, you know there is always issues in a contract and long term contracts have long term issues, short term contracts have short term issues. Issues are always there in a contract. But what is important is to understand the contract, perspective of the contract and how best a contract can be drafted. So, nature of contracts will always help to understand the contracts.

Here we have picked up certain types of contracts. Names would be confusing, but actually if we see the slides it will be very simple to understand. Wagering contracts are basically speculative contracts where if you speculate if it rains, I will pay you 1000. Or you enter into contract for you know betting, that is a speculative contract.

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So wagering contracts are illegal contracts. You cannot, you know bank on wagering contracts. You cannot enforce wagering contracts. As I said in lecture 1, that if you try to enforce these kind of contracts, you may be put into the jail. So it better not enter into the contract. And even if you enter into it for any reason, even in a friendly times, do not try to enforce that. If you have lost you have lost.

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Now contract of insurance always says whether a contract for insurance is a wagering contract. Absolutely not. Insurance is a valid contract. It is an absolutely viable valid contract. Why? Because insurance is a contract in which there is an insurable interest. In a wagering contract, there is no insurable interest. It is a game. It is a game. It is a gamble. Insurance is not a gamble.

It is a property and there is a cover, there is a risk and there is a cover. There is a death inevitable for a person, which has got a cover. So, there is an insurable interest in every aspect. So, it is never a wagering contract. Insurance again is for indemnification, risk mitigation. We will go to insurance in the next slide and that is my last slide, I believe and we will understand that insurance is never for making profits.

Insurance is not from the insurance company's angle. It is for making profit. A Bajaj or a Lombard or HDFC or a Reliance or for as a PSUs they all look for profits. But insured never look at insurance as a profit. It is never a profit center for an insurance.

It is a risk mitigation, is an indemnification. It is for making good not for making

profit. But in the gamble, it is only profit because you have nothing to make good.

You are playing. You have no risk, you have no liability, you are just making a

gamble. So, insurance is not a wagering contract.

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Major Issues related to Contract

Quasi Contract- Responsibility of finder of goods

A person is not bound to take care of goods belonging to another, left on a road or other public place by accident or inadvertence, but if he takes them

to his custody, an agreement is implied by law. Although, there is in fact no agreement between the owner and the finder of the goods, the finder is, for certain purpose, deemed in law to be a bailee and must take as much as

care of the goods as a man of ordinary Prudence would take of similar goods of his own. This obligation is imposed on the basis of a quasi contract.

Section 71, which deals with this subject, says:" A person who find good belonging to another and takes them into his custody, is subject to the same

responsibility as a Bailee"

Quasi contract, responsibility of finder of goods. There is no contract but deeming

contract. By your action, it becomes a contract, it is an implied contract. You leave

certain goods at a certain place, a person takes that good, uses those goods, implied

they have entered into a contract. Later on, if it is found out that you have used those

goods, you have to pay for those goods.

But you might say I have not entered into a contract, you have not given it to me,

there is no relation between you and me. You have not offered it to me, I have not

accepted it, all fine. But you have taken somebody's goods. It is not your goods. And

thereafter, you have also used those goods. Now return, question of return does not

arrive because you have used it also.

So that becomes a clear case of responsibility of finder of goods and you have entered

into a quasi-contract. Quasi because it is a dummy, it is semi contract. That is called a

quasi-contract, implied by action.

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Major Issues related to Contract

Quantum Contract

The phrase 'quantum meruit' means as 'as much as merited' or ' as much as earned '. The general rule of law is that unless a person has performed his obligations in full, he cannot claim performance from the other. But in certain cases, when a person has done some work under a contract, and other part repudiated the contract, or some event happens which makes the further performance of the contract possible, then the party who has performed the work can claim remuneration for the work he has already done.

Quantum meruit. It means as much as merited. A was supposed to sell 200 kilos of rice to B by 31st of December. A sold only 150 kilos of rice by 31st December, nothing more. Now B used those 150 kilos of rice. Now by virtue of that, B has actually accepted a modified contract, instead of 200 kilos 150 kilos now stands as the contract. He has to pay. He cannot say I will not pay because my contract was for 200.

He could have said it has he not used that 150 kilo. Since he has used that 150 kilo of, by his own action, by implication, he has accepted the contract. That contract is called quantum meruit, as much as merited.

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Major Issues related to Contract

Quantum Contract

- The right to claim quantum meruit does not arise out of the contract as the right to damages does; it is a claim on the quasi- contractual obligation which the law implies in the circumstances.
- A contract with B to deliver to him 250 kilos of rice before the 1st of May. A delivers130 kilos only before that day and none after. B retains the 130 kilos after the 1st of May. He is bound to pay A for them.

250, 200, 1000 whatever will be the kilos, the action is, has he used it or not? Since he has used it, he is bound to pay.

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Assignment of contracts is important in a contract to know. How do I assign a contract? Assignment means supposing A enters into a contract with B. Now one of the terms of the contract may be that B may assign the contract to C to perform and in that case, A will not have any objection. Now this can be written itself in the contract. A enters into contract with B or any of its assignees.

If the contract writes any of its assignees later on A cannot challenge that. But if it is not written, then if it is assigned then concept of A has to be taken. But if you have put it or it assigns, sometimes the word is done or it is permitted assigns, the word permitted is added before assigns, what happens is you can assign but prior to that you have taken my permission that you can assign that.

That is a better way of drafting the contract or it is permitted assigns. This kind of assignment we call by operation of law. It can happen. Suppose A is a company B is a company. A enters into a contract with B for supply of goods. Now B will supply goods to A. A will pay money to B. Now B went into liquidation or some kind of business difficulty or he has been acquired by Z.

So, all the business of B has been acquired by Z plus Z's own business. Now in the natural course, this contract will go to Z. A and Z will not have to enter into contract. Permanent assign means, permitted assign means, it goes to Z and A agrees. Then the

contract becomes by operation of law assignment. By act of parties. How that happens? A person dies. He was to perform a contract.

He was to perform; his personal presence was required. But he died. Nobody else is there to do the function or discharge the contract. In that case, the assignment cannot happen if it is a personal program. Say for example, some contract has been given, some tickets have been sold that x will sing in that function and people have bought all the tickets.

Unfortunately, x is not well that day, he cannot come. So, in that case it cannot be assigned to somebody else. Who will sing on his behalf, that assignment cannot happen. So where personal involvement is there assignment cannot take place. But act of parties, by act of parties' assignment takes place only when it is accepted by the other party. We will see to it as it unfolds.

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Assignment of Contract

* By Operation of law

In case of death, the legal representative of the deceased, who was a party to the contract gets the interest in the contract. (permitted assigns in contracts - what does it mean?)

* By Act of Parties:

By act of parties means " novation".

* Example: A owes B Rs.10000, B may assign his right to C. However such a right can only be done by a contract. However, such a assignment cannot be done if it involve personal skill, ability or other personal Qualification.eg Manna Dey by Jhantu dey

Operation of law. In case of death who has a party of contract gets interest in the contract. Permit assigns in contracts, what does it mean? It means exactly what I told you. It is permitted means it is permitted and therefore you do not have to go to him again for permission. Or there is another example of a legal representative of deceased is like a company or it can be like this.

A contract is entered into between A, not a company, A and B, B or any of its legal representatives. In case B is not there his legal representatives would be there to

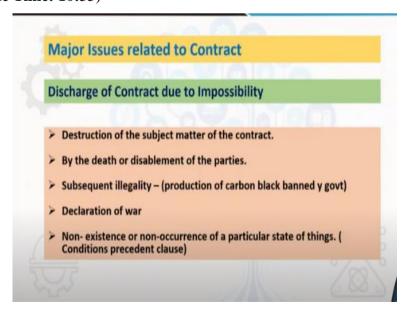
discharge the contract. So, in that case also if B for any reason passes away it automatically flows to its legal representatives. The contract goes on. There is uninterrupted contract. But if it is only B, in that case this contract will break.

With the legal representative fresh contract has to be entered into. By act of parties, A owes Rs. 10,000. B may assign his right to C. A owes B Rs. 10,000. B may assign his right to C. However, such right can only be done by a contract. However, such assignment cannot be done if involve personal skill, ability of the example I gave of a singer. That assignment cannot take place.

But in this case, I was supposed to pay 10,000 rupees to B. B might say instead of me you pay it to C because I have a due towards C. So, if you pay to C that will be enough discharge. But only saying will not do, there has to be a contract, in which he will write your payment to C would tantamount to your payment to B and will be relieved from your payment obligation.

It will be discharged. I do not owe any money once payment is made to C. That is called action of parties, assignment by operation of by act of the parties. Not by operation of law, by act of the parties. Because there is no law, it is an understanding. The other one death is an understanding. Agreement in which you are mentioning by permitted assigns is an operation of law. This is an act of the parties.

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Major issues related to contract. Discharge of contract due to impossibility. A contract

cannot be performed by the date or disablement of the parties. Two parties were there,

one of them died. So obviously contract cannot be entered into. Subsequent illegality.

Supposing production subsequently is banned by the government. No, you cannot

produce any further of this kind of drug.

Certain drugs actually can be you know in very short supply, because it is required for

some lifesaving medicines. So, government may stop certain companies in

manufacturing certain drugs. It is very common in various countries. Government

takes the control of production of that kind of drugs, because those are lifesaving

drugs. And for which some pharma companies also were producing that.

Now they have been stopped to produce. Now if they have been stopped to produce,

they cannot perform any of the contracts they have entered into subsequently to

supply. So, it is a clear case of force majeure and discharge of contract duty

impossibility of performance. Declaration of war. Of course, during war you cannot

perform contracts.

So, discharge of contract also during war, of course is remained suspended as I told

you remain suspended. When the war is over, you can again enter into a contract.

Conditions precedent clause. Non-existence or non-occurrence of a particular state of

things.

If you do not get the approval, regulatory approval before the start of the contract, if

you do not get the approval of the environment clearances for certain contracts of sale

of power or for that matter for sale of you know goods, you require certain

environment clearances. If those are not received, the contract does not take effect. So

whatever contract you have entered into gets discharged.

Because nobody will wait long term for those kinds of things to happen. So finally,

both parties agree no conditions precedent clause is not being met. It is almost six

months, 12 months. So let us terminate the contract.

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Major Issues related to Contract

Circumstances and Discharge of Contract

There may be the similar circumstances but contract can not be discharged due to the following:

- Difficulty of performance.
- Commercial impossibility no profit.
- > Strike, lockout and civil disturbance.
- > Failure of one of the object.

SOLUTION

Force majeure clause – very very important. Beyond the reasonable control of either party.

Circumstances and discharge of contract. There may be similar circumstance, but contract cannot be discharged due to the following. Difficulty of performance. Difficulty of performance cannot be a case of discharge of a contract. I will give an example. Supposing a company was to produce power and he was to import coal from Australia.

Now import of coal from Australia, because of the huge freight cost almost has become commercially unviable. Yes, it has become difficult now to perform the contract, but what is the alternative? Coal is available in Indonesia. Why not the company is bringing coal from Indonesia and trying to perform the contract.

It cannot be a case where please discharge me from the contract I have no liability in that contract. In a court of law, it will not be there. If it can be shown that Australia coal has become unviable because of the freight and the cost has become so that the contract is commercially impossible to perform. No profit is there. It still can be a case. I will come to the next point later.

But difficulty of performance is when, when you are getting it from an alternative source, you are not trying that. You are straight coming to the court and saying sorry, discharge of performance, discharge me from my contract, because coal is unviable, coal is not available in Australia. Or even if available, the price is such it is impossible to get. That will not happen. You have to find out sources to perform the contract.

Difficulty or performance is not acceptable. Commercial impossibility, no profit is both yes and a no. If it is seen it is temporary, then obviously court will not interfere. But if it is seen that there is no other way to continue this contract because of the nature of the increase in prices all over, not in one place, all over it has increased like this, the raw material is not at all available at that price.

And it is not a small increase, it is a huge jump. No company can run with this cost. So, the judgment would be revising the contract, make the price viable or terminate the contract. But much before that only commercial impossibility, no profit temporarily would not be the case. It has to be for almost impossible to perform.

That is no way there is any line of sight the raw material cost will come down and business will remain profitable. No way. It is only being seen that the business cannot be run at the price agreed upon because of the raw material prices all over the world. Nowhere, no place is there where it is possible to buy at a reasonable price and make some business profit.

In that case it is still considered, yes, it is almost like a force majeure, impossibility of performance. But only some commercial impossibility or for example, not no profit less profit. I was expecting a margin of say Rs.10 per unit whereas the margin has come down to Rs.5. That cannot be a commercial impossibility. You have still a plus 5. Or for that matter it is no profit zero, but only temporary.

It can be after three months different. Let us see after three months what happens. Or is there any other source from where you can source the material or everywhere is the same? Strikes, lockouts and civil disturbance. Well, strikes, lockouts definitely are part of force majeure. Every force majeure contains strikes and lockout. But lockouts again should not be something done deliberately.

It has to be seen what kind of lockout it is. Strikes are to some extent acceptable. But lockout always is to be seen that it is done for what reason? So clearly accepting strikes and lockout as discharge of contract directly no, maybe through force majeure yes. Failure of one of the objects whether business can be viable or not depends on that. Viable means, not commercially viable, whether at all business can run or not?

Commercially viable is not the test for discharge of the contract. Solution, force majeure clause. Very important. Beyond reasonable control of either party. If that contains any of these, there is a way of getting out. But force majeure never contains commercial impossibility. No force majeure will have a commercial impossibility clause. No one will accept.

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Major Issues related to Contract

Liquidated Damages and Penalty

Sometimes parties themselves at the time of entering into a contract agree that a particular sum will be payable by a party in case of breach of the contract by him. Such a sum may either by way of 'liquidated damages' or it may be way of 'penalty' The essence of liquidated damages is a genuine covenanted pre-estimate of the damages. Thus, the stipulated sum payable in case of breach is to be regarded as liquidated damages if it be found that parties to the contract conscientiously tried to make a pre-estimate of the loss which might happen to them in case the contract was broken by any of them.

Liquidation damages and penalties are somewhat common in contracts. If you fail to perform the contract, if the other party in spite of providing all what is required to be done from his side, if one party compliant other party is not compliant, because of that other party not being compliant there are breaches on the other party, that one party suffers then obviously damages have to be given.

And which is predetermined what will be the damages. Sometimes, the damages are calculated in advance that this is the amount of damages you have to pay in case you do not supply within so many days, in case you fail to supply the minimum quantity with so many minimum quantities. In case the minimum quantity has to be purchased from outside the differential price has to be given.

So various kinds of damages are, liquidated damages are considered in the contract. Of course, is negotiated. Huge negotiation is there for this kind of liquid damages and penalties. There is no set piece formula. It is all based on negotiation. But whatever is important is properly documenting those liquidated damages and penalties.

Later on, when the dispute arises when the time to invoke this happens there should not be any confusion.

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Major Issues related to Contract

Liquidated Damages and Penalty

On the other hand, the essence of a penalty is a payment of money stipulated as "in terrorem" of the offending party. Thus if it is found that the parties made no attempt to estimate the loss that might happen to them on breach of the contract but still stipulated a sum to be paid in case of a breach of it, with the object of coercing the offending party to perform the contract it is a case of penalty.

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Now in contracts like this where we are having liquid damages and penalty, there is one more provision in contract, which is very important is limitation of liability. Whatever is done in a contract, it is very important that you put a cap on the liability. Business has to be done, risks are to be taken, unforeseen circumstances.

A person can be at the receiving end, a person can be at the often on the other side also. You may not be at the receiving end; you can be at the receiving end as well.

There may be a breach on your side, the breach can be on the other side as well. The breach on your side may be beyond your control. You are failing to supply. Failing to supply not for anything else but you are not getting the raw material.

Why thinking always that the other party will fail to do its job or perform its contract its obligations. It may be that you may also fail to perform your obligations. So how do you protect yourself? The best way to protect yourself is or to protect any contract is put an overall cap on the total liability. We call this the limitation of liability clause. And it is drafted like this, notwithstanding, contain anything herein above.

Whatever is written in the contract, the overriding, notwithstanding contained anything contained herein above. The liability of either party is not your liability only for either party because it is a mirror clause. It will be applicable for both the sides. That the liability for either party shall not exceed, we can put certain percentage of the total transaction, maybe 5%, 10% if the transaction is very big.

But if it is multiple transactions, we can put the clause cannot be more than the transaction value in each case. Even the contract with the consultant. Sometimes the consultant ask for indemnification. That if court case comes to us, we are consultants you are corporates. If somebody files a court case against us for doing your consultancy, then you will indemnify us if the judgment is against our favor, not in favor of us.

We lose, we have to pay a penalty, then you would indemnify us. Now I appoint a consultant, I give him all information. Now while giving all information, obviously I will ensure that information are accurate, but even then, if somebody files a case against him and the company then I have to indemnify, company obviously, I have to take care of by myself, but for him also I have to pay the damages.

Now there is no limit for that those types of claims. So, it is important that when you do this kind of contract with consultants, put a clause that notwithstanding anything herein above the liability in either case, or for either party will not exceed certain percentage of a transaction value. Normally they say 1x. 1x means equal to the number of, equal to the amount of transaction value.

Sometimes big consultants put the figure 2x. Sometimes they put it 3x, all negotiation. 1x, 2x, 3x means one time, two times, three times of the transaction value. But that is important to put the transaction value. Because later on it may so happen that this particular claim may lead the company to bankruptcy. Because one aspect is in getting relief from the court for anything, enormous time, money and effort goes.

The second if a judgment is given in your favor at the very first instance, at the lower court or maybe at the middle court, to get a reverse of the judgment is a very tall task. To reverse the judgment totally at a higher court is a tall task. Once a liability is set on you, then at best the liability can be reduced a bit, but do not think that liability will be totally wiped off. So, it is better to put a cap on the liability.

It is the practice all over for big corporates that if you are entering into a contract with me, fine whatever is there in the contract, overall cap is I will not be liable more than this, for any reason, direct, indirect, consequential, non-consequential, deliberate, non-deliberate, my liability should not be more than this percentage. Fair enough.

At least one thing is for sure, this contract the liability for any reason cannot be more than this. Of course, the word deliberate, fraud etc., all are negotiated that if you do something deliberately how can you put a cap? Now if it is deliberate, then you have to argue by saying that if it is deliberate, whether you know it is deliberate or not deliberate, who will decide is it deliberate or non-deliberate?

The court will decide. Now there you have to put the word that only when it is deliberate and it is proved in a court of law of the last appeal. What does mean of the last appeal? That the final court. So, if you start with the division court, it goes to higher court, it goes to High Court, it goes to Supreme Court. So, if Supreme Court determines that yes, it was deliberate, then only the amount of claim would be more.

Otherwise, it will be capped at the transaction value. Even that is acceptable, because if you do something deliberately you are a professional organization, you cannot say I do deliberately something and then I put a cap. I murder somebody and then I say my

sentence will be maximum five years. No death sentence for me. No that cannot happen.

So, you do a deliberate fraud and it is established by a court of the highest court then there cannot be any cap. That is understandable and workable. But anything other than that it will be capped at, capped at the maximum amount can be 1x. That is the transaction value. Normally that is what happens. But if the transaction value is very high, 100 crores, 200 crores, 300 crores, it will be percentage of the transaction value, maybe 1%, 2%, 5%, 10%, like that.

It is again totally negotiable and negotiated but very important to keep in contracts. This is these are certain finer points on contracts which we need to understand though limitation of liability or other things like you know arbitrations are not very looked into very deeply. Because it is thought of these are just routine points.

Confidentially of information is another thing which need to be very properly drafted in a contract. Severalty, another point which needs to be drafted. Severalty means the contract may get terminated by a flex of time, by discharge of the responsibilities, but still the contract remains valid. Certain terms of the contract remains valid. One maybe the confidentiality.

Even after the termination of the contract it will be valid. Confidentially has to maintain for five years. Similarly, that is called the tenure of the contract gets extended at certain provisions of the contract. Jurisdiction clause is another important, where the jurisdiction would be. Similarly, there are provisions. Force majeure already we have discussed is a very important provision on force majeure.

Assignment is another important provision. Now there are another policy another term which comes very well in the contract is anti-bribery policy. Every contract should have an anti-bribery policy very clearly telling the person that our policy is very clear on anti-bribery. We do not encourage any kind of corruption. So, the contract, recording that in the contract is important.

These are more or less the major parts of the contract, which needs to be considered. I have taken references from some of these books. But examples of limitation on liabilities and others that I have shared is shared from my experience. I recall, there was an incident of a car accident in Japan. And that car accident led to the closure of a plant.

I mean not even a plant a corporate in some part of India because they supplied material to that tire and the tire was finally found to be the reason for the accident in a car in Japan. It was a Bridgestone tire and the car which got damaged, the car company raised a claim on the tire company because it was found out the person who got damaged, he raised the claim on the tire company.

Tire company raised the claim on the car company. Car company raised the claim on the tire company. Tire company raised the claim on the manufacturer. And the claim came 10 to 15 times of the amount of carbon black he supplied. So that is why limitation of liability is a very important clause in any contract. Because you may have done business for few crores.

But when the liability comes it comes in 25, 50, 30 times because if there is no limitation of liability. So that is one point which I think which should be considered when contract is done.

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CONCLUSION

In this lecture discussion has been made on wagering agreement, quasi contract- responsibility of finder of goods, quantum contract, assignment of contract, discharge of contract due to impossibility circumstances and discharge of contract. Learners will have knowledge and lessons on all about these.

We will discuss more as we go forward. Thank you.

Business Law for Managers Mr. Kaushik Mukherjee Vinod Gupta School of Management Indian Institute of Technology, Kharagpur Module-4: Law of Contract

Lecture - 20 Law of Insurance

Good evening. This brings us to the lecture 20 module 4, Law of Insurance.

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BUSINESS LAW FOR MANAGERS

Introduction

Insurance is generally described as a socially support mechanism to reduce or eliminate risks or loss to life and property. It is a provision which a prudent man makes against inevitable contingencies, loss or misfortune. It provides financial protection against a loss arising out of happening of an uncertain event. A person can avail this protection by paying premium to an insurance company .Insurance works on the basic principle of risk-sharing. A great advantage of insurance is that it spreads the risk of a few people over a large group of people exposed to risk of similar type.

Well, insurance is basically a law, which speaks of how do you cover your risks. Risks are part of the business. So, without risks, business cannot run. And the amount of risks that a business has today cannot be in numbers. It has gone up like anything. And the latest one is the pandemic risk. Never heard of before, but it has also joined the risk register now. So, all big company's risk register also contains now the pandemic risk.

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➤ Essential requirements ➤ General Principles ➤ Form of Insurance ➤ Who has insurable interest ➤ Voyage and deviation

But the essential principles of insurance remains the same, the principle is very clear, complete trust and faith. If you do not have the proper disclosure, you will first of all lose out on everything. First is disclose everything, whether it is a medical insurance, or it is property insurance of a corporate or it is a marine insurance of a corporate, or it is your life insurance.

If you do not disclose your day zero, you are losing out. Be extremely transparent, clear in what you are doing. Allow the insurer to know all your perceived risks, what are the risks that you perceive. Then only you can take a proper coverage of the risk. And you take a policy, which is a robust comprehensive one, point number 1. Point number 2, from a corporate side never look at insurance as an investment, as a profit center.

Never look. Insurance is never an investment; it is never a profit center. It is a risk mitigation measure. If somebody starts looking at that I have paid insurance premium for my property for last 10 years, maybe 20 crores but my claim is only five crores. So why should I pay? That is not the way to look at insurance. You may be fortunate that it is happening like that, but one fine morning all these 20 crores may go to the drain and you would have nothing but you have paid premium of only 5 crores.

That 5 crores will save you to get 20 crores less some salvage and some depreciation you will get the money back maybe 15, 16 crores. So, no one has to look at insurance from the point of view of an investment or a return on investments. It is a risk

mitigation measure. The third also is important. Insurance does lot of preventive measures. Insurance helps the company to prevent timely many disasters. How?

Because any insurance that you do is a continuous process of monitoring by the insurance company. They do a risk inspection at least once in a year for each of the factories and is quite thorough.

If a company desires to understand what are the inherent risks which they are running then he can from the risk inspection report of the insurance companies do those checks and balances and keep the plant healthy, reduce the shutdown of the plants, reduce the disruption of the plants and this helps to increase the bottom line and the yield of the production process.

So, a robust and effective insurance of the plants will always help not only in risk mitigation but also to a large extent in improving the health of the plant and thereby the yield and the productivity of the plant. This is one concept perhaps not deliberated so much when you talk of insurance, will only talk of coverage but it does add, it does add to the bottom line and the health of the organization.

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Essential requirements * The insured is really subject to a risk; otherwise it will amountto betting. * The time and occurrence of risk must involve some uncertainty. * Both the insurer and the insured should not have any control over the happening of the event insured against. * The risk insured against should not be a very minor one otherwise the cost of insurance may be uneconomical. * The cost of insurance should not be prohibitive. * The risk must be capable of approximate mathematicalestimation

It basically from the law of insurance the insured is really subject to a risk. There has to be a risk. If there is no risk, then they cannot be insured. There is the risk of fire, the risk of storm, the risk of marine peril sea, the risk of a pandemic, the risk of a

health, risk of an earthquake. So various risks which are covered are real, measurable and those which happen.

So, when we take a factory insurance, we do not take only a fire insurance we take it an industrial all risk insurance. All risks are covered; storm, peril, earthquake, terrorism, fire, ignition, explosion, everything is covered in one. That is called IAR policy, industrial all risk policy. The second thing is the occurrence would be uncertain. There would not be any certainty, that is not insurance.

Therefore, many times they say life insurance is an assurance not an insurance, because we all have to die. Death is certain. But again, there is an uncertainty as the timeliness of the death. Therefore, it is insured. No one has the control. Both the insured and the insurer does not have any control over the happening of the event. In any of these cases, we do not know when the fire would be happening in the factory.

No one has the control. No one knows when the ship would be hitting an iceberg. No one knows when there will be a leakage of oil from the ship. No one knows when we have a medical emergency. Again, the risk insured should not be very minor, petty risks are not included. Because it is uneconomical. Premium has a cost. Why premium? Because premium is a recovery. Insurance companies, their job is to spread the risk.

When somebody approaches a company for a medical insurance, the first thing the insurance company ask the insurance head of that organization, how many heads would you insure? Why ask so? Because depending upon that it will help him to cover and quote the premium. Very simple. If there are 100 employees and the average age of the employees is 27 medical insurances will be very low.

If they are 100 employees, average age of the employees is 65, it will be very high. Same if the employees are 1000 and average age is 65, still low, still low. Then 100 employee is 65. But if the 1000 employees is 27 it would be least, why? Insurance thrives on the purpose of the probability of happening. What is the chance of happening?

If there are only 100 people and all above 65, the occurrence of medical emergency is very high. Whereas it is 27 is very low. Whereas 1000, 65 then it is high but not very high because the spread is so high. Maybe 20 people out of 1000. But if it is 100 it can be very high if it is 20 out of 100. 20 out of 100 and 20 out of 1000 is a different concept altogether. So, risk spread they want to know how much risk I can spread.

Same with the factory insurance. A company may have five factories. You go for insurance of one factory, premium would be very high. The moment you take the same policy for five factories it will be less than half for a single factory. If it was 80 lakhs for a single pack factory now it is five factories it will be 40 lakhs because probability of happening of fire explosion in that factory.

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Insurance is not a wagering contract, no way. Because wagering means speculative. Insurance is never a wagering contract because there is an insured, there is an insurable interest. The purpose is risk minimization, not profit maximization. There is no gambling here. Certainty is not there, but there is a distinct chance of happening. Only the timing is not there.

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Law of Insurance

General principles of Insurance

- Indemnity Example X insures his car against accident and theft for Rs. 90,000. The car meets with an accident and the loss thereby occasioned is Rs. 10,000. The amount recoverable from the insurance company will be Rs. 10,000 only.
- And in case the car is stolen, thus resulting in a total loss, the amount recoverable from the insurance company shall be Rs. 90,000 (minus depreciation) even though the car may be of a value more than this, say, Rs. 95,000.
- Good Faith (Medical Insurance disclosure of decease) Therefore, all contracts of insurance are contracts uberimae fidei, i.e., contracts of utmost good faith and therefore non-disclosure of a material fact entitles the other party to avoid the contract.

These are very general basic principles of insurance. One concept is **you** one cannot make profit out of insurance. By taking an insurance you cannot make profit. Because supposing your car value is 1 lakh rupees and you have declared the car value as 50,000. You can do that. I declare my car when was 50,000. You want to save premium. So, supposing you have paid premium of 50,000 rupees, say 5000 rupees.

Now your car meets with an accident and their claim comes 2000 rupees. Now you said I have paid 5000 rupees give me 2000 rupees. The insurance company will not pay. The insurance company will pay you 50% of 2000 rupees. Why, because you have underinsured your asset by 50%. 10 lakhs you have insured for 5 lakhs, 50% you have insured. So, any claim that comes you will get 50%.

That is the law of insurance. You declare full value, whatever will be the claim you will get. 10 lakhs is the full value. Even for any reason you have paid 5000 rupees only, the claim comes 50,000 rupees you will get 50,000 rupees though you have paid premium 5000. So that is what the insurance is about.

Second, you had a car. The car, there was the theft of the car 90,000 rupees and there was an accident and theft for rupees 90,000. The car meets with an accident and the loss thereby occasioned 10,000. So, amount recovered from the insurance company will be Rs. 10,000. X insures his car against accident theft for Rs. 90,000 The car meets with an accident the loss thereby occasioned Rs. 10,000.

The amount recoverable from the insurance company will be 10,000. In case the car is stolen, thus resulting in a total loss the amount recovered from the insurance company 90,000, mass depreciation even though the car may have a value of more than rupees, say 95,000. So, depreciation is always reduced. The cost of depreciation gets reduced. You cannot get more than the depreciated value.

Even if the car value is 90,000, the car is totally stolen, you can ask for a claim of 90,000? No, you have used the car for 10 years or 5 years. They have a procedure of calculation depreciation for 5 years. They will reduce the value of 5 years and then give you the value. Supposing it is 10% depreciation, then 9000 rupees for 4 years, 36,000 rupees. 90 minus 36,000 rupees will be given to you. 54,000 rupees would be given to you.

Whereas, the car price according to you was 90,000, it was stolen. Even if it was stolen, the car that was stolen was used by you for 4 years, depreciation has to be charged. Similarly, car met with an accident. 90,000 cars, totally damaged. You can expect to get 90,000? No, they will calculate the depreciated value of the car and then they will reduce the salvage also.

Salvage means whatever scrap you have sold and got the money. Maybe even 500 rupees, 600 rupees that will be reduced. Then only you will get the money. In all medical policies also, there is a concept called excess. Minimum amount you have to pay. Over and above that the medical insurance company will pay. The excess may be 200, 500, 600.

If you have a medical claim of 500 rupees, 600 rupees, they will not pay because it comes within the excess. If it is 12000 rupees the excess will be reduced and balance amount would be paid to you. So, you cannot make profit out of insurance. There are various other means, which cannot be discussed, because there are people also play around with this kind of insurance and try to make money.

I mean, these are lot of bad practices are there which they may try to bring out that kind of you know issues where their assets are not existing, showing as assets. Assets

are met with the damage but the damage claim is shown at a bigger figure. So, I am not discussing all these because these are not the cases which are ideal situation.

I am talking about the ideal situation where insurance is taken for the benefit for risk mitigation and risk minimization. There we find that you cannot make profit out of insurance. You have to be totally honest. And that is the best way to deal with insurance. Good faith. Berriman fidei. There is a Latin word which means utmost good faith. Uberrimae fidei means utmost good faith.

Always be, supposing you are going for a medical checkup, medical insurance. If you do not disclose your diabetic, if you do not disclose you have got some medical problem. And later on, it amounts that the premium has been calculated on the basis of without considering those issues or problems, medical health problems, and unfortunately you are diagnosed with any one of them after a few years and you are to be treated, then the claim may be rejected totally because you have not disclosed.

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Law of Insurance

Insurable Interest

Causa proxima. In case of marine and fire insurance we have the principle of causa proxima, i..e., the proximate cause. When a damage has resulted due to two or more causes, we have to look to the proximate or the nearest cause of damage, although the damage might not have taken place without the remote cause. Thus, in the event of the loss, it is the proximate and not the remote cause that is to be looked into. If the cause of the loss is a peril insured against, the insured can recover, otherwise not.

Example –

Cargo (sugar) being shipped is insured against sea perils. Certain rats make holes into the bottom of the ship wherefrom the seawater enters the ship, thereby destroying the whole cargo. The remote cause in this case is rats which is not a peril insured against but the proximate cause is "sea water" which isa peril insured against and thus the loss will be recoverable.

In insurance, there is another wonderful concept which is called causa proxima. Causa proxima means proximate cause. Any damage that happens maybe for various incidents one by one, sequential events, but insurance will see what is the immediate reason for the loss. If the immediate reason is something which is insured, then only insurance will be paid otherwise not. See the example in this case.

In case of a marine and fire insurance, we have a principle of causa proxima that is proximate cost. When a damage has resulted due to two or more causes, series of causes, we have to look at the proximate or the nearest cause of damage, although the damage might not have taken place without the remote cause. Even if you do a root cause analysis, you will find that the damage has happened actually from point A.

Point A it has gone to point B, point B to point C, finally C has hit the ship which is insured. Now we have to see C, point C whether point C is covered or not. Whereas the root cause is point A. Point A may or may not be covered, that is not material. Material is whether C is covered. If C is covered, you are going to get the money. Your claim stands. If C is not covered, your claim does not stand even though A is covered.

A is not material in this case, though it is a root cause. Example, cargo means sugar is being shipped, is insured against sea perils. Sea perils are many things. Sea perils means sea water, icebergs, storms, even pirates. So many perils are there. Certain rats make holes into the bottom of the ship where from seawater enters the ship, thereby destroying the whole cargo.

So, rats makes holes from that hole seawater enters and the cargo gets damaged. Now the claim comes from the insurance company. The surveyor comes. Surveyor is a person who is appointed by the insurance company to go and find out the cause of the incident. Because very important for the insurance company to know the cause of the incident. Because the moment they find out the cause, they have to see whether that cause has been covered or not.

Say for example, medical. What is the cause of the ill health or the hospitalization? Dengue, malaria, COVID, something else, what is that cause? All these are covered. But if it is something which due to a congenital disease, congenital disease for which he is hospitalized, and that congenital disease has not been disclosed at the time of insurance, then he does not get any claim.

If he has disclosed at the time of insurance and paid premium accordingly, he is fully covered. Similarly, in this case, the root cause will not be seen. In this case the root

cause will not be seen. What will be seen is what is the immediate cause? The immediate cause is sea peril which is water. Water is a sea peril, is covered. Water damaged the cargo, the sugar. Rat did not damage it.

Rats are not covered, water is covered. So, insurance company is bound to pay. However, if you see at the cause of the incident is the rat but still the insurance company is bound to pay because of the causa proxima concept. The remote cause in this case is rats which is not a peril insured. So what? But the proximate cause is sea water which peril is insured against and thus the loss is recoverable.

It is a fight between the head and the heart. The heart will say well the rats are responsible; the insurance company should not have been paid. But head is saying different thing because it says the proximate cause and the proximate cause is sea peril loss due to see water.

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Law of Insurance

Insurable Interest

- In Pink v. Fleming (1899) 25 Q.B.D. 396, Lord Esher observed, "The question, which is the cause proxima of a loss, can only arise where there has been a succession of causes.
- When a result has been brought about by two causes, you must, in insurance law, look to the nearest cause, although the result would no doubt, not have happened without the remote cause." In the above case the ship collided with another ship, resulting in delay and mishandling of cargo of oranges which deteriorated. Held, that the damage to oranges was not direct result of collision (the peril insured against) but of delay and mishandling and as these causes were not insured against, the insured could not recover.
- Mitigation of loss
- Risk must attach

Another case exactly like this proximate cause, very important for insurance companies to find out the root cause and the proximate cause. In this case, the question is when a result has been brought about by two causes you must in insurance law look to the nearest cause, although the result would go would no doubt not have been happened without the remote cost. Same thing the judge says.

In the above case the ship collided with another ship. So, there was a collision. Ship collision is definitely a covered. It is a very common thing in a sea which is covered

in insurance. Ship collided with another ship. It may be in the port. Normally in the sea no one collides because you are plying on the sea you are going in different directions. It happens mostly in the ports.

So, ship collided with another ship, resulting in delay and mishandling of the cargo of oranges which deteriorated, oranges deteriorated. Held the damages to oranges was not direct result of collision but of delay and mishandling. As these causes were not insured against the insured could not recover. See, there was a collision between the two ships. The cargo was in question is oranges.

Now these oranges got deteriorated, damaged. The surveyor came and saw these oranges got deteriorate damaged not for the coalition. What happened they were held in crates. And these crates originally when it was shipped, it was shipped properly. Now when it collided, it got displaced here and there. And all the helpers, workers inside the ship they were desperately trying to put the carrots in the proper places, crates in the proper places.

While doing so they mishandled. Some of the crates got broken. Some of the heavy materials were kept on top of the crates, heavy materials, and these got broken. Since this got broken, and the surveyor could take photos and find out that how can these heavy materials be put over the crates of oranges he could establish the fact that it did not happen for collision.

But it happened for mishandling and delay in handling of the ship crew and therefore it is not payable. Though collision is covered, collision is covered but the proximate cause was something else, mishandling, delay which was not covered. Hence, insurance claim is not payable. So proximate cause is so important to find out to find out whether at all the claim is payable or not.

The other aspect of insurance is mitigation of loss, very important. The insured the moment the loss happens, the insured has two responsibilities, to inform the insurance company immediately the loss has happened. He should immediately inform the insurance company loss has happened. And second, as a judicious person, he should

make every effort to reduce the loss, to mitigate the loss, to minimize the loss, is his responsibility of the insured.

So, if there is a fire in a factory, many times the surveyor comes and says what happened after that? What actions you took? I could see the explanations you have given about the damage. How could the fire spread like this? Where were the firefighting operators doing? How much firefighting was done. So, if there are firefighting operators not there in the factory, then you are violating one of the conditions of factory to keep firefighting operations.

Have you taken the firefighting operations? Have you established without doubt that enough action has been taken to mitigate the loss? If not, then your claim gets reduced to a large extent.

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Law of Insurance

Subrogation

Subrogation is, thus, the substitution of one person in place of another in relation to the claim, its rights, remedies or securities. After satisfying the claim of the insured, the insurers stand in his place. For instance, a ship called 'Indira' is insured for Rs. 30,00,000 and it is damaged through collision with another ship called 'Vikram'. If the owners of 'Indira' received from the underwriter compensation of Rs. 30,00,000 as per the policy, then the underwriters acquire a right to recover this amount from the owner of 'Vikram' if it can be proved that the collision was due to the negligence of the captain of 'Vikram'. The insurance company can take this action to recover money in the name of the owner of 'Indira'.

The other important aspect is subrogation. It means stepping into the shoes of another. The insurance companies does it. Substitution of one person in place of another in relation to a claim. After satisfying the claim of the insured, the insurer stands in place of the insured. What does it mean? It means when there is a damage of a property insured by a particular insurance company with the insurance company, the insured will lodge a claim on the insurance company.

The insurance company after doing all the due diligence, checking mitigation, checking root cause, finding the exact damage, reducing the salvage, reducing

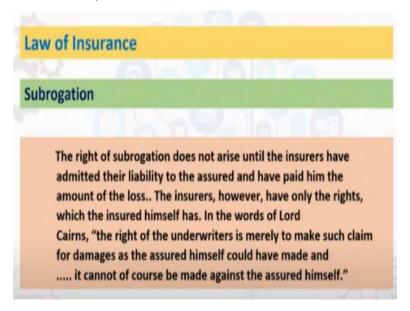
depreciation settles the claim. Once the claim is settled, then the insured has no further claim.

Now the insurer steps into the in the shoes of the insured and sees to it that these damage if has happened for someone or something against which claim can be lost, he will the insurance company will lodge the claim and realize try to realize the amount. Example, a ship called Indira is insured for 30 lakhs and it is damaged through collision with another ship called Vikram.

So, Indira got damaged with collision with another ship Vikram. If the owners of Indira received from the underwriter, means the insurance company compensation of 30 lakhs as per the policy. Of course, there is no deduction here of underwriter depreciation and salvage. It is a clear example as if 30 lakhs comes back as 30 lakhs. Then the insurer acquire a right to recover the amount from the owner of Vikram.

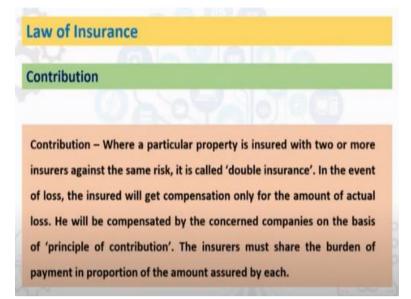
Now Vikram owner will be prosecuted or will be challenged, will be taken to court, will be actually been forced to pay or recover the damage that has been done to Indira. And that money will be recovered by the insurance company, not by the insured. Insured is first given the relief. Your claim is settled. Once that is settled, then insurance company steps into the shoes of the insured. That is called subrogation.

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Of course, this right of subrogation will only arise after the insurers have admitted their liability to the assured and have paid him the amount of the loss.

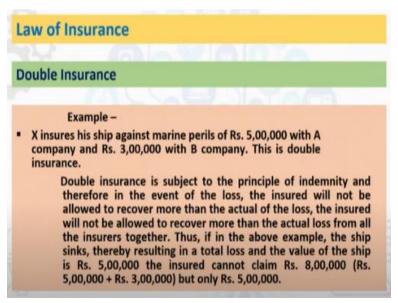
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Contribution is double insurance. Many times, it happens that you get your property insured by two or more insurance companies. But that does not make you richer by a penny. When the claim comes, you will get exactly the damage that has happened to you, and they will proportionately share the burden. So, you even if you take 2, 3, 4 insurance company's premiums, pay premiums, you will get the same amount.

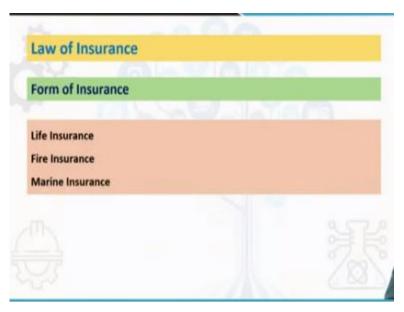
You cannot get more than what the damage is. The insurance companies will proportionately bear your loss.

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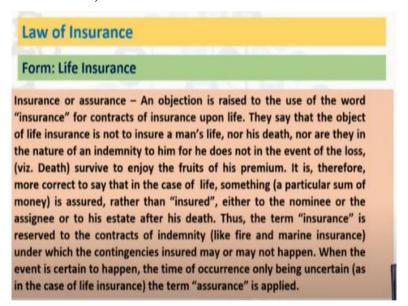
This is an example of how proportionately the double insurance gets shared.

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Life insurance is basically nothing but a life assurance, where it is bound to happen. But still, it is an insurance because there is an element of uncertainty. Let us see each of these insurances.

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Is an insurance or assurance. As I said, life insurance is more of an assurance. But in this case also it is a question of uberrima fides, utmost good faith. One has to disclose everything, because later on it may amount that life insurance would be questioned. Even then, the premium depends on the disclosure that the individual gives.

If the disclosure is insufficient, and because of something else unfortunately something happens the person, the insured passes away, then getting that premium

would be difficult because he has suppressed diseases because of which if death has happened.

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Law of Insurance

Form: Life Insurance

- Life insurance not a contract of indemnity
- This distinguishes life insurance from other types of insurance.

Suicide – The life policies usually contain a clause that no payment shall be made in case the assured commits suicide. In such cases the insurer can avoid he liability. But, however, if the assured was insane and was incapable of appreciating the nature of his act, his self-destruction is not intentional and therefore the insurance company shall be liable on the policy in spite of the clause. Sometimes, the policies provide that they would become void only if the assured committed suicide within a particular period from the date of the policy.

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Law of Insurance

Form: Life Insurance

Assignment of life insurance policy (s.38 of the insurance actof 1938). Life insurance policies are freely assignable like actionable claims. Life insurance policies are marketable commodities, which can be validly assigned with or without consideration, to persons who have no interest in the assured'slife. Thus, life policies may be sold, mortgaged or settled.

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Law of Insurance

Fire Insurance

What is a fire – The term 'Fire' in a Fire Insurance Policy is interpreted in the literal and popular sense. There is fire when something burns. Thus, ignition is necessary to fire. Heating not accompanied by ignition is not fire. Loss or damage occasioned by fire means loss or damage either by ignition of the articles consumed, or by ignition of that part of the premises, where the article is. In one case there is loss, in the other case, a damage occasioned by fire. Damage from lightning is not included in the fire risk unless it causes ignition. The same is the case with electricity. Also, 'fire' does not include 'explosion' unless the explosion is caused by 'fire' or explosion causes fire (Stanley v. Western Insurance Co. L.R. 3 Ex.71).

Fire insurance is what the corporates look at for mitigating the risk as regards the various factories they have. And it is not fire insurance alone they do industrial all risk, IAR insurance, which a large part, chunk of it is the fire insurance policy.

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Law of Insurance

Fire Insurance

The cause of fire is not material unless it is the deliberate act of insured himself or of someone acting with his knowledge or consent. Loss by fire, which is caused by the negligence of the insured, is recoverable. In Harris v. Poland (1941), I K.B. 462, she hid her jewellery under the coal in the grating near the fire-place. Having forgotten this, she lit the fire and jewellery was damaged. Held, she could recover under the firepolicy.

Fire insurance is a contract of indemnity and is also subjected to the principles of uberimae fidei, subrogation, and contribution.

But here again, the cause of fire is important to understand. Unless it is a deliberate act of the insured, all claims are payable, even negligence is payable in case of fire insurance. If you are negligent, because of your negligence fire has happened even then it is payable unless it is a deliberate negligence, then it is a fraud. There is an example of a lady jewelry she kept it near the fireplace.

That was a clear negligence, but still she got it because she did not do it deliberately.

It was inadvertence and negligence. So, fire insurance case negligence is covered but

not deliberate act.

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Law of Insurance

Marine Insurance

Marine Insurance Act of 1963.

Definition - A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured in themanner and to

the extent thereby agreed, against marine losses, that is to say, the

losses incidental to marine adventure.

Here also in case of fire insurance, disclosure of materials you are keeping in the

factory, plastics you are mentioning in the factory, your power plants, your

vegetations, your firewalls, your firefighting, all these equipment have to be in place

before a comprehensive fire insurance policy is taken.

There are instances when insurance companies refuse to give insurance to certain

companies when they find the practice are very risky. They are not run properly.

There is every chance of an explosion in the factory. In that case they will not go for a

cover of the policy. Because a premium is a peanut when explosion happens.

Premium is nothing when an explosion can totally damage the factory and they are

bound to pay.

Quantum of premium will not determine that. They are bound to pay if they have

taken an insurance policy.

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Law of Insurance

Marine Insurance

- The term Marine adventure includes any adventure where
- (i) any insurable property is exposed to marine perils,
- (ii) the earnings or acquisition of any freight, passage money, commission, profit or other benefit or the security for any advances, loans or disbursements is endangered by the exposure of insurable property to maritime perils,
- (iii) any liability to a third party which may be incurred by the ownerof or other person interested in or responsible for, insurable property by reason of maritime perils [s.2(d)].

Many insurances is a contract which covers all cargo movement, the sea cargo movement, which happens and it is a costly insurance and it is a risky insurance because movement in the sea and that to 45, 60, 70 days, 90 days is every hour every day is risky. And there is uncertainties galore. And the claims come very big. It is not small claims, large claims come.

So, there are separate insurance policies for that. The premiums are quite high. And it is always under you know constant monitoring. Various losses that has happened in the past of insurance companies, large amount goes for meeting marine insurance losses.

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Law of Insurance

Marine Insurance

- Insurable property is defined by s.2(c) to include any ship, goods or other movables which are exposed to maritime perils.
- Maritime perils [s.2(e)]. The term "maritime perils" is the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures and seizures, restraints and detainments of princes and peoples, jettisons, barratry and other perils which are of the like kind or may be designated by the policy. "Perils of the Seas" refers only to fortuitous accidents or casualties of the sea and does not include the ordinary action of the wind and waves.

Maritime perils. These perils include fire, war perils, pirates, robbers, thieves, captures, seizures, even you know piracy is something of a cover, which is a very high premium, but some companies are bound to take because the route they take, the route they take, the dreaded route they take, there are chances of pirate attacks. Seizures.

Few days back only there was an incident in with three or four ship members were shot dead by the pirates inside the ship. So, these kinds of things happen though they may not happen often but these kinds of things happen.

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Types of Marine Insurance Voyage Policy Where the contract is to insure the subject-matter "at and from" a place, or from one place to another orothers, the policy is called a voyage policy Time Policy A policy that covers a specified period of timeis called "Time Policy". A "time policy" cannot be taken for aperiod more than twelve months (s.27). Valued Policy A valued Policy A valued policy is a policy, which specifies the agreed value of the subject-matter. In the absence of fraud, the value is conclusive as between the assured and insurer, except for ascertaining 'constructive total loss' (s.29).

And marine policy is a very tricky policy. Lot of terms are to be understood here. It can be two ways done. It can be done as a voyage basis from one destination, port of call to the port of destination, port from the, port from which sail to the port of destination. That is one which is called the voyage policy. The other is called the time policy. Take it for a whole year.

Whatever we the number of voyages, the policy is taken for a period from 1st January to 31st December. How many voyages, where it is going, all are covered. And the other is specific voyage basis policy. From one place to another place is called the voyage policy or time policy. There is another policy which is valid policy to keep a cap on the value that this money amount of marine policy cover we will give, this much amount.

Say 100 crores, 200 crores, 500 crores. That much is the value policy. The moment it covers that, the policy stops. Fresh policy has to be taken.

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Law of Insurance

Who has Insurable Interest

- The following persons have insurable interest;
- Owners of ship for full value.
- Owners of cargo.
- Bailee in respect of property left in his custodyand care.
- Shippers and their agents.
- An underwriter for the risk insured by him, which he may reinsure.
- Master or any member of the crew of a ship forhis wages.

Who has insurable interest? Owners of the ship has insurable interest. Owners of the cargo has got insurable interest. Shippers and their agents have got insurable interest. Master or member of the crew have got insurable interest. Underwriters have got insurable interest. So many persons have got insurable interest. But the most important person is the master or the captain of the ship.

He is practically the power of attorney holder for all the other persons having insurable interest when the ship is on the sea. He can take any decision he wants. If he wants to take the ship to the nearest port for safety security reasons, he can deviate from the route. Deviation of route in a ship is very costly. It is not like car deviation; you move from this road you go to the other road.

For ship deviation means huge amount of burning of oil, huge expenses, and there can be demurrage also. Huge demurrage expenses. Demurrage means waiting charges. Even then, such a costly affair, the sole authority decision making is on the captain of the ship. He will command, he will say whether it is required or not.

And sometimes it is done for protecting the interest of the owners, cargo, the cargo, the ship, if it is in damaged condition and of course the health of the crew members

requiring emergency attention. So, in all those cases if he deviates and he incurs losses, even that is covered, marine policy that is covered.

Only thing it has to be a situation like that which demands that deviation. The insurance company would like to understand why it happened.

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Law of Insurance

Marine insurance: Disclosure and Representation

- Duty of disclosure: Section 20 provides that the assured must disclose to insurer every material circumstance, which is known to him. He is deemed to know everything, which he ought to know in the ordinary course of business. A circumstance is material if it would influence the judgment of a prudent insurer in fixing or determining whether to take the risk. Insurance is a contract of "uberimae fidei" ie utmost good faith.
- Double Hull ship
- · Water level at load port.
- Water level at discharge port.

Disclosure is very important. Many insurances of water level at port, water level at the load port, water level at the discharge port. Because ships cannot come into the port unless there is enough bar, I mean depth of the sea for it to come. Panamax vessels, Aframax vessels, they continuously face this problem of berthing in Indian ports. Of course, not ports like Mundra and others.

But Calcutta ports, Haldia ports, these are huge difficulty in berthing of big Panamax and Aframax vessels, even today. Dredging is done but still this is difficulty. Because ships, floor of the ship, the bed of the ship can get hurt and it can be a damage on the ship hull, which will be a huge cost. And it is responsible for the port to give a safe berth to all the ships.

So, water level at the load port and discharge port. Then again, whether it is a single hull ship or a double hull ship, disclosure is very important. If you are carrying oil, it should always be a double hull ship. If you have gone for a single hull ship, and you have not disclosed that to the insurance company, your premium will be, your premium also will be low and your risk will be very high.

They may not pay your claim at all. Because you are supposed to take a double hull ship you are carrying oil. But to save premium you have said second hull, I mean single hull ship you have mentioned and you have carried that as a single hull ship. Then in that case, your loss your risks actually would be under the scanner, you may not be paid for the risk.

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Law of Insurance

Warranties

- According to s.35(1) of the Marine Insurance Act, warranty is an undertaking by the assured that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts. A warranty may be expressed or implied.
- Express warranties :

"Express warranties" are those, which are expressly mentioned in the policy or incorporated in some document, referred to in the policy.

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Law of Insurance

Warranties

- Implied warranties "Implied warranties" are those warranties, which are presumed to be present in every contract of marine insurance unless excluded by express words to the contrary. These warranties are:
- 1. Warranty of seaworthiness In a voyage policy there is an implied warranty that the ship will be seaworthy at the commencement of the voyage for the particular adventure insured. Where the voyage is "Seaworthy" means that the ship is reasonably fit in all respects to encounter the ordinary perils of the seas as regards the adventure insured. In a voyage policy on goods there is an implied warranty that the ship shall at the commencement of the voyage be seaworthy as a ship and also that it will be reasonably fit to carry the goods to the agreed destination (s.42).

Warranties are there of the ship's worthiness, of the route.

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Law of Insurance

Warranties

2. Warranty of legality of voyage – There is an implied warranty in all marine policies that the adventure is lawful and that it shall be arrived out lawfully, in so far as the assured is able to control it (s.43). But, where the master of crew, without the knowledge of the owner, indulge in unlawful activities, the contract will not become void on this ground.

Of the legality of the voyage.

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Law of Insurance

Voyage and Deviation

- Where the place of departure is specified in the policy, theship must sail from that place. If it sails from any other place, the risk does not attach (s.45)
- Where the destination is specified in the policy and ship sails for a destination other than the one specified, the riskdoes not attach (s.46).
- Unless the policy otherwise provides, if after the commencement of the risk, the destination is voluntarily changed, the insurer ceases to be liable as from the time of change (s. 47).
- Unreasonable delay in the prosecution of the voyage discharges the insurer from liability (s.50).

If any deviation is done for unforeseen circumstances, force majeure situations, that is acceptable.

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Law of Insurance

Voyage and Deviation

- Deviation when excused A ship is permitted to deviate from the prescribed voyage, or, when no voyage has been prescribed by the policy, the customary route, under the following circumstance:
- 1. Where allowed by any special term in the policy;
- 2. Where caused by circumstances beyond the control of the mater or his employees;
- 3. When the master of the ship finds that, in order to make the ship seaworthy, the ship must be rushed to the nearest port of refuge;

The captain has to take the call, the master of the ship.

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Law of Insurance

Voyage and Deviation

- 4. Where necessary to ensure safety of the ship or the subject matter insured;
- 5. For the purpose of saving human life or a ship in distress, when loss of life is feared.
- 6. Where reasonably necessary to obtain medical or surgical aid for a person on board.

Where it is necessary for the safety of the ship, human lives, medical help, he is bound to take and he is protected and, in that case, also insurance company agrees.

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If something happens because of the deviation, he meets with an accident, then insurance company cannot say why the deviation happened? And since the division happened this damage has happened. No, if there is a reason for that captain has deviated and the damage has happened, still the claim lies.

Before I end, I must talk of one insurance which is a currently talked about insurance, most talked about insurance is Directors and Officers Liability Insurance, D&O insurance. It is a newest insurance policy, but is taken by all companies because of the enormous responsibilities and risks associated in governance of companies.

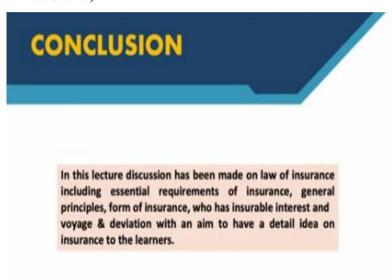
So, it is especially cut out for the directors including the independent directors and the officers of the company like the key managerial personnel, the managing director, the chief financial officer and the company secretary and other officers who are responsible for the day-to-day actions of the company. They are all protected in case any court case is filed, any claims, any damages, any penalties are imposed on them.

These insurance company takes care except where it is by fraud or something to do with a criminal breach. Other than that, civil breaches, non-filings, any prosecution, anything which happens normal course, then in those cases penalties are given, I mean awards are given against all these are covered by D&O insurance.

However, environmental loss, breaches, breaches of sexual harassment, whistleblower all sorts of things which are of the nature of fraud, which are of the nature of deliberate nature, these are not covered. But in the regular course of business so many decisions are taken, if anything backfires, claims come, directors are held responsible, companies are held responsible and companies are penalized, in those cases the Directors and Officers Liability Insurance can be invoked and the damages can be made are to be made by the insurance company.

So, this is the newest in the Indian corporate and almost all companies have taken Directors and Officers Liability Insurance to come out of this. That brings an end to this insurance session. I have taken references from some of these books, but as I always continue saying the same thing it is all from my experience of working for so many years and also looking into the various aspects.

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Thank you so much. Wish you all a very good time ahead. Thank you.

Business Law for Managers Prof. S Srinivasan

Vinod Gupta School of Management Indian Institute of Technology – Kharagpur Module-5: Factories Act

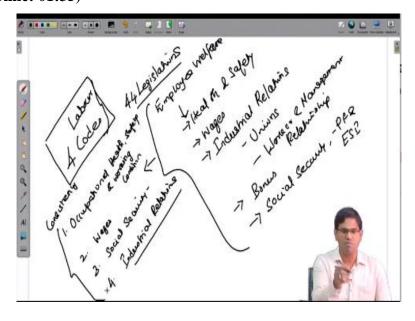
Example 21Background, Concept and Salient Features of Factories Act

Welcome to lecture 21 of module 5. So far, the first 4 modules, Mr. Kaushik Mukherjee would have handled about various aspects of company law, contract and prohibition of competitions and all that he would have discussed. From module 5 to module 8, we are going to discuss about a labour legislation primarily for any potential managers or managers in a company.

It is very essential that we focus on 2 aspects. One is about focusing on company act and contract and how to manage my contractors, other legal aspects. And then the second half is primarily important to focus on the labour legislation. What are the provisions which are governing the organisation with respect to managing the employee with respect to health and safety, with respect to wages, bonus, payment of gratuity, so many aspects, so the model 5 to 8 will be primarily covering on the labour legislations of this particular course.

Let us get into the lecture. So today, I am going to discuss about the first legislation which is a factory act.

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Before I get into this particular lecture, I just wanted to discuss about the development which is happening. As a country, we have been having lot of legislations since independence. Now, what is actually Government of India is doing is they started to consolidate the labour legislations. If you look at the earlier law of, so when we talk about employee welfare, I mean, I talk about its cover's health and safety, health and safety and it covers wages, legislations with respect to wages.

And it is respect to industrial relations, when we talk about industrial relations, industrial dispute, then we also talk about unions, worker and management relationship, then legislations with respect to bonus. Then, respect to social security, with respect to PF and ESI and all. And there are so many legislations which were existing in an independent legislation. Now, the recent development which has actually happened was, all these legislations were consolidated into 4 codes, labour codes.

These labour codes are actually already consented and President of India was already given his approval and a few legislation codes are implemented, but it is still in the phase of reviewing and it is not actively implemented, but what if you look at what is labour code is covering, all these aspects of these legislations are consolidated and brought into the 4 labour courts. The reason being is that so that it becomes easier for consistency perspective, yes, maybe some definitions would very differently in some legislations.

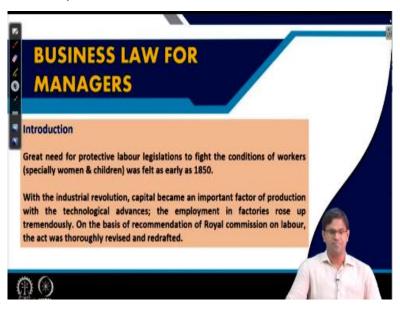
When we consolidate the consistency comes into picture, any review or updating is also considered. Now, if we look at the 4 labour codes, what are those 4 labour codes? First labour code was focusing on occupational health, safety and working condition and second is on code on wages. So, wages, it will cover all the payment of wages, minimum wages, bonus and all that.

Then social security, the code on social security, the social security will primarily focus on various aspects of social security legislations like provident fund, gratuity, employees' state insurance, all that is are covered under the social security. Then the last one is industrial relations. When we; talk about these codes on industrial relations, which is primarily focusing on the dispute, industrial dispute, talking about various aspects of layoff, closure, terminations and retirement.

All these are handled by this particular code, which is also talking about what are the mechanisms as a government has bringing up to ensure that there is ambience at the peace exists in our industry with respect to the worker and management. So, these are the larger 4 labour codes. Now, coming back to our lecture, how we are actually designing, though the labour codes are already been consented by the President of India.

Some of the labour codes are yet to be implemented. So, what we are actually going to cover is we are going to broadly covered all aspects of the important aspects of the labour legislations that is going to be the primary aspect of our particular these 4 models. So, now, the first one we are going to talk about factories act. Factories act is actually going to focus on the aspect of health and safety and work cover aspects.

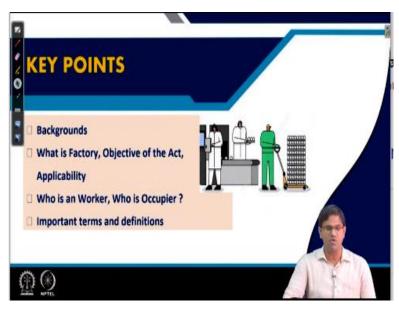
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So, on this first module lecture, what we are going to cover is upon why this factory act. If you look at the development historically if you look at, you know, there is always a greater need for labour legislations, because after the industrialization and industrial revolutions, there were larger amount of economic activity was happening, but eventually there is also a lot of exploitations on the workers were parallelly simultaneously happening occurring.

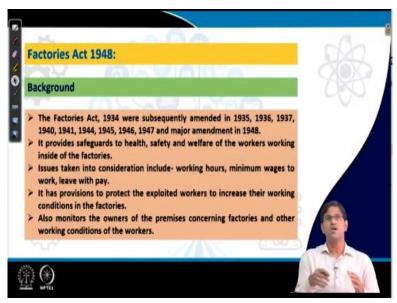
So, there is a larger need to regularize the working conditions for the workers, so that workers are working in a safe environment and their rights are being protected. So, there comes with the recommendation or royal commissions labour, this act was primarily introduced.

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And if you look, now, what we are going to cover in this particular lecture, we are going to cover upon background of this particular legislation. And we will also define what is factory as per these legislations and what is the objective of this particular legislation and the largely applicability of this legislation. And we will also talk about who is worker as per these legislations and who is the occupier and we will also see some of the other important terms and definitions which are covered in this particular legislation.

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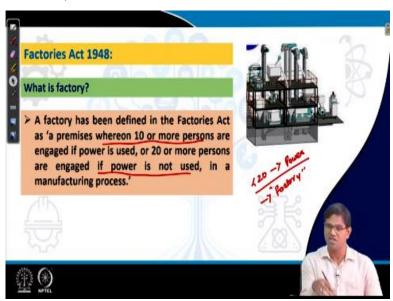


So, now, let us understand the background of these legislations. This act was first enacted in the year 1934. Subsequently with a lot of changes happening, there were many amendments were taken place from 1935, 36. Subsequently, there are so many amendments and major amendment, but took place in 1948 and it provides a safeguard to health and safety, welfare of the workers, working inside the factories.

Though, it is also taking consideration into working hours, minimum wages and then leave with pay, all these aspects also covered, it will be talking about how many hours and worker has to work in a factory, what is the maximum number of hours allowed beyond these minimum workers and it also provides the provisions that protect the workers to ensure that they are working in a safe working condition.

It also monitors the occupier of the factory meaning that the owner of the premises that the ensuring that yes, you are bound by these regulations and how you are going to provide those safe working conditions for the workers in the factory.

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Now, let us come to the definition of who are all considered as a factory. As per the legislations, a factory is a premises wherein 10 workers or more persons when the factory has engaged with the power, the power being used power, I am talking about the electricity power or premises or an activity industry activity where it has more than 20 people where the power is not used.

Now, comes the question, why these definitions are important? Let us say there can be because when the moment they have been classified as the factory, you need to here register yourself as a factory under these legislations; you need to get the certificate of the operations and factory inspector has to provide you the license and you need to time to time the renew your license. So, that is why the definition comes important.

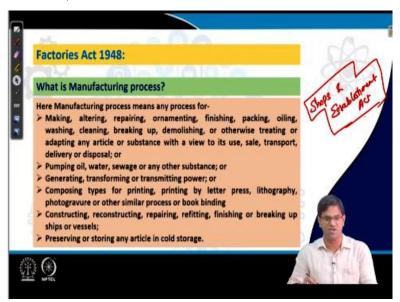
Let us say I am a factory; I do not have 20 workers I do not also use power. My worker is less than 20 that is where then you are not factory as per this definition. So, meaning that you are exempted from not registering or subsequent renewals. That is why the definition is very important. If you are using 10 or more workers with a power, you are called as factory and in case if you do not use power.

But if you are employing more than 20 workers in your particular premises, then you are called as a factory, in the moment you are called as a factory. You need to register as a factory and every year, you need to renew your licenses and when you have you know, registering for a factory, you will have to mention what is the horsepower that you will use in your factory, how many workers are going to be working in a particular factory?

For example, in first year you have 100 workers, okay and then let us say subsequently a second year, you are increasing to 250 workers, so, when you are you know renewing, you need to update these information's on the factories certificate. So, where do they register for this factory? Every state government has a different way of covering the certificate. Now, most of these you know state governments have made it as a you know, online certificates.

This final, one has to register with the inspector of factories and they will assess the demons and the fitness of your applications and after the review, you will be issued with the license.

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Now, comes what is manufacturing process? Because this act is actually covering about any factory which are engaging in a manufacturing activity. These particular factories act is not

covering on the services, service industry. What does it actually cover? Shops and

establishment act. Shops and establishment act which covers the service industry in this

particular case. So, these particular factories are at primarily focusing on the factory which

are into a manufacturing particle.

Now, comes who are all; what are all the manufacturing processes? If you look at this, it

covers a wide variety of activities, you can look at you know, the manufacturing process

means any process for making, altering, repairing, ornamenting, finishing, packing, oiling

and if you took a lot of activities been broadly covered, that actually makes most of the

people who are engaging in these activities are engaging in a manufacturing process.

The moment whereas engaging in a manufacturing process, what is it coming back? Connect

with the definition of the factory, yes if you are engaging in a manufacturing process,

whether you are no generating, transforming, transmitting power and or composing the types

of printing, printing by letterpress, lithography or constructing, reconstructing, repairing,

refitting, finishing or breaking up shapes and vessels, all these activities are a manufacturing

process.

When you are doing a manufacturing process with the power and more than 10 workers, you

need to register yourself as a factory that is why the definitions are important. Some time, you

know, some activity may not be listed here. Then you are not in a manufacturing process.

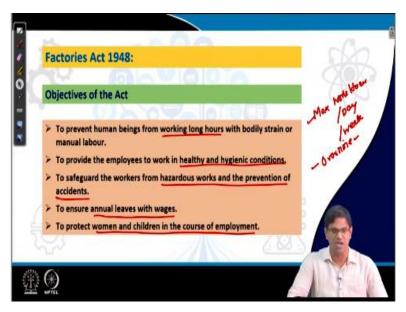
You may be covered under different legislation. So, it is not mandatory that you will not be

imposed to follow these regulations because you are not conducting, doing a manufacturing

process. And you are not required to enroll or register for the factory certificate.

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Now, what are the objectives of the act? See, these acts are the primarily as said, it is focusing on you know, working hours, regulating the working hours. So, when you know if you look at you know, regulating working hours, it will say what is the maximum work hour, maximum work hour per day, per week then let us say somebody is working overtime, we will be talking about all this aspect in this.

So, this act actually provide very clear information about, what is the maximum work hour the employee or the worker has to work per day, per week and it also talks about what is the maximum number of overtimes is beyond which the regular work hours, how many hours a worker can actually engage and what is the you know, reciprocal benefit to be provided for the overtime work hour also.

Then it also provides employees to work in a healthy and hygienic condition. That is why it is very important. So, factory has to provide a safe, health and working conditions for the workers. Then it also tries to safeguard the workers from hazardous work and prevention of accidents. So, this act will mandate the factories to follow certain practices, best practices with respect to health and safety, securing the you know machineries, ensuring the safety of the machineries, operation of the machineries and also fire safety in the factory.

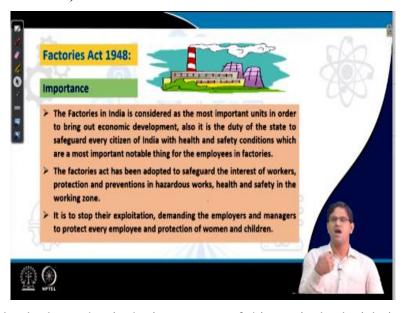
What are the fire safety practicing the factory has? What are the risk assessment factories doing? So, that workers are not risking themselves when they are engaged in a particular work and it will also talk about annual leave with wages, there are concept of you know, various leaves you know, casual leaves earned leave. So, when earned leave, how many days

only you should be provided to the workers. So, that they also enjoy certain days in every year as an earned leave.

Then it also protects women and children in the course of employment. So, we are talking about a prohibition of child labourers in the workplaces. This particular legislation is talking about, when you are employing women or young children or an adult adolescent in the factory so, this act also says, there are certain activities are in the industries where child workers are allowed this where it is going to regulate.

In case if a factory is engaging a woman or a child worker in a factory, what are the conditions that they have to carry out. So, this act provides a very comprehensive perspective to secure the workers in terms of health and safety, in terms of their workers, in terms of their hygienic conditions in the factory.

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Now, we will also look at what is the importance of this particular legislation. See, factories in India is considered as the most important units, you know, to make a lot of economic development, but at the same time, it becomes the duty of the state here means, we are referring to the central government as well as the state government to safeguard every individual worker with a proper health and safety conditions in doing this particular activity.

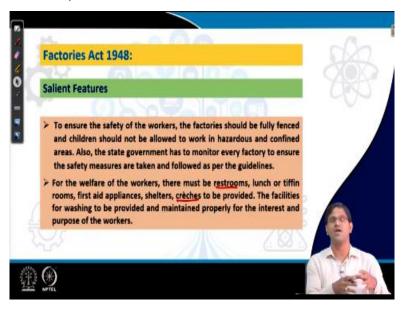
It is not only about driven by the economic activity, but at the same time, you ensure people engage in this economic activity to be secured with a safe working condition in terms of no harm, no risk being in the factory or in case if you are working in a particular missionary or

you are working in a particular set of activity, how do you secure the workers in terms of providing additional personal protective equipments.

For example, the helmet or a goggle or maybe other protective system which are required to work in a particular setup activity. Then factors has been adapted to safeguard the interests of the workers in terms as we say, the hazardous work you know, understanding from working in hazardous works or in case if there are some processes, which is as hazardous in nature, what type of protections or security that factory is going to provide and also provide health and safety in the factory.

And this act is also goes to you know, stop think the expectations or demanding or requesting or mandating the employers and managers to protect every employee and also especially the vulnerable categories of this, which is women and children were being employed in a particular factory.

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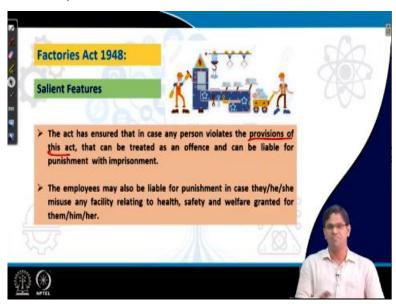
Now, other acts also, it also tries to ensure the safety to the workers. Where it says okay, every factory has to have a boundary and you know, children should not be allowed in certain hazardous processes or you know physically demanding work. And you know, it is the responsibility of the inspector of the factories or state governments representative to monitor every factory that yes, you know child or women are not being asked to work in the certain restricted processes.

And you know, every factory follows these safety measures. So, meticulously, they are compliant with the requested health and safety measures. And it also talks about the welfare of the workers. So, it talks about yes, as a factory, you should provide restrooms, dining place or a canteen area and you know, keep first aid boxes or appliances on the production floor, or you know, assembly line, wherein you also the factories that also ask that yes, you have to train some of the workers on the first aid.

So, that in case any untoward incident happens, there are persons who are trained on providing the immediate first aid to the particular workers. And it also talks about you know fire safety practices, you know, fire suppression system in the factory and to provide you know Creche facilities for women who have you know children below 6 years of age.

When a factory has many women with children below the age of 6 years, factory has to provide a childcare centre wherein the when a woman worker can bring their children and place them there, there should be a caretaker who can look after them. So, that you know these women worker need not to worry about the young kids which are at home.

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And it also laid down about the working hours. It is also talking about yes, workers should not work beyond the 48 hours per week, meaning that 8 hours per day and 48 hours per week maximum and it is talking about 6 days work and there should be a mandatory one day off for every within every 7 days. Ideally, the first day of the week is a Sunday.

The factories act says that yes, ideally it can be a first day of the week, which is a Sunday or

you know, based on the consultations or the locations of the regions, its factory operates at

least one day within the 7-day period has to be weekly off day for the workers. Then it also

says in case if a worker happens to work on the particular weekly off day, within next 3 days,

they have to be provided with a compensatory holiday.

And if the work on the particular weekly off day, they have to be treated as an overtime work

and have to be provided double the wage rate for any worker who is working on those

particular things. And they also request management providing facilities like restrooms,

adequate lighting, ventilators, check that you know, temperature has to be checked.

And if there is you know some processes, where the temperature is really high, an

organisation has to provide various other ways to bring down the temperature and also

regularly monitor the health of the workers who are engaged in those critical processes or the

you know most hazardous processes. And it also says that, yes, if anybody violates the

provisions of this act and we are going to see in this particular module, all the important

provisions.

Anybody violates these provisions, it is treated as an offence, it is a violation and can be

liable for punishment with varying punishment degrees with respect with some imprisonment

and fine as well and employees may also be liable. I am talking with the workers, workers

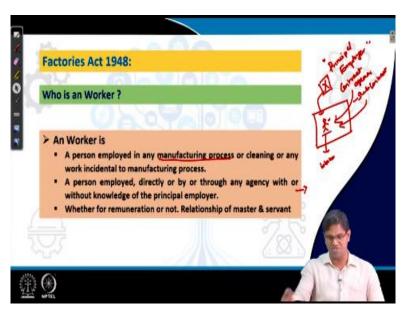
also liable for a punishment in case if they misuse any facility related to health and safety,

welfare granted to them. So, there is an obligation both from the employer as well as the

employee to follow and adhere to these conditions and provisions provided.

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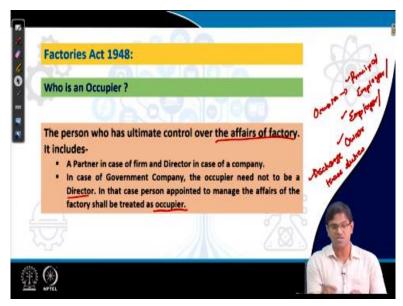
Now, let us talk about who is worker as per this particular legislation. Worker is a person who is employed in any manufacturing process, it can be cleaning or any other activity, we are talking about a manufacturing process, which are listed down earlier in our slides that so many activities are listed as the manufacturing process or any worker incidental to the manufacturing process, they are also worker and any person who is employed directly or through an agency or even without the knowledge of the principle employer.

Let me explain this concept. See, it is not that always a person who is working the particular factory premises, let me call this as a factory premises, anyone who works inside this particular factory is an employee worker and you know, this worker may not be employed by the particular factory. Let us say Mr. X is there you know occupier, meaning the owner of the factory, here, he is not employee but maybe this person is employed through a contract agency or maybe by a subcontractor as well.

So, anybody who works in this particular factory engaged in the manufacturing process called worker and you know, this becomes and this particular person in case of this, let us say, you know, he has been hired from a contractor or subcontractor and he becomes a principal employer. So, in the sense, he or she becomes responsible to ensure that yes, whether they are directly employed by me or employed by the contractor or subcontractor and any kind of relationship, somebody works inside my factory.

It is my legal responsibility to ensure all these aspects of the health and safety provisions and working hours are regulated as per these legislations and the principle employer become responsible for this implementation.

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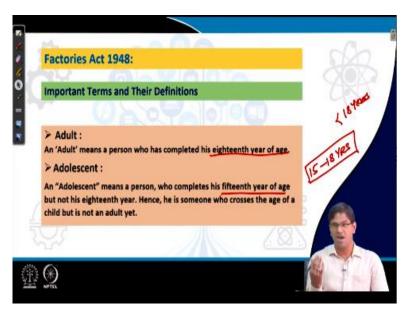


Then, let us talk about who is occupier. Occupier, we are referring to the owner of the factory or who is responsible person for the particular factory. Who is this? He or she is the person with ultimate control over the affairs of the factory meaning that you know, running the factory affairs, the day-to-day activities, maybe the capital investor or looking after the whole operations of the factory.

It includes can be a partner in a firm or a director in case of a company if we are registered as a company or a partner in a partnership firm, he or she is called as an occupier. In case of a government company, so, now, we think government is also running a factory. For example, railway workshops, you know so many public sector, public limited companies, we have.

In case of a government company, the occupier may not be a directive, not always a director, but in case if somebody is appointed as an executive manager or you know, managing director on an executive who manages the you know, activities of the factory can be called as an occupier. So, why we are concerned about occupier? Because occupier is what we are referring to as a principal employer or otherwise called as an employer or can be an owner who is responsible to discharge these duties, that is why the occupier is important to understand.

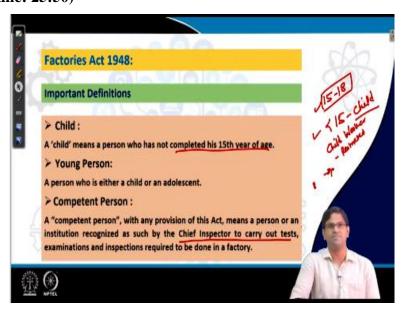
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Next, the other terms which are defined which is important you know, adult. How to do are adult? Anybody who has completed 18 years of age are adult meaning they are allowed to work in a factory. Now, talking about adolescent, adolescent is the person who completes 15 years of age, but not 18 years. So, between 15 and 18 years of age are called adolescent and now, the question comes, can they employ a person less than 18 years of age?

We are talking about you know, child labour prohibition act, but as per these factories' adolescent ion, yes, there are a set of activities where factory can employee less than 18 years can be an adolescent or even a child worker which. We will also see who is child.

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Child is a person who is not completed 15 years of age. Now, you consider that there are 2 categories of workers you know, between 15 to 18 are adolescent and less than 15 who are

child. Now, so, this act says yes, these adolescent and children can be employed, but that is

regulated. We will be seeing that in one of the modules, one of the lectures that okay, what is

that you know, rules which are governing the in case if a factory employs child worker in a

factory.

So, child worker cannot work within the restricted work is there and also, they cannot be

employed on a certain activity, they cannot work more than you know, 4 and a half hours in a

day and those regulations are coming into picture and child worker has to be examined by the

doctor and every time when a child works in a factory, he or she has to be provided with a

particular tag in their arm, so that they can be easily identified. Why?

In case of any risk anything so, it is always you know, child and adolescent workers has to be

given with some tags to be placed with an arm or in some way so that you know, these

workers can be easily differentiated from the regular workers. So, that is why this act was

talking about who is an adolescent, who is child. And young person is either child or

adolescent.

Then now, comes who is a competent person. When you are talking about a competent

person, why we are concerned about a competent person, because the competent person

becomes the responsive person to make assessment meaning that when we say a lot of rules

and regulations and the provisions are made by these legislations, the competent person

becomes the responsible person to visit and see whether this factory is compliance with all

these regulations or not.

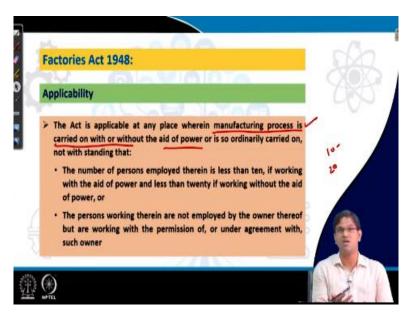
So, that is why the competent person is important. So, who is a competent person? So, the

competent person is by a chief inspector to carry out you know, the factors inspector to carry

out tests, examinations and inspections required to be done in the factory.

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So, now comes, the last aspect of this particular lecture, the applicability. So, where this act is applicable? So, this is applicable to play all places where in the manufacturing process is carried out. Now, you understand why we defined you know, studied the definition of manufacturing process. Wherein the manufacturing process is happening, this is applicable with or without power.

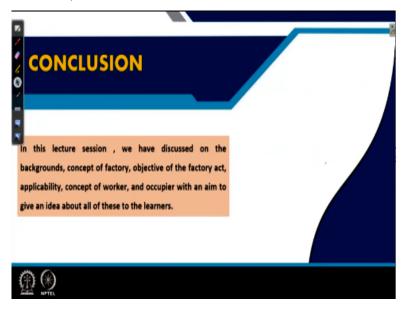
When we say with power, what is the definition says, it should be you know, with power, it is 10 workers and if without power, more than 10 20 workers, so, then in this case, those factories are governed by this legislation. The persons are working wherein not employed by the owner, but are working with the permission or under the agreement with such owner meaning that you know with agreement with the contract agency, if they can that is also applicable.

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So, these are the references.

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Today, we have actually started with the basic understanding about how, what are the labour codes which are existing and we also understood the background for these particular registrations. Why these factors are what is it actually covering upon, we discussed about the some of the basic definitions with respect to you know we discussed about worker, occupier, child, adolescent, young person.

We also studied about who can use a factory and so, that now, when they qualify as a factory, they have to register as a factory. So, thank you so much. We will be seeing the other aspects of these factory's legislation in the subsequent lectures. Thank you

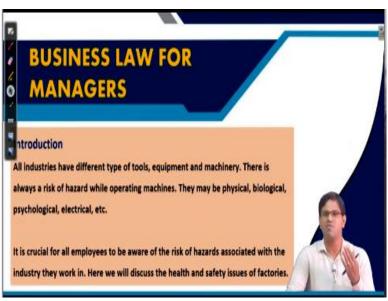
Business Law for Managers Prof. S Srinivasan Vinod Gupta School of Management Indian Institute of Technology – Kharagpur

Module-5: Factories Act

Lecture – 22 Health and Safety

Welcome to lecture 22 of module 5. And last week, the last lecture, we discussed about the background factories act and we have given you know, objectives of the act and we discussed about the various definitions. And today's lecture, we are going to discuss about health and safety provision, which are enshrined as per this factory act legislations.

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So, let us look at why this health and safety is an important. If look at in any industry and these industries using various machineries, tools and equipment, when we use various machines or tools and it is always there is a risk associated with operation of the particular machines. So, these risks can be with respect to a physical or psychological or electrical can be various risks associated with it.

And it is very crucial for employees to be aware of those risk of hazards associated with the particular factory or industry they work in. So, in this particular lecture, we are going to discuss about the health and safety aspects which are listed down by the factories act. So, let us look at what are the aspects of health and safeties are required by the factory management to ensure that yes, when they employ the workers in the particular factory.

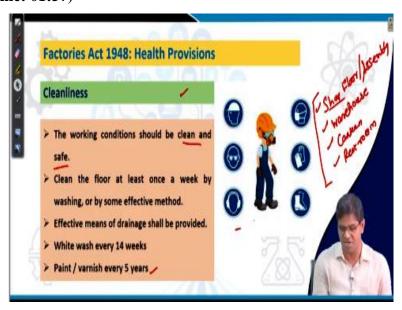
So, what are the health and safety provisions this factory has to provide to its workers or its employees.

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So, we are going to largely discuss on 2 provisions, which are: one is on health provisions and another one is safety provisions.

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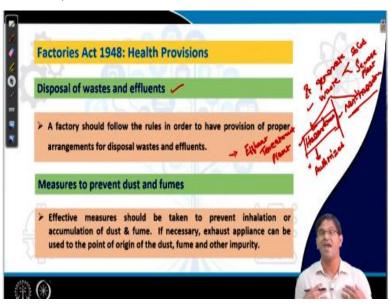


Now, starting with the first one cleanliness, so, this act also says yes with respect to cleanliness, you as a factory, you have to ensure that yes, working conditions should be clean and safe. When you say talk about a clean and safe, there are various you know processes, which is happening in a factory maybe a shop floor, we talk about shop floor or an assembly line, we call it assembly line.

Then we talk about warehouses where material being stored and we are talking about canteen facilities, restroom, the various buildings or various things which are available in the factory. So, the factory has to ensure that yes, all these plays are kept clean and safe. And the factory has to clean these places at least once a week with effective method. And there should be effective means of drainage shall be provided.

And at least know, factory has to go for a painting every 5 years. This is with respect to cleanliness. This, we are starting with a basic aspect of you know health and safety provisions. Then we will see in detail about other aspects of a thing.

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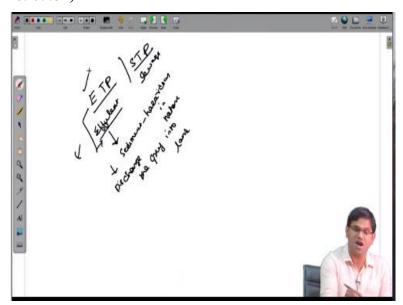
Next is about disposal of waste and effluents. When an any factory engages in an activity, there is always likely that yes it will generate waste. So, when they say waste, how this act actually says, you classify the waste into hazardous and non-hazardous and also, we say solid waste and look at where, when there is a drainage water, there should be no sewage treatment plant or otherwise you send it to the government provided treatment plant.

When you talk about the solid waste; we know it is very important. The factory buys a lot of raw materials, there can be, they use chemicals or related certain pains or some of these wastes or can be hazardous in nature and it is very important that yes, you cannot store all the waste in a same place. So, the factory has to have a dedicated place for waste management and when they have a dedicated place for a waste storage, they have to you know segregate the waste into hazardous or non-hazardous waste.

With respect to a hazardous waste, so, factory cannot directly dispose the hazardous waste. So, the factory has to dispose this through an authorized vendor. So, the authorized vendor is who have been provided certificate by the environment, Ministry of Environment or by the respective state government that yes, this particular companies are authorized vendor, who can handle this hazardous well.

So, factory has to ensure that the wastes are segregated into hazardous and non-hazardous. And hazardous waste to has to be actually disposed through an authorized vendor. And non-hazardous waste can be again, can be within our contract or agreement with another waste disposal mechanism. So, this is very important and also some places factory might have effluent treatment plant ETP, when they discharge a lot of water and it is very important that know they have this you know ETP.

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Wherein, why this ETP effluent treatment plant or STP, which is sewage treatment plant? So, the larger factories used to have effluent treatment plant. Why this effluent treatment plant? Because through this process what do they do you know, they actually have the sediments which are maybe sometimes hazardous in nature. So, this is very important.

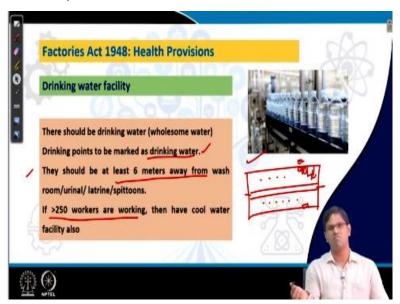
And larger factories used to have the sewage treatment plant and for an ETP yes, through this effluent treatment plant, you will only discharge the grey water. Discharge the grey water into the land, you cannot just discharge the contaminated water on the land. So, because it is as per the regulations and the environmental policies, yes, it is a pollution.

So, factory should have these if the larger factories which are generating large amount of these waters, they should have an effluent treatment plant and some factories might also have a sewage treatment plant. So, these are the with respect to the disposal of waste and effluence. And the next comes with the measures to prevent dust and fumes.

If you look at the large some of the activities in a particular factory or maybe some major factories might have this engage in an activity that will create dust and fumes. So, the factory should ensure yes, they have given effective measures to prevent the worker being inhaling those dust and fumes. So, you see someone certain activities, they would have provided specially made masks that yes, do not the workers do not inhale those dust or fumes when they are actually working on the particular activity.

And the factory also should set up an exhaust provision. So, that the dust or fumes being taken away that does not create a lot of health risk for the workers who are working in those processes.

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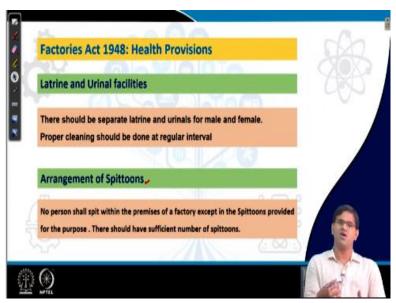
Then, comes drinking water facility. So, the factory has to provide a drinking water to all its workers and these drinking water points has to be clearly marked as drinking water. Because the factory cannot use the same water which been used for washrooms and in other place. So, that is why, it is required that yes, you have to indicate drinking water points separately. Maybe some of you who have visited to the factories could have seen that yes, this is a drinking water facility.

So, when they have a drinking water points, why we are talking about drinking water point? And for example, this is a factory; there is a no assembly line and you see workers have been working here this decide, this decide and you always see these are all passages and doors and all that you will see some drinking water points here. And it has to be marked as a drinking water and you ensure that drinking water point is not next to the toilet or a restroom that is very important.

You say, it is also saying, it is at least 6 meters away from the washroom or a urine or a latrine place, because we have seen some of the factories where you see that yes, just get into the washroom and then you just beside that they will keep the drinking water points. This is a noncompliance. So, why there is a possibility of contamination? It is also some health risk for the workers. That is why there is a requirement yes, you should keep the drinking water points 6 meters away from this washroom or urinal places in the factory.

And in case of the factory has more than 250 workers which are working, there should also provide provisions with a cool water facility also. So, there should be you know, both the waters the normal as well as the cold-water provision should be provided if we are engaging more than 250 workers in a particular factory.

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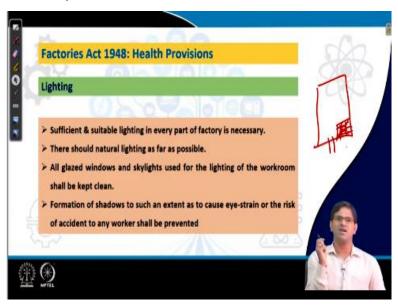


Then we are talking about a washroom facility yes, factory asked to provide adequate number of washroom facilities for both male and female workers. There should be a separate place to be provided for both male and female workers. Because, it also talks about you know, privacy

for women workers and safety concerns also is there. So, the factory is required the factory management to provide 2 independent washroom facilities for both male and female workers.

And it has to be the regularly cleaned and it has to be regularly seen whether it is clean and all the maintenance been done. And also, arrangement of spittoons, there should be provisions to the workers to spit, but most of the factors does have, but now, we will look at now with the larger and more advanced factories where the workers do not engage in this sort of activity. So, this is also but also a requirement in the smaller factories and it with respect to lighting.

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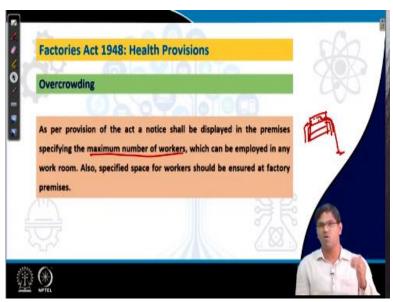


So, these are also talk about whatever lighting facility the factory has to provide. The factory management has to ensure that yes, there is sufficient and suitable lighting in every part of the factory. Why the lighting is concerned? See maybe you know, you might have a larger factory, some sections maybe dark imagine in case of any incidents or untoward accidents, any fire breakout.

If there is no adequate facility, there can be a possibility of you know workers know having some difficulty in going, reaching the exits, emergency exits. And also, when they work not with an adequate lighting, there can be possibility of risking themselves in some of the accidents, workplace accidents that is why there is a requirement yes, factory management has to provide sufficient and suitable lighting facilities.

And you know, all the formation of shadows as an extent to which cause the eyestrain because know when without a proper lighting, workers might have the eye strained and are the risk of accident as I was explaining that is why this provision of lighting is important, the adequate lighting should be provided for the workers working in the factory.

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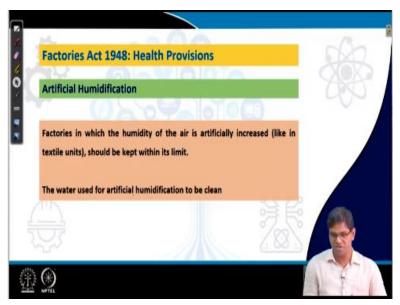
And overcrowding: as this all also says that yes, there should be notice displayed in premises specifying the maximum number of workers which are employed in the particular work room. For example, factory might have multiple floors, maybe sometime you see the mezzanine floor, the floor in between the first floor and the ground level we have a mezzanine floor, sometimes you know, there is a possibility of overcrowding.

Why a factory is talking about avoiding the overcrowding or restricting the number of workers to be working on a particular worksite? The reason is seen, there should be adequate exits or there is a provision that yes, these many workers in terms of any accidents or a fire, they are able to exit. If there is an overcrowding, you know, what is happened? What will happen?

Well actually, you know, in terms of any fire, in terms of any risk, any untoward incident happens, there is potential chances of you know stampede kind of situations likely to happen in those risks situation that is why factory also regulates, what is the maximum number of workers work in these particular square feet of rooms. So that is being specified. So that you know adequate space, working space also to be provided.

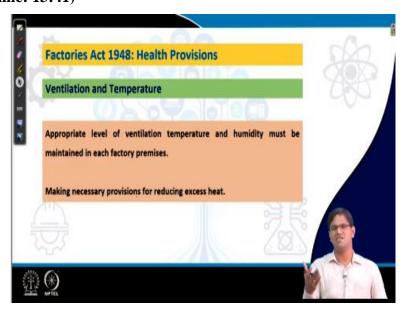
It is not only about these overcrowding, talks about does the worker have a working space to work because they should be not be constrained of you know, too much people working on a same table or a worksite which is a tough. That is why the overcrowding is to be avoided.

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Then factory act is also speaking about artificial humidification you know, where that humidity which artificially increased should be, so that it kept to the maximum limit, you know, sometimes you see, water being used in for the artificial humidification to be clean. I have been to many factories where the water being artificially good, so, that the humidification is maintained at a maximum limit.

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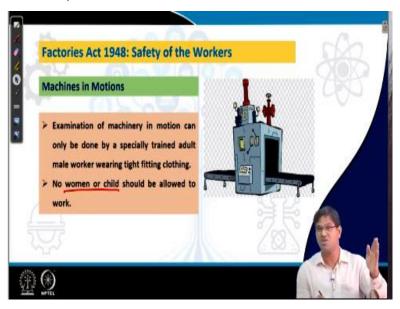
Then ventilation and temperature: yes, appropriate level of adequate level of ventilation is provided to the workers and also ensure that the temperature is also maintained, wherein, you

see some of the activities where we say moulding or plastic moulding factories or where some iron industries, where workers work in a very heavy high temperatures, there is also the continuous exposure to that kind of a high temperature has a larger, long term health implication to the workers.

So, the factory management should also ensure that yes, the temperature is not so, high is that it is going to have a health impact on the workers. So, there should be in case yes, there are some processes, which will generate a lot of heat. So, factory management has to ensure that yes, there are the ways in which you have to reduce the heat, may be, you have to have an additional ventilation or a fan.

They used to have than many manufacturing plants now, it see that the large manufacturing has become an air-condition to ensure that yes, the heat has been reduced by way of providing additional provisions. So, that the workers are not exposing to have a health risk.

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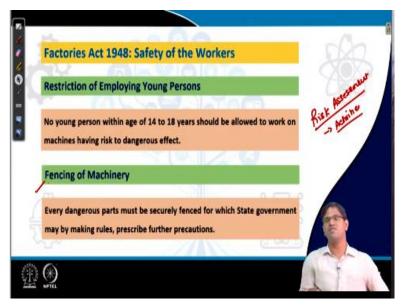


Then talking about a machine in motions. So, the factory management has to identify okay, what are the machines which are emotions and those machines should be operated by the trained worker. And that worker has to always work with a tight-fitting clothing because there is a possibility that there are the cloth, the uniform they wear may get into the moving machines, there is always a risk.

And it is also said that there were places where the machines are, the moving machines are having a fence. The fence being created, so that workers do not have the risk of having any

accidents or workplace accidents when they work near the moving machines. And if you look at the woman or a child is not allowed to work in machines in motion that is where we said, this factory act has provisions with respect to protecting women and children if they are employed.

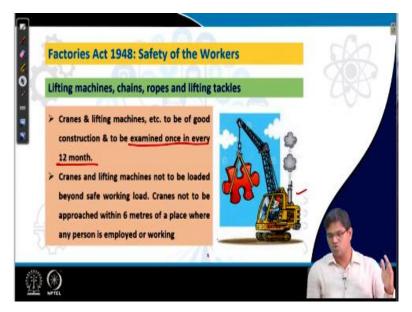
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Then restricting employing young persons. So, knowing persons is allowed to work on a machine which are dangerous in natures. So, the machines or the activities are generally classified as you know, non-noticed because every regularly factory has to do the risk assessment. The risk assessment will classify. What are the risks associated with each of the activities? Yes, let us say some machines in this particular machine, what is the risk associated with it?

What is the regular review to be done? So, that the risk have been contained so, in those dangerous activities or operations, the young children or adolescent or the young workers, women are not allowed to engage on those particular work. As I was already saying that referencing of machineries, yes, dangerous machines or motion machines in motions are apt to be fenced properly so, that know, there is no risk involved when the workers work on the particular machines and only trained persons are allowed to work in those machines.

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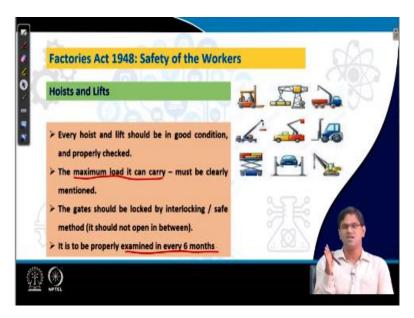


Then, if we look at the cranes and lifting machines, what are the provisions with related to that machine to be used. See, when they use cranes or lifting machines, it should be of a good construction and it should be examined and certified once in every 12 months. So, there should be an assessment on the particular cranes or machines been used that yes, this deems fit; it is all been regularly examined and it is fit to be used in the particular factory.

And in case if the cranes are lifting machines not to be loaded, the same conditions safe working load beyond safe working load and when the cranes are moving and it should not approach 6 meters of the place where the anyone has been employed. For example, if somebody is working, it should not operate within the 6 meters of the distance.

So, it is to ensure that yes, safety of the worker being worked in any of the activities because if the cranes lift and there is some mishap can happen. So, that is why this factory act specifies that yes, the worker has to be ensured of the safety and those places the cranes are to not be allowed.

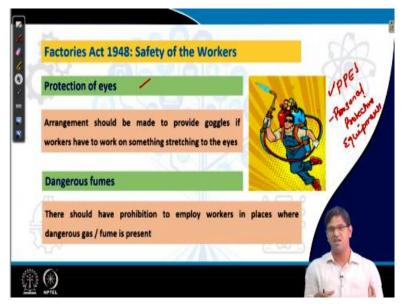
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With respect to hoists and lifts, yes, every hoist and lift should be in good conditions and it should be properly checked and it should be clearly display what is the maximum load it can carry and you should ensure that yes, gates should be locked by interlocking system or should always be an interlocking system and it should be properly examined in every 6 months.

So, it has to be regularly examined and it should be certified as yes, it is in a proper working condition. So, it can be used.

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Then talking about the protection of eyes. There are factory, when we talk about the protection of eyes, is it relevant for every factory in case, some factoring may have certain activities. For example, you know welding or maybe grinding activity. So, all those activities

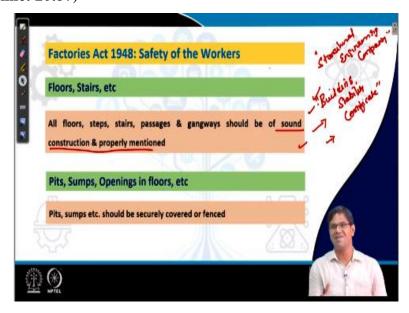
where there is a potential risk of having any risk for your eyes. So, workers has to be provided goggle.

In some places, some factories where they engage in a chemical room or a chemical mixing, yes, they have to be provided with the proper PPEs which is personal protective equipment. So, adequate PPE is to be provided and the eye goggle should be provided and any chemical rooms or chemical mixing rooms, the factory act clearly lays down yes, there should be eyewash station near this chemical rooms or chemical mixing rooms.

Why? In case any spills, any accidents on your eyes, there should be an eyewash stations where the worker can go and wash their eyes. The eyewash station (()) (20:03), there will be 2 water provisions where it will actually know when the water will be flushed turn on your eyes. So, that should be eyewash stations to be placed and also there should be wash station as well, you know sometimes any chemical rooms and chemical mixing, there can be a risk of having any risk health risk to happen.

So, there should be wash station as well to the nearby chemical room. So, these are the minimum requirement if the factory has certain activities which are likely to have any risk associated to the workers. Then any dangerous fumes. Yes, there should be a prohibition to employ workers in place where there is dangerous gas or fumes is likely to be presented. So, their workers have to be prohibited to go or work on those particular places.

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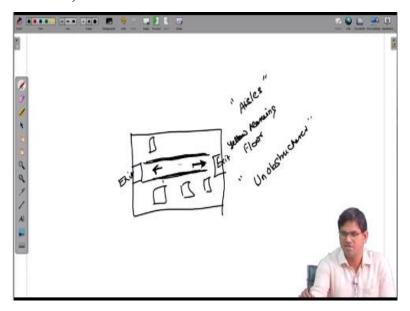


Then comes to no floor stairs and etcetera: so, all floors' steps and stairs and passages should be of sound constructions where and properly mentioned. When you talk about sound constructions, there is also a requirement of building, stability certificate, okay every factory has to be assessed by the authorized structural engineering company okay.

So, the authorized or certified structural engineering company should assess the buildings and floors and the constructions of the factory and should provide a building stability certificate that yes, this factory or the buildings are in a fit condition that it can be used for the set or defined activities. For example, sometimes the factory might say, we are going to run these, these activities, but eventually they might be doing a different activity.

So, that construction may not be sufficient to conduct the, maybe a certain set of activities. So, that is the responsibility yes, the authorized structural engineering company has to assess the stability of the building and provide building stability certificate.

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Now, this is about a stability of the certificate. Now, we also if you look at in the factories, what will happen? So, you will have a way if you some of you have visited the factories, you will be observing yes, this is the shop floor okay. I am just putting these are the machines, these machines somewhere okay these are the machines and machines and you have the exit here and you have an exit here.

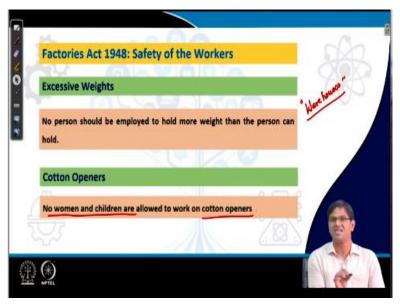
See, now you should be within the machines, there should be a hele marking Okay, so this hele should be marked in a yellow colour. Yellow colour marking has to be there on the floor.

I am talking about yellow colour marking on the floor and that should be a red colour arrow mark which indicating the exit routes. It has to be on the floor and this hele marking we are talking about a heles, this heles should not be obstructed. It should be unobstructed.

There should be any time of the operations of the factory, you should not keep any materials on these heels because it will obstruct the workers to access the exit because why we are talking about this? Why this has been very mandated? It is one of the requirements of the safety conditions because in case of a fire, in case of any emergency, workers will use this passage on this route and nothing should be stored on this passage.

No machines, nothing should encroach this clearly marked heels which should be marked in yellow in colour and the arrow marks should always show towards the exit. this is an exit, yeah. Now, let us talk about that and next of all about the big sumps and opening the floor, big sumps should be secured, Coverley and fully fenced. It is to reduce the risk of the workers.

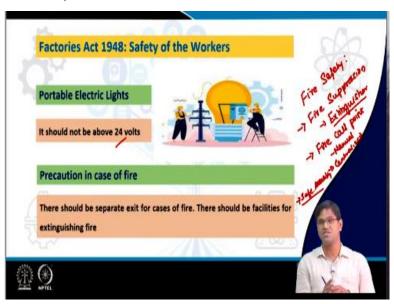
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And there is also provision with respect to excessive weights, no person should be allowed to carry anything weight, more weights than the person can hold and especially on the warehouses where we see that yes, workers are not allowed to carry very heavy weight or maybe you know, asking him to load in a height which is more about those 6 feet height, so it is very important.

Yes, these workers are not asked to carry weight which is more than what they can hold and no women or children are allowed to work near any cotton openers. So, there are a lot of cotton industries where these in the cotton openers, children and women are prohibited as like you know working on a dangerous machine or near the machine in motions.

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And many portable lights been used in the factories. It should not be above the 24 volts and we are talking about precautions in case of a fire. See, this is very important aspect in any factory. This factory legislation factories act legislations emphasis on the fire safety system. What does it talk about a fire safety system? It says yes, there should be a proper fire suppression system.

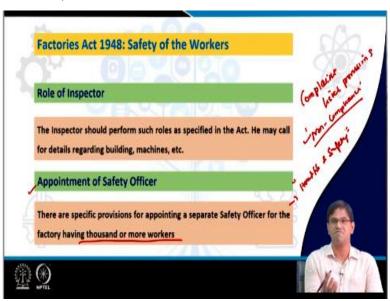
When we talk about a fire suppression system, it can be either a fire extinguisher, most of us would have seen, the fire extinguishers are being kept in every shop floor, every part of the building. So, that now in case of a fire, the fire extinguisher can be used and there should be a fire call point either it can be manual fire called point or centralised fire panels which are so that the security can actually see okay, which locations has fire when they alarm the siren goes off.

So, the workers asked to rush to the safe assembly point. Let me go back and explain here. So, in every factory, there should be safe assembly point. When case of a fire anytime and there is an alarm being called, worker has to rush to the safe assembly point and they will be there. So, the factories act will clearly lay down yes, there should be fire suppression system and there should be fire called point and also, safe assembly point.

And you see, there are some places wherein maybe a warehouses or materials been stored or maybe finished goods are stored. Some places where there will be no worker working. So, there should be an automatic deduction system and there should be water sprinkler being used. So, maybe some of the factors use water sprinklers because when they identify any smoke detectors are there, it will automatically give you an alarm.

It is an automatic alarm system and also any smoke, then there is a water sprinkler which will suppress any fire breakout in the factory. So, these are the important requirements in any factories. So, that does not risk any of the workers in case of a fire in any emergency.

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And comes the role of an inspector with respect to health and safety provisions. What does the inspector play a role in ensuring that yes fire health and safety provisions are existing in the factory? So, the inspector of factories will visit the factory and he or she will investigate inspect the factory and see that okay, do they have all these requirements being met? Are they being compliant with the listed provisions?

So, any non-compliance resulting the stricter legal actions on the factory because if they fail to ensure, there is a fire safety provisions, the fire suppression systems are provided. So, in case if that is not there, then they are actually violating the legislations and they will be marked as non-compliant and they have to go through the process of re-correcting and factories inspector can sue them as per these legislations.

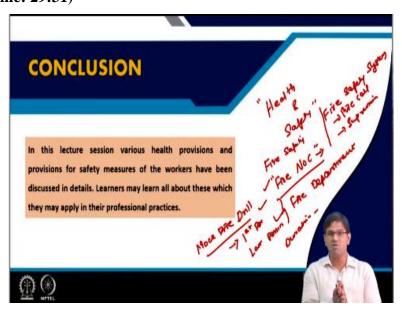
And also, it also talks about the appointment of the safety officer. There are specific provisions for appointing a separate safety officer for factory having 1000s or more workers. When a factory having 1000 or more workers, a factory has to appoint a safety officer. What is the role of safety officer? Safety officer becomes the responsible person who is looking after the health and safety provisions in the factor. As we talked about no fire safety, we talked about fire safety and machine safety, electrical system safety, so, all that will be looked after by the safety officers.

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So, these are the references.

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And in today's lecture, we discussed about various aspects of health and safety provisions which are enshrined by the factory act because it is one of the fundamental aspects of the

factory act. It is asking requesting on mandating the factories to yes, you provide this health and safety provisions to the workers. So, that workers are working in a safe working condition. This is very important, especially with respect to machine safety, with respect to electrical safety, with respect to file safety, which are minimum criteria that yes, you are able to meet.

For example, with respect to fire safety, so, every factory has to have a fire NOC, no objection certificate from the fire department, local fire department. It is also a minimum requirement to run your factory. So, when we go for a fire NOC, what are they being evaluated? They are being evaluated based on; do they have adequate fire safety system?

So, where fire safety system which is respected to as I said fire called point, fire suppression system whether they have an adequate number of fire extinguisher has been regularly examined, tested and also once in every 3 months, they have to do a fire drill. Fire drill has to be done. During the fire drill so, it is like, they have to run a call the fire, fire alarm, they put the fire alarm where they should ensure that yes, all workers are coming out of the factory and reaching the same assembly point.

During the time, they have to measure how long each the last worker to reach the safe assembly point. So, it is expected that yes, within 3 minutes, all the workers in the factory has to go out from the production plant and reach the safe assembly point and when they conduct this mock fire drill, so, they have to conduct this mock fire drill. When they do these mock fire drills and they have to note down okay, who is the one first person to come out and was the last person to come out.

So, what is the duration it took for everyone to come out. So, this is what required are to know to get this fire NOC and it has to be regularly reviewed. So, in this lecture, we discussed about health and safety provisions and we will be discussing about the other aspects of the fire factory act in the subsequent lectures. Thank you.

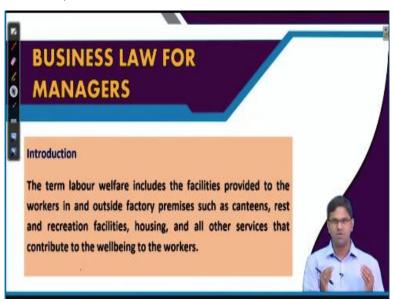
Business Law for Managers Prof. S Srinivasan

Vinod Gupta School of Management Indian Institute of Technology – Kharagpur Module-5: Factories Act

Lecture – 23 Labour Welfare

Welcome to lecture 23 in module 5. In previous lectures, we discussed about health and safety provisions as enshrined by the factories act. Today's lecture, we are going to focus on labour welfare. So, various provisions which are mandated by the legislations that a factory management has to implement in the workplace for the benefit of the workers.

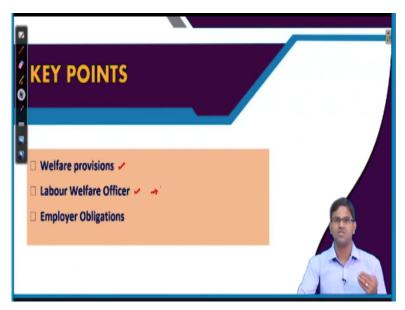
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So, let us discuss, what are those benefits? Which are mandated by the factories act? So, let us understand, what is this labour welfare? The term labour welfare, which includes you know, facilities to be provided to the workers in and outside the factory premises. If you look at inside the factory premises, it is like canteens, restrooms, recreation facilities.

Some factories may provide housing facilities, dormitory facilities and other services which are required for workers to protect the wellbeing of the workers that is where the labour welfare, the term labour welfare includes. It is not only about a salary and other things. It is also concentrated about the providing facilities which are required for the worker so, that they can keep up there will-being and also protect them from any harm which can be physical or psychological in nature.

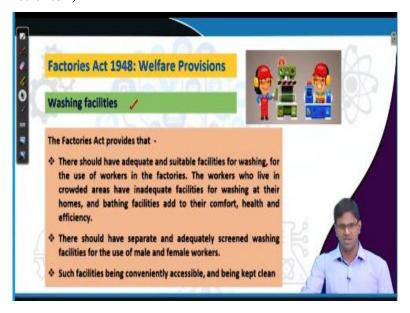
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So, let us see what are the things, which are governed under this labour welfare provisions. One is yes, welfare provision in the factory whatever welfare provisions are to be provided that we will discuss in detail and we will also talk about the appointment of a labour welfare officer inside the factory with what type of factory are required to our labour welfare officer, because in this case, we will be discussing, is every factory mandated to have a labour welfare officer? No.

And in case yes, what are those factories which required to have a labour welfare officer and we will also discuss about their roles and responsibilities of this labour welfare officers and we will also discuss about employer obligations with respect to providing this labour welfare services to the workers in their particular factory.

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Now, begin with the labour welfare provisions. First is about washing facilities. We will be

surprised to look at now what are we talking about a washing facility. See, as per this factory

act or now, we look at the code on occupational health and safety and working conditions, it

says that yes, factory should. For example, larger manufacturing organizations wherein if the

factory management has generally in most of the manufacturing organization, we always see

that there is a uniform. We call it blue collar workers.

So, you know, they essentially do the physical activities or maybe the production activity,

shop floor activities all that, not management employees are all called workers. Those

workers are always referred to blue collar workers. Now, having said that the manufacturing

activities involves all these activities what we are talking about, so, the factories has to

provide an adequate facility for washing the cloths of or the uniform of the workers.

Now, you see why this is required because we see that being a developing country where we

talk about yes, a large section of the workers may come from disadvantaged societies or

economically weaker section or we are talking about below poverty line, there may be a

constraint of may be living in a crowded areas where they do not have an adequate facility,

washing at the homes.

So, it is also required factory to provide certain place provisions for washing facilities. So,

and also when we are talking about a washing facility yes, if you are employing both male

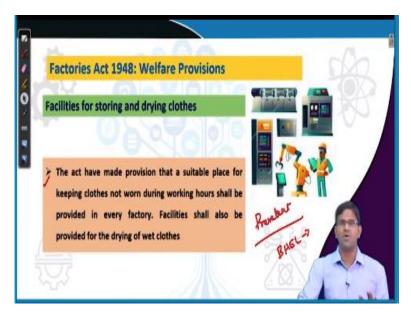
and female workers in your factory, you have to have separate places for both a category of

the workers, both male and female workers or washing facilities and such facilities should be

conveniently accessible and also should be kept clean.

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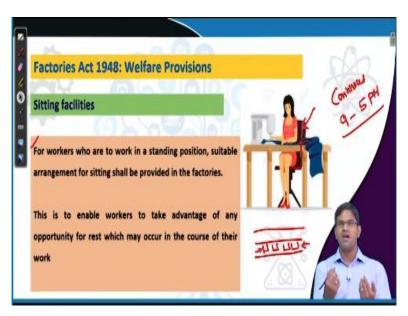
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Now, having said that the washing facilities now yes, then what? Yes, the moment I have provided a washing facility, you should also provide a provision that is suitable place to be provided to keeping the cloths to be worn, uniform to be worn during the work time. So, if you look at this practice is highly prevalent in almost major manufacturing organizations where each of the workers are provided a cupboard or maybe 2 or 3 workers together are provided as a 10 cupboard, small place to keep your uniforms.

For example, if you take even public sector companies also have this, for example BHEL provides cupboards facilities wherein their workers can keep their uniform there. So, generally you know, workers come by the company provided buses or by their own mode of computations, then after reach, they use, they take their uniform and then use that is why this provision is required part of this requirement of welfare provisions.

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Now, then comes that is a washing facility, we are starting from the basics to the other essentials welfare services within the factory. Now come to sitting facilities. What are we talking about the sitting facilities? There may be several processes or activities in the factory that may be requiring a worker to work in a standing position for a longer period of time. And for those set of activities, there should be suitable arrangements providing a seating shall be provided in a factory.

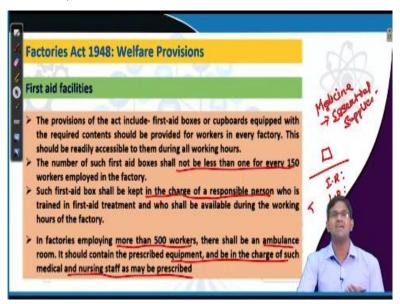
And you know, maybe there will be small breaks be provided. So, those times the worker should be given a seating provision so, that they can actually have a quick rest as well. And also, if you look at there are other processes, wherein you see in a shop floor line, assembly line, people used to work in a sitting position, just imagine, so, these are the shop floor line and these are the workers where they sit.

And now, when you provide a chair to work, it can be in a sitting position and if you are providing on a sitting position, you should also provide a backrest you know, where we are talking about this kind of a backrest. So, eventually, what will happen in the long work hours? Because especially on a factory where we are talking about assembly or a production floor, it is a continuous activity.

So, from day in and day out or maybe you know, the moment you clock in at 9 o'clock till the time 5 pm, they will be monotonously repeating the same job without the backrest. It will be giving them a physical difficulty or maybe impact in the long run their health as well. So, you have to provide a backrest. It not essentially this kind of cushion or at least some level of

backrest so, that they can actually sit back when they have a proper backrest to be provided where we are also talking about sifting facilities.

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Then comes a first aid facility. Even if we discussed very briefly in the first lecture on this particular module, when we talk about first aid boxes, yes, there should be a first aid box or a cupboard to be equipped with all required materials. I mean, I am talking about essential supplies of medicine, medicine supplies. So, there are list of medicines or the essential supplies. They call it essential supplies to be provided on the first aid kit that has to be provided on the shop floor.

So, how many numbers required? At least one first aid should be provided for every 150-worker employed in a factory. Now, comes other aspects of it, where do we keep? Who is responsible? See that first aid box should be provided in the shop floor the production building itself and that should be in a locked and then the key has to be given to a responsible person or person in charge of handling this first aid kit.

And this worker also should be trained by the authorized organizations who can give first aid training. If happen to visit some of the manufacturing factories or you are working in a manufacturing factory, now, you can actually go back and see yes, if you look at go to their HR department or maybe you know, industrial relations department or labour department in the companies, you will find that they will have a list of trained workers on a first aid.

So, every time they provide you know, first aid training to the workers and each worker will

have a separate batch, some factories follow some batch to be provided. It is kind of a plus

sign so that they are trained first aid staff. Why it is important? Because in terms of any

accidents, workplace accidents, so the first aid services to be provided in the production floor

who is using these first aid kits, then comes going forward.

Now, in case I am talking about medium to larger factories, wherein I have more than 500

workers. When there is less than 500 workers, the requirement is that you should have at least

first aid facilities and your worker has to be trained. Now, talking about a factory which has

more than 500 workers, what is the requirement? There should be an ambulance room in the

factory.

When you are talking about an ambulance room where the basic medical attention can be

given immediately after any incidences of accidents or any other things happens within the

factory. So, there should be an ambulance room and it is also kind of prescribed equipment

and you should have a person or a nursing staff should be available on the ambulance room to

provide immediate attention.

Now, the larger factories used to have a clinic. When you are talking about a larger factory

where they employ more than 1000 to 2000, some factories even to have 5000 to 10,000

workers working where they used to have a small clinic within the factory. So, doctors will

be appointed. There will be a nurse. So, there is a clinic which will take care of the basic

essential requirements. And also, the requirement from the factory is that yes, you need to

display which is the nearest hospital to be taken in terms of emergency happens in the

factory.

And they should also list on the hospital should be reachable within 15 to 30 minutes

distance. So, and by the time that the basic attention to be provided in this factory that is why

the first aid facilities one of the major requirements because in most of the manufacturing

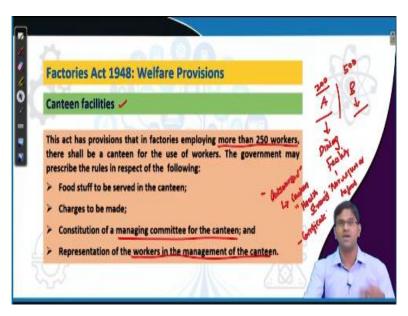
organization yes, there is always a risk of this kind of health, the accident minor accident or a

major accident are likely to happen that is why these provisions are required to ensure that

yes, factory is concerned about the safety of the workers.

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Now, moving from the first aid facilities, what we are talking about the canteen facilities. Does a factory should provide a canteen facility? Not really unless otherwise, if you have more than 250 workers. Let us talk about 2 factories, factory A and B and where I have 500 workers, where I have 200 workers. Now, what is the requirement? In this factory, you should have a dining facility wherein you do not need to provide not required to provide.

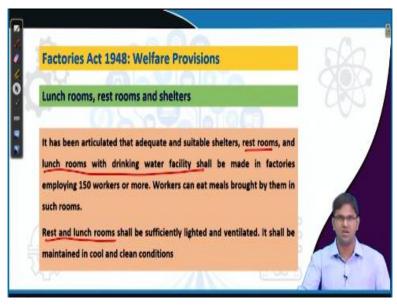
It is not mandated, not required to provide food facilities and you should have a dining place where the workers can bring and eat. So, whereas in this factory, yes, it is the more than 250 workers, yes, you should have a canteen facility where we should also provide food facilities where food has to be served to the canteen and charges to be made and there should be a constitution of a managing a committee for the canteen.

Yes, generally there is an equal representation from the management and also for the worker category. So, that the management committee can talk about the quality of the food being served. And if you go beyond the minimum requirement, there are very good factories wherein they talk about now, most of the canteen facilities are outsourced meaning that the contract agency used to provide services to the canteen services.

So, there is also a requirement. All this canteen staff has to go through the health screening and those certificates should be provided and should be available in the factory. So, all the canteen staff has to be time to time have to go for the health screening and the certificate should be kept by the management or the HR department in the factory. So, that every time

you will be able to review it. These are the requirements when a factory has a canteen facility.

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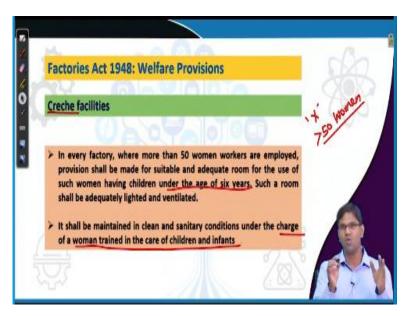


And let us talk about the lunch room. Yes, as I said, if you do not have more than 250 workers, there is not a mandatory requirement. But we are also seeing you know, most often we always see manufacturing activities in larger or most of the places where we see these manufacturing factories are away from the main cities or let us say the housing colonies, a little away from the those living places.

So., we used to most of the factors even if there is less than 250 workers, there are times they used to have a canteen facility but it is not mandatory, as I said, but let us say lunch room facility yes, if you do not have a worker if you have workers, you know up to 150, you have to provide lunch room facility and you should also provide suitable restrooms, lunch rooms with a drinking water facility should be made available in the factory for 150 workers or more so, that you know this.

And also, when we are talking about a restroom, the restroom should be having sufficient light and ventilation and there should be a separate restroom for male and female workers. And if you happen to visit some of the factories, you will be able to see that yes, there is a small restroom, wherein during the lunch break or even a tea break some workers may use to, want to have a small quick rest, they can have a provision to go to the restroom.

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Then we are talking about creche facility or we call it daycare services, children care services. What is that provision under these particular expectations from the factory? Now, in case if you are a factory, let us say your factory X, employing more than 50 women workers, then there should be a provision which should be made suitable adequate room for use of women having children under the age of 6 years.

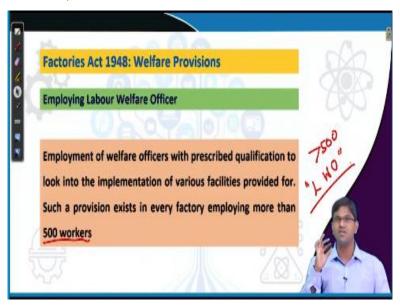
Let us say if you are having more women employed in a factory, you should have a crush facility or a creche facility, we call it you know, either way people used to pronounce it differently and you should probably creche facility in the factory premises and this can be an availed by the women workers who have kids who are aged below 6 years.

They can bring their children and put them in the Creech facility, which are available inside the factory and there should be a caretaker employed to take care of this kid children and there should be a play toys and there should be a proper restroom this all should be available in the crush room and if you have seen in the larger factories, they given a very healthy food and there were dedicated caretakers employed and these are the minimum requirement.

If there are more than 5 children, yes, definitely you have to employ one person to look after the children. And they shall be maintained in clean and sanitary conditions as I said under the charge of a woman trying in the care of the children's infants. So, this is one of the requirements under the factories act legislation. Yes, if you are employing more women and we happen to see that most of the manufacturing organizations employs a large number of

women workers in various processes. So, it becomes mandatory for them to have a creche specialty inside the factory.

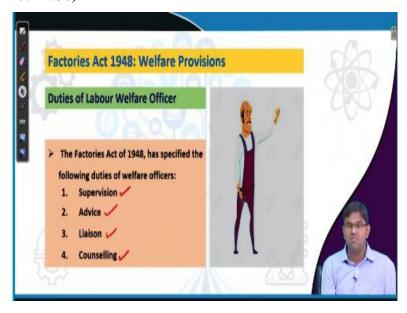
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Now, having discussed about all these welfare conditions. Now, we are going to talk about a requirement of having a labour welfare officer. So, now, who should have the labour welfare officer? So, the labour welfare officer with a prescribed qualification essentially who have social work degrees or the minimum requirement of degrees has to be, can be employed if you are employing more than 500 workers.

If your factory has more than 500 workers, you should definitely have a labour welfare officer. So, the labour welfare officer with a prescribed qualification to be employed.

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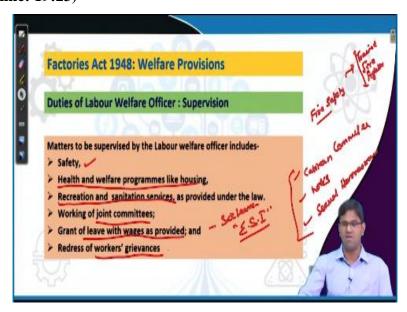
When you employ labour welfare officer, what is the duties of this labour welfare officer? See, largely they perform the major 4 responsibilities. One is about supervision of; what they are going to supervise? They are going to supervise as per the legislations, factory has to have these facilities right welfare provisions, either we are talking about first aid; we are talking about creche facility or we are talking about canteen facility; we are talking about washing facilities, all these facilities we talked about.

Now, this becomes the responsibility of the labour welfare officer to supervise those welfare provisions has been properly implemented or not. Or any, non-compliance is to be observed and to be informed to the management and such to be addressed. And they should also advise time to time; is there a non-compliance or maybe a failure to implement certain provision which are mandated by the legislations.

They can advise the management or to implement on this and they can also do a liaison between the worker and the management because they play a role of conducting the worker and the management in terms of the welfare provisions. You will have a works committee within the factory where you have a representation of the workers.

And these welfare officer time to time interact with the workers and understand what are their needs or requirements or if they are facing certain challenges, they can play a role of liaison connecting the worker under management. And they can also counsel the workers providing the counselling services to the workers. We will see one by one what are those details are.

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When we talk about the supervision as I said, so the labour welfare officer will supervise on the aspect of safety. Safety, we are talking about, the safety can be fire safety. The fire safety, we are talking about. Do we have a trained firefighter? So, when you say the term, the firefighters is not that, there should be somebody from the fire department.

It is not that wherein factory is of each production floor or if we are larger factory have multiple buildings, multiple shop floor, where some of the workers has to be chosen and they should be trained on the basic firefighting system. For example, how to handle the fire extinguisher. We have seen a lot of fire extinguisher many of our buildings, maybe in your education institution or in your offices or your factory or seeing the fire extinguishers.

Now, somebody has to be chosen and those people have to be trained on how to handle that firefighting equipment. And there should be regular training. And they should also be engaged in a mock drill on this. So, the labour welfare officers duty is to ensure that yes, these firefighters are trained and the anything for example, some workers who have been trained on fire safety have left the factory, they have to update the fire safety fighters and you have to display their names ensure that yes, that has been done.

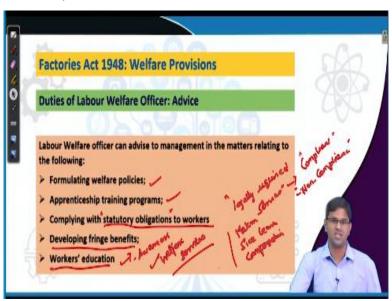
And then with respect to first aid, first aid trained persons, do they have adequate number of first aid trained workers and also ensure that yes, the first aid box has all the supplies. It is not running out of certain medicines or certain supplies inside the first aid box. This has to be taken care of to be supervised by the labour welfare officer. And also, one has to look at the health and welfare programmes like housing or we are talking about any other requirements on the health and safety or welfare programmes and also look after the recreation and sanitation services.

When we are talking about sanitation services, we are talking about providing adequate washroom facilities, restroom facilities. For the workers, does it have an adequate thing or any grievances any compliance that has to be addressed and working with the joint committees when you are talking about a joint committee, some factories will have you know canteen committee or maybe works committee, we are talking about sexual harassment committee.

There can be multiple committees will be you know in the factory. So, now it becomes the responsibility that yes, the labour welfare officer in the factory jointly work with these committees to escalate the requirements to the management and grant of leaves with wages to be provided, this labour welfare officer will also look after the sick leave in case of worker has been associated from the employee state insurance act, ESI.

They can coordinate, help them on the maternity benefit and also redress the workers grievances. Yes, obviously, in any factory, we are seeing that yes, there are instances, workers might have certain grievances that has to be addressed through this labour welfare officer that is the duty of the under the supervision.

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Now, on the advice. What are the advices they can do? These labour welfare officer can advise the management on various aspect of formulating welfare policies, if you are you know, appointed a labour welfare officer maybe some factory, maybe time to time growing, developing, maybe some services are there, some services not there, the labour welfare officer can actively be involved in formulating the welfare policies.

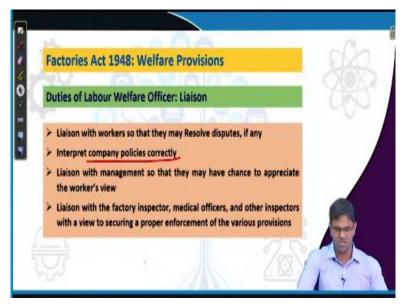
And also look after the apprentice training programme because now, under the skill India programme, a lot of apprentice programmes are happening in various parts of the country. So, facilitating that ensuring that apprentice that people who are trainees are provided adequate facilities, assignments are provided time to time all that can be done and complying with the statutory obligations to the workers.

When you talk about statutory obligations, yes, we are talking about legally required services. So, that has to be ensured yes, factory being compliant with all these requirements, do not engage go into any non-compliances ensure that yes, factory does not have any non-compliance in place. Yes, that is required and developing any fringe benefits, additional benefits on top of what has been provided.

And workers education in terms of creating awareness, providing awareness to workers on various services or welfare measures, welfare on the, especially on welfare services available to them. So, that is the role of a welfare officer to educate the workers, sometimes we see you know, on the production floor maybe workers are not that educated, you can provide training on the available services like maternity benefits, sick leave or compensation, workmen compensation.

There are many benefits are available. So, the labour welfare officer can provide training to these workers on these aspects,

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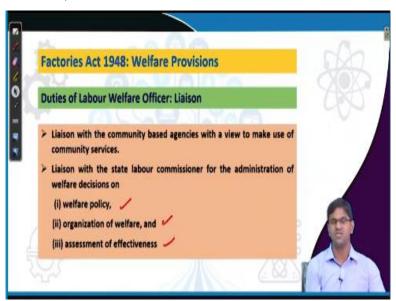
Then they can also play liaison and as I said, yes, they will play a liaison with the workers so that they may resolve the disputes which arise between the worker and management and interpret company policies correctly. Maybe somebody may misunderstand certain provisions. So, I can share one of the incidents which had happened when I was visiting one of the factories in in Madhya Pradesh.

Wherein, very recently the factory has had a workers union strike, which is very surprising to you, the fact is that there were false messages being passed on the WhatsApp groups and reading that everybody started to agitate against the factory management, which was not actually true case. So, that is the labour welfare officer role to interpret the company policies correctly, there is always possibility of incorrect information being circulated or passed across.

So, it is the responsibility of the welfare officer to interpret the company policies in a good sense and liaison with the management so that they have a chance to appreciate the workers' view; sometimes the manager may not interact with the workers or maybe miss out to hearing the perspective from the workers. So, it is the responsibility of the labour officer to provide the inputs to the management on the worker's view.

Also, can play liaison roles with the factory's inspectors or medical officers or the fire safety officers who are visits the factory and in ensuring that yeah, this is what we fact practice as part of our factory welfare services that they can play a role as a liaison with a factory inspector meaning that outside the organization as well.

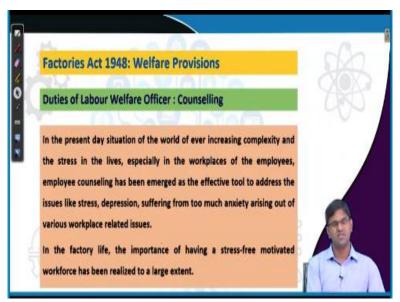
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And then there are also liaison with the community-based agencies wherein, when you are a larger manufacturing organization, operating inside a community where there is a high likelihood that you know, nearby NGOs or community-based organizations might want to discuss and see what is the working conditions in the factory.

You can work with these communities to NGOs or community organizations, yes, they will be the services have been provided and liaison with the state labour commissioner for talking about the labour welfare policies, organizations welfare and assessment of the effectiveness of the services provided in the factory.

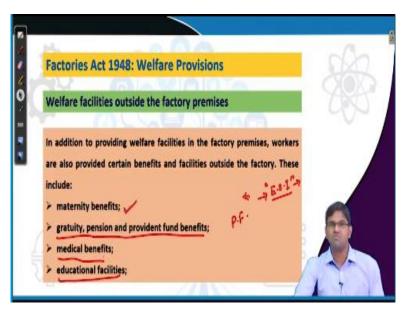
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Then about the last minute but we are talking about a counseling. Yes, if you look at, why it is becoming very important. In a present-day situation with the ever-increasing complexity and stress that everybody go through and especially the workers working in a manufacturing organisation wherein, day in and day out, they repeat a monotonous job. They may be keep assembling the products or packing the materials or working in a raw material, warehouse, go down, we are talking about, stress, they go through is really large. So, they can actually labour welfare officer can act a role of counsellor providing counselling services to or maybe planning a recreation activity for the stress relieving for the workers.

And it also is very important that yes, factory also plays a role in facilitating the stress-free environment for the workforces, because eventually that will actually impact the better outcome for an organization.

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Now, these are all discussing about within the factory premises. As a labour welfare officer within the factory premises, you can do all this. Now, outside what you can do. So, in addition providing the other welfare services within the factory premises, so, worker has certain benefits which are outside you know, one has to access it outside the factory wherein we are talking about ambulance or the first aid or canteen, it is all inside. It is already available inside.

Now, there are services or benefits, which are available if you are employed in a particular factory, you can also have the benefit outside. What are those benefits? So, here the welfare officer can play a role in facilitating the services to be availed by the factory workers. For example, maternity benefits, now, almost all factory pay employees state insurance or ESI, maybe people who know already heard about it, yes.

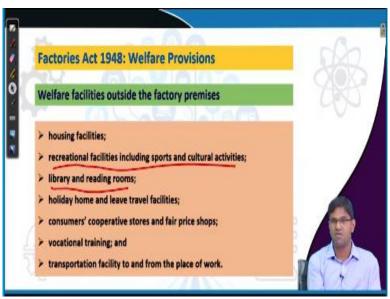
Otherwise, if your first time hearing this word, employee state insurance and wherein we will learn about it in subsequent modules. So, employee state insurance as per the social security benefits are to secure the health of the workers, both employees and employer contribute certain portion of their salary towards this. So, that whenever they are sick or other benefits, they can actually have, for example, maternity benefits under the ESI act.

You can actually get no salary for the non-working days if you are going on a maternity leave. The ESI will facilitate it, the ESI will pay the workers, the factory management can facilitate where the factory will labour welfare officer plays a critical role in facilitating this

and also, helping workers to get this gravity or a pension provident fund where we are talking about now everything become online.

Certain section of the workers may not know how to transfer in case of somebody is leaving the company, how to transfer or how to withdraw the money, all that support this welfare officer can provide and also talking about a medical benefit, other medical benefits to be availed by the workers, they can facilitate and of course, educational facility, any other support system they can provide. This can also be availed by the, provider by the factory welfare officer.

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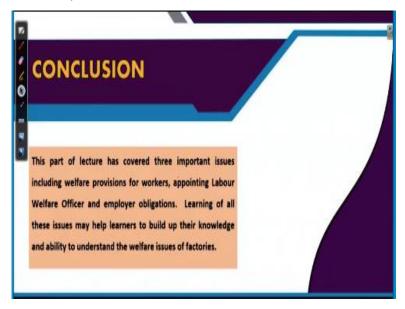
And on top of all this, they can also be engaged in recreational facilities including sports, conducting sports activities, providing the library and living rooms, live with travel facilities, cooperative societies, vocational training, transportation facilities to and fro from the place of work. So, these are all the other services which labour welfare officer will look after it.

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These are the references.

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And in our in-today's lecture, we discussed about various welfare services are provided to the workers part of these factories act and we talked about various welfare services are available to the workers starting from washing facilities, canteen facilities, for state services ambulance, clinic, other basic services and also talking about you know labour welfare officer, appointing a labour welfare officer.

And we also talked about, so, how many first aid cases are required. We talked about you know, do you have an ambulance facility or do you have to employ a labour welfare officer? If you look at from a managerial perspective, you should understand, which of the factory has

to have an employee welfare officer and which other factors are excluded in case, if you are not having worker more than 500.

If it is less than 500 workers, you are not required to have a labour welfare officer. If you have more than 500 workers, yes, you should have labour welfare officer. This is the same case less than 250, no canteen is required. It is not a mandatory but more than 250 workers, yes, you should have definitely had. Similarly, there are other facilities also connected with the number of workers in the factory.

So, these are the labour welfare services provided under this mandate or under these legislations. In subsequent lectures, we will be discussing about the working conditions and work hours for the workers. Thank you so much. We will see in the next lecture.

Business Law for Managers Prof. S Srinivasan

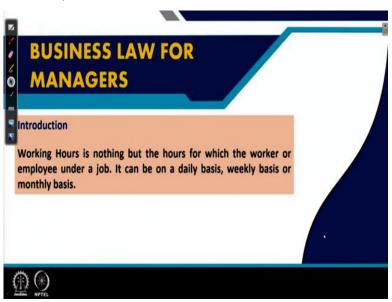
Vinod Gupta School of Management Indian Institute of Technology – Kharagpur Module-5: Factories Act

Lecture – 24 Working Hours

Welcome to lecture 24, we are in module 5, the previous lectures we discussed about our welfare provisions. On today's lecture, we are going to discuss about working hours which is one of the important aspects of these you know factories at or we are talking about and working conditions, this is very, very important. We are going to talk about what can what are the maximum work hour, has to allow to work in a day.

And what is what if in case if somebody works beyond the stipulated work hours, we are going to discuss all those interesting facts which this was very much relevant for people who are going to be employed, also is going to be role play a role of a manager, how have to be compliant with the minimum requirements.

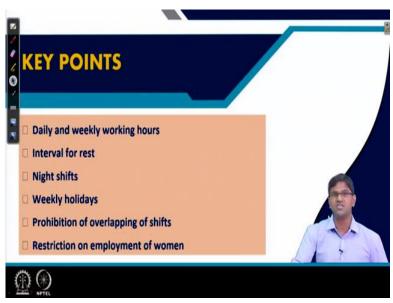
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Let us get into the lecture. So, let us understand what is this work hour? Work hour is nothing but know the number of hours work hours or employees spent under a job. So, it can be on a daily basis, weekly basis or a monthly basis. Here, you know, some work hours may be employed on a daily basis or somebody on a weekly basis somebody on a monthly basis and

this work hour is nothing but the any work I spent carrying out my duties that called my work hours that is qualified as a work hour.

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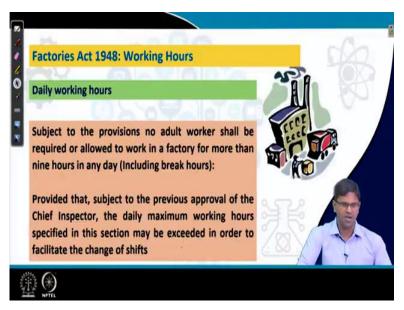


Now, what we are going to discuss in today's lecture, we are going to talk about. Now, what are the know minimum work hours with respect to daily limit and weekly work hour limit, what is that access and in case if there is a violation in there, if they exceed what has to be done? We are going to discuss about some practical perspective as well. And what are the interval for rest to be provided? What is the requirement? What is the mandatory requirement?

And we will also talk about the provisions related to the nightshift. Who are allowed to work at nightshift? And what is the conditions? And we will also talk about know weekly holidays what does it the next actually talking about a weekly holidays and prohibition of overlapping shifts? We see that manufacturing organisations work on shift bases and some factory work in several shifts, 3 shifts in a day.

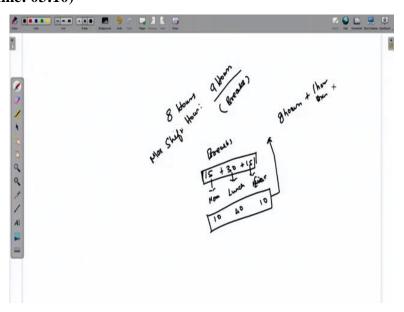
And we also look at know what is the any restriction which are placed for employing a woman in certain shifts. So those points are the one we are going to discuss today.

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Let us start with the daily working was what is the requirement under these particular legislations? It says subject to the provisions know adult worker we are talking about an adult worker that is why now if you look at the first lecture, we defined the child worker and then adult worker, child worker not more than 5 hours in a day they are not allowed to work. For an adult worker, these are not allowed to work in any factory more than 9 hours in a day including breaks.

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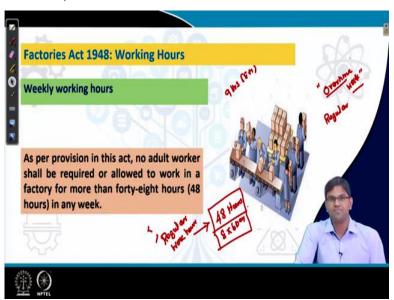
So, it is very important you understand it is not now when you say know. Yes, work hour is 8. Yes, it is 8 hours, but the maximum shift hours is 9 hours. It includes breaks also. Generally, if you go to any of the factory where we see that yes, there are 15 + 30 + 15. So, this is about minutes breaks, this is most general practice which I am not talking about in many industries.

You will have 15 minutes break in the morning, 15 minutes break in the evening, and there is a 30 minutes lunch break. Some factory might give 10 minutes 10 minutes and 40 minutes. So, somehow, we see that now one hour of break I mean included so 8 hours of work plus one hour of break. That is why it says maximum of 9 hours which includes break also.

Provided, can a factory violate? Can a factory work beyond these 9 hours including break? Provided subject to previous approval of the chief inspector or you know district level factory inspector daily maximum hours on those sections cannot exceed. But if you with a special approval, yes you are allowed to employ worker beyond this work hour with the only a prior approval of the factory's inspector.

So, but again, what will happen to the extra hour people work that we will discuss in the overtime aspect that we will discuss in the same lecture itself.

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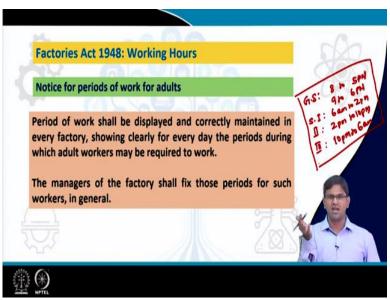
Now, talking about a weekly working hour. Now what is the you know coming about in a weekly work hour. So, we said 9 hours per day that includes break right 8 plus 1 hour now comes in a week. What is the maximum hour an employee or worker has to work? So, in a week, the maximum work hour is 48 hours any week. I mean that 8 days in a week, sorry 6 days sorry 8 hours in a day for 6 days in a week.

So, it is 8 into 6 days which is the maximum hours of work are allowed you know, week done. Now, can a factory work beyond 48 hours in a day? Yes, this is the you know

maximum but also factory workers are allowed to work on overtime. Overtime which is beyond their regular hour. So, we are talking about these 48 hours is a regular work hour, this is what we are talking about.

So, it is a regular work hour in a week any week should be only 48 hours on top of this regular work hour yes, there can be instances are there can be provisioned where worker can work beyond 48 hours that will be coming into overtime work. That we will discuss the you know what is that you know conditions how that has to be treated all that we are going to discuss in some time.

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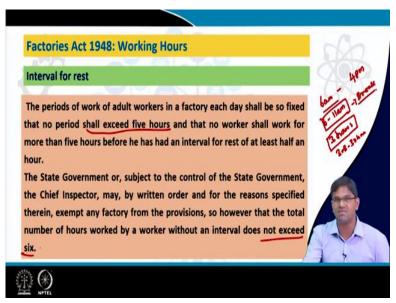


Now, notice period of work for adults. So, the period of work should be displayed and correctly maintained in every factory you know. And clearly it should show the period during which adult worker are required to work. For example, if a factory is running on a 3 shift, so, if you go to any factory if you know visit some of the factories you will be able to see that yes, the factories will display the working hours.

For example, some factory may have several shifts they say general shift. General shift is nothing but know it is either 8 to 5pm or some fact it is 9 to 6pm which is if you see look at you know this is know 9 hours including breaks and also you will say shift 1, shift 2 and shift 3. So, they have to for example, shift I starts at 6am to 2pm, 2pm to 10pm, 10pm to 6am. If you look at so, factory has to clearly display this in their notice board the regular work hours of the particular factory.

And also say, how many work hours are engaged in each of the shift that is also mandatory that yes as a factory you should have a record to display, how many work hours are working each of the shift? What is the work hour? Work hour also has to display, what time is the break? And what time you are morning break, lunch break and all that has to be clearly displayed. So, that work hour also aware that yes, I this is my work hours.

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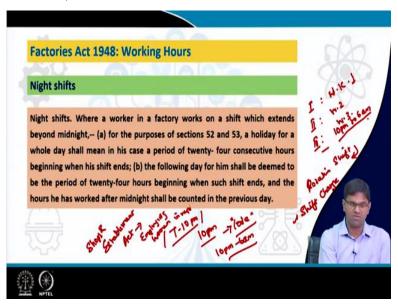
Now, interval for rest, what are the you know, requirement in terms of providing rest to the workers see in no place in no factory workers are allowed to work at a stretch of hours. Nobody should work beyond 5 hours at a stretch. For example, let us say I am factory I am starting at 6am and you know, I leave me for a work hour at 4pm. So, let us say 6 to 11 is a maximum stretch the workers can work.

Immediately after 11am there should be a break there should be a break. So, generally if you should look at factory management provide a break after 3 hours as I have always visited several factories in India, even in even the remotest places in India. So, where we see between 3 to 3 and a half hours, we could see that know 30 minutes breaks are provided to the workers.

But what Act says no worker shall work for more exceed 5 hours without a break time. So, there should be definitely a break should be provided as a 30-minute break or a 15-minute break 30 minutes break is provided if workers work for 5 hours continuously. And our State Government are subject to the control of our State Government Chief Inspector may by the return order are specify in case of any exemptions are provided.

But generally, that should not exceed 6 hours. Why there are places in our country where I because of the geographic locations may be difficult to keep the workers for very long hours. So, they might to go for 6 hours at a stretch, but with this with a special approval from the Chief Inspector or from the State Government that yes you can have 6 hours work otherwise it is the break should be provided not more than 5 hours. So, there should be a break or interval to be provided.

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Now coming to the night shifts, what is the provision which are talking about a night shift? Where a factory works on a night shift extends beyond midnight, so, that will become you beyond midnight, so holiday for the whole day shall mean in case you do not have 24 hours of consecutive hours that begins in the shift next. So, for example, somebody works in a continuous shift.

Let us say shift system, let us talk about a shift system 1, 2, 3. Now, we always see shift system, the third you know, if you look at you know, third shift, it starts from 10pm to 6am. So, that we always you know, the rotation of the shift or say shift change or shift change. So, workers used to have a shift change. We see you know, most general practices or that require some workers work in this week in first shift.

Week 1, let me call week 1, week 2, week 3 and for every change in the shift there should be one day which is 24 hours break should happen especially after the night shift, you should not just. For example, somebody is work from 6pm to 6:10pm to 6am, then next rotation of shift

should not happen there should be definitely 24 hours of break and if you took out the night

shift.

You know, women workers are not allowed to work we will see that in detail in the end of the

lecture. Woman workers are not allowed to work in the nightshift provided there is a special

approval has been obtained from the Chief Inspector of factories act. But if you look at now,

with the recent amendments, with the Labour Court comes on the working conditions, it is

providing options that yes, women worker can be allowed to work even beyond 10pm in the

factories.

Generally, you know, with special permission 7 to 10pm these women workers are allowed.

But now, with the new code going to be implemented effectively when the moment new code

comes into picture, it allows women workers to work from 10pm to 6am as well. Now that

comes to questions, but we are seeing women I am being employed in IT industries are being

working in the night shifts, how they have been a lot of work.

So those industries are covered under Shops and Establishment Act, that actually allows

employing women in the night ships. When in night shifts, so, that is where know those

industries are covered. So, they are allowed to work in the night shifts, as per the Factories

Act it does not allow a women worker to be employed, but now with a special approval it is

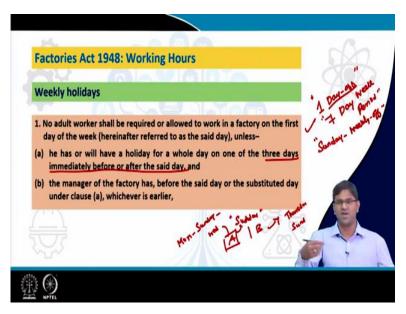
allowed.

When now as I said with a new Labour Code coming into a picture or if it come into effect

that is going to allow women workers to be employed him and in the night shifts also.

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Now comes to the weekly holidays, no worker should be allowed to work in a factory or know or I will put it another way. So, at least one day off should be provided in a 7-day week period this will be you know fit well. So, generally it is as per the Act it says first day of the week, which is Sunday can be declared as a holiday. So, he or she will have a holiday for the whole day on one of the 3 days immediately in case.

For example, some place which we have seen know Sunday most often Sunday is being declared weekly off. Some place by the agreement or maybe in a factory might decide to give no rotational weekly off day. For example, many know multinational or you have been a supplier to larger multinational organisations, you know or maybe you know, export-oriented factories, they run on 24 hours 24 by 7.

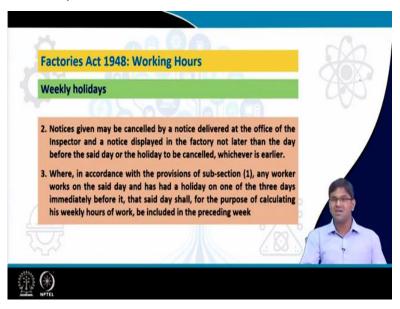
So, when the 24 hour 7 where we say the weekly off day varies from workers to worker there is a roaster being prepared. Some worker provided a weekly after and Monday somebody on Wednesday somebody on. So, there is a be a but at least they should meet the condition. Yes, one day off provided within a 7-day working period. In case, if somebody is happening to work on a weekly off day what should be done?

If somebody works on those day, he or she has to be given a whole day or leave in the next 3 days immediately before after the set day. So, within next consecutive 3 days somebody has for example, it is either or ways. Now, for example, let us say some Sunday is a weekly off day. Now, I am giving 2 scenarios A and B. A is the one who worked on let us say Monday

to Sunday also he or she worked and within Wednesday, within Wednesday A should be provided holiday weekly holiday in this situation.

Let us say they forecasted that yes, there is a demand on the Sunday, they have given him holiday on Thursday and requesting him to work on Sunday. So, either side at least a holiday should be provided. So, the manager of the factory before said day all the subsidiary day has to be ready whichever is earlier. So that should be a provision of providing a weekly holiday in case if a worker happens to work on a weekly off day, it is not necessarily a Sunday any other day which factory fix it as a weekly holiday.

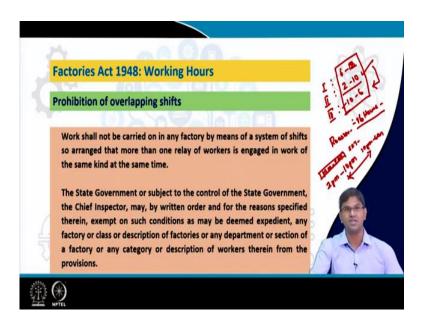
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And you know, others have been noticed to be given maybe notice given maybe cancelled by notice delivered by the Office of Inspector then. No holiday can be better later than the before said day. And now as we said, we already discussed any worker who works on these declared weekly holidays has to be given holiday in the you know, 3 days immediately before it and after it.

So, that should be you know, provided as a mandatory requirement. So, it is one day weekly off day should be provided to workers.

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Then let us talk about the prohibition of overlapping shifts. So, this I was already hinted about the ship system in the factories, as I said no, we have seen many factories runs on 3 shift system. So, it is like 6 to 10 sorry 6 to 2 or 2 10 or 10 to 6 this is how the sift system runs. And you know, as I said factory has to create a roaster system in such a way that yes, no worker are asked to you know, continue the shifts on the rotation.

Since for example, A is employed in this particular shift and next week he or she should be given one day off before he or she starts the different shift. For example, somebody worked till 10pm and asking the same person to continue that, your roster begins your next week shift comes now, you will start the next day immediately 10pm to 6am then you will take a break no.

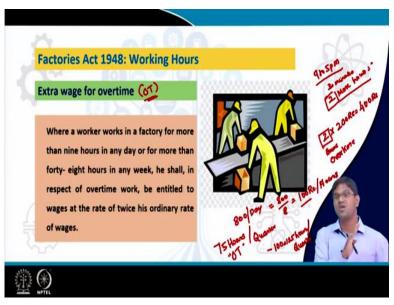
So, factory has to provide a break to having the event there is a shift change happens. So, worker has to be provided at least 24 hours a break before they take the next shift systems shift change. There should be a roaster there should be clearly a Roaster we have seen no factories. Factory will definitely make HR department will make a roaster system to ensure that yes, there is no overlapping of shifts.

There are instances of factors we are going into noncompliance is where they may demand workers to know the during the shift change, or somebody has to work 16 hours at a stretch, which is a noncompliance which is not allowed. I mean, 6 hours is this. I have started my

duty at 2pm to 10pm. And this lets you know my duty starts from Monday to Saturday. Are this being the factory where which runs you know, 24 by 7.

And I begin my next rotational shift or let us say Saturday that you know 10pm again 10pm to 6am on Sunday. This kind of a continuous shift system is not allowed restricted. So, no overlapping of shifts.

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Now coming to the important aspect of the work hours, which is an overtime. So, any worker we already said 9 hours including breaks as the maximum work hour limit for a day but on top of it, work hours are allowed to do an overtime hour. So, but overtime hours is like not more than 2 hours a day. This is very important aspect of the understanding the work hours.

So now, let us say somebody works for overtime, let us say 9 to 5pm is my work hour. Then let us say I have given 30 minutes break and I am working for 2 more hours. Now, what is it, you know, as per the law See these 2 hours has to be paid double the wage rate for example, let us say my salary is 800 rupees a day per day? Now, if you calculate how many hours I work 8 hours, so 800 divided by 8 which is 100 rupees per day per hour sorry per hour.

Now, I am working for 2 more hours, how should I be paid, it should be double the rate so, far every one hour of what am I do I will be earning double the rate. So, for these 2 hours, I will be paid 2 into 200 rupees, which I will earn essentially 400 rupees for the extra 2 hours of work I do as over time. So, as per the act, any overtime hour should be paid at the double the wage rate and what is the maximum overtime I can do every day?

It is 2 hours of additional overtime I can do but in reality, we have been seeing many factories which are engaging workers on overtime hours more than 2 hours also. So, but now comes the tricky point from the you know, Labour Welfare or the Factories Act perspective. It also says quarterly maximum overtime hours a worker can do see there are provision which says which allows a 75 hours of overtime OT refers to overtime?

So, OT, I am talking about OT overtime is OT. So maximum 75 hours of OT per quarter. Now, there is also amendment subsequently happen it is allowing know 100 to 125 hours per quarter. So, no worker should be allowed to work beyond this overtime hours. So, but you will be asking why would they require no overtime, many factories which runs with the know a smaller number of workers are probably their orders are more they depend on the overtime hours.

And if you from the you know, man, you know, I am understanding from 2 different perspectives. There are most difficult situations happens in the factory as a management what level because we look at overtime hours are paid double the rate, right. So, workers are interested to do overtime hours. Now we will ask a question, why do not you provide overtime hours?

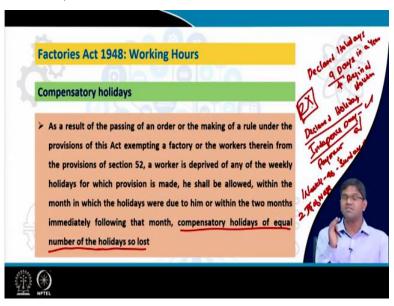
No, it is beneficial for both and all factory management can also stretch their work hour get the work done and workers also happy that they will be earning double the rate. The concern is, it is kind of a physical stress happens for a worker who works for a long work hour. There is always a high risk that any workplace accident can happen if a worker works without rest or maybe working for pretty long hours in a day.

So, your body may not support you to work continuously for a very long hours in a factory. That is why this work hours are coming to Govern or regulations is very very important. So now it is always a very tricky situation which I have observed in many industries that yes, by work hours are interested to have you know work for more work hour overtime hours. Because it is going to pay me double the rate.

Whereas my Act do not allow me to employ my worker around continuous overtime, because there is a restriction on quarterly overtime. So, this is very, very important aspect of understanding what time so what time rate is always paid double the wage rate. Now comes many factories legally double the rate. But what we are seeing in reality? Some places, some factory maybe I call it as a not you know good standard factories.

They used to be at a single rate meaning that I will pay same 100 rupees you work additional 2 hours, 3 hours I am going to pay the single rate. Some factory used to pay 1.5 times but these are all non compliance which is legally not allowed as per the Act you have to pay double the wage rate if you are allowing a worker to work on any overtime.

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Now talking about now compensatory holidays. You know, so you have in case any holidays are been allowed and declared as a working day for some of the factories you have to you know provide compensate the holidays equal to the same holiday which you are losing. So, for example, some factory you know every factory will have a declared holiday. Declared holiday list will be provided.

Minimum is 9 days in a year. On top of it or regional holiday maybe declared but 9 days becomes you know at least 9 days of holidays in a year in a calendar year, at some times what will happen factory may because of the know work demands, they might want to do have working day on the declare holiday and they have to have the compensatory the holiday for the number of days it is lost.

Now comes the question let us say somebody works on a declared holiday. Let us say call it an Independence Day. I am just a reference. So, my workers worked on this day. Now, what

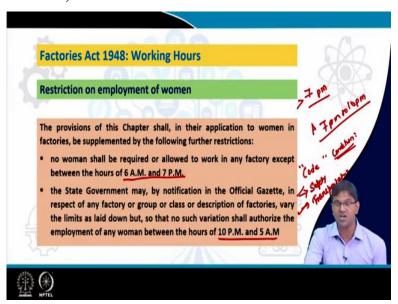
is the you have to provide a compensatory holiday is one the next is payment for this day. Any work which happens on a declared holiday are weekly off day which is a Sunday or any day but primarily Sunday, let us call it this way.

Workers working on Sunday or on a declared holiday, that work hour has to be paid at the double the wages. This work hour has to be considered as overtime hours because it is a declared holiday if you are working on those holiday hours declared holiday workers have to be provided at the double the rate 2 times it should be 2 times of wages. So, 2 times x 2x times should be your salary.

So, if you are working for your declare holiday, you will get 2 days of wages for the particular day you work. But also, you have to be provided a compensatory holiday. So, what is that I have seen in many factories is that some factory say see, of course, these workers are worked, I am already given them the compensatory holiday. What is that? Why should I pay them double the rate because now they lost one day because they worked for holiday and I have given them the holiday.

No, as per this act, which says any declare holiday if they happen to work that is considered as an overtime hour that has to be paid at the double the rate at the same time, they should be provided a compensatory holiday.

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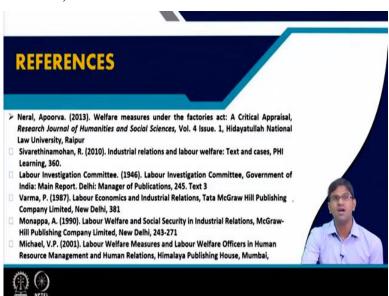
Now comes the important aspect that yes, women worker working in a factory. So, a women worker, no women shall be required or a love to work in the factory except between 6am to

7pm As I was actually discussed in the prior slides, that the women worker are not allowed to work beyond 7pm. But there is provision which says you know, allowing workers with s approval from the Factories Inspector or maybe with the State Government by notifications in the Official Gazettes.

They can allow the workers or the women workers to work beyond the time. Now, how well they were also restricting that will be allowing 7pm to 10pm. So, with that approval also it was allowing only women workers to work from 7pm to 10pm. Now, as I said with a new Labour Code, which is going to come when it is effectively implemented, it is allowing women worker to work between 10pm and 5am.

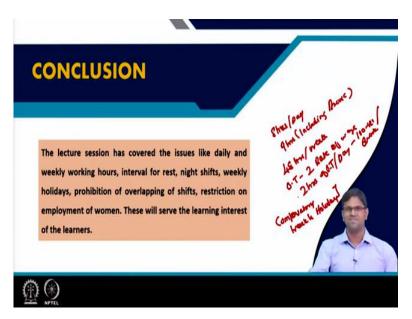
As well but the condition is that factory management has to take the responsibility of ensuring their safety. From the time they reach their home and the time they start from the home to the work. So, it becomes the responsibility of the factory management to ensure safety and providing transportation, these are the conditions. So, factory has to provide safety is and the transportation facilities if you are employing women between these times.

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These are the restrictions on employment of women and these are our references.

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And we Today we discussed about working hours which are very important we talked about maximum work hour which we say 8 hours a day or if it is 9 hours, including break. Then 48 hours per week and we also talked about overtime which is OT double the rate 2 times rate of wage and maximum 2 hours of OT per day are 100 to 125 hours per quarter.

And we also talked about compensatory holiday, weekly, holiday and any work during this day to be paid at the overtime rate. So, these are Very important because you have to be aware about this are if you are a manager, you have to follow this to implement as a factory management you obey the legislations otherwise you will be unnecessarily getting into the non-compliances so, which is very important.

So, we discussed about it and we will look after you know, what are the other provisions are required part of this legislation in the next lecture. Thank you so much.

Business Law for Managers Prof. S Srinivasan

Vinod Gupta School of Management Indian Institute of Technology – Kharagpur Module-5: Factories Act

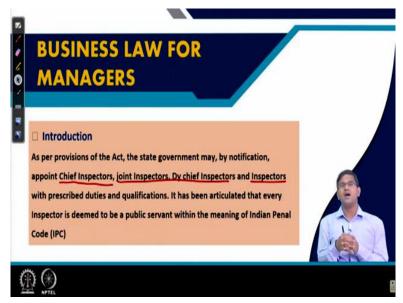
Lecture – 25 Duties of Inspecting Officials

Welcome to lecture 25. This is the last lecture of module 5. In Module 5, we have been discussing primarily on the factories act. We discussed about the backgrounds various backgrounds definitions and we discuss about health and safety aspects. What are the health provision and safety provision which are mandated for factory management to implement in the workplaces and we also talked about employee welfare and services.

We talked about various services which are required part of the act. And also, the last lecture we discussed about working over which is one of the important aspects of the Act which is actually regulating the working hours. So that the workers do not have to work for a very long hours, it also talks about a break and we are also talking about the provisions related to overtime in case of a worker works and an overtime.

What has to be done? How it has to be paid? And weekly holidays compensate the holidays, all that were discussed. Now, we are coming into the last part of the legislative which is going to talk about the duties of the inspecting officials.

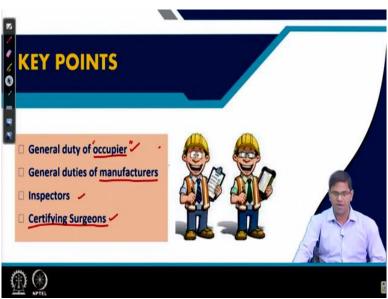
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And as per this provisions of this act, State Government through the notifications will definitely appoint one of them, either a Chief Inspector, Join Inspectors or Deputy Chief Inspector and Inspectors, who are apt these prescribed qualifications and they will be enshrined with certain duties and responsibilities. And you know, they are a public servant. As per this, legislations in every district are maybe combining few districts based on the State Governments looking at the amount of manufacturing companies existing.

So, they might even appoint an influx inspector of factories for a particular District or Mandel or a Zonal level, they will be appointed and they are definitely a Government Servant to be appointed as an Inspector of Factories.

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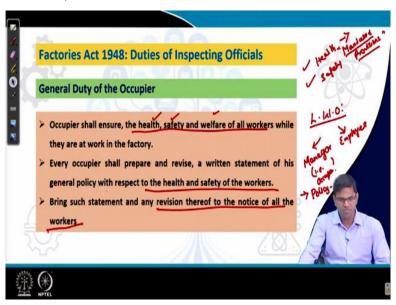
Now, what are we going to discuss today's lecture. So, we are going to discuss about general duties of an occupier we have already been discussed about who is an occupier. Occupier is nothing but owner of a company are in case a representative of the company whose name has been reflected on the factories license as I said, yes, when you wanted to register yourself as a factory, you will have to enclose who is the responsible persons.

Many times, the larger firms where they will have multiple factories under their particular conglomerations, they might deputy general manager or a responsible manager of the particular factory as the responsible person in that case, the occupier is the general manager or manager of the particular factory or otherwise to the smaller factories. Wherein the owner of the factory or the capitalist of the factory will remain as an occupier.

So, we are going to see what are the duties with respect to the occupier as an occupier or as a registered person who's going to taking care of the factory. What are the duties one has to do? And we are going to talk about the duties of a manufacturer? Yes, of course, the person who's going to manufacture the product at the factory. So, what are the duties they have to do under these legislations and we will also see the duties of the inspector.

So, we have an inspector of factories for each district or at these zonal levels. So, what are the duties they are going to do? And we are also going to talk about duties of a Certifying Surgeons. So, this part, when we are going into this place, I will be talking about why we are talking about surgeons. We are wherein we are only so far talked about the owner of the manufacturer and Inspectors. Where does the surgeon come? What is the role of the surgeons? I will be discussing it in that particular slide.

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Let us get into the lecture now. Now, what are the general duties of the occupier? We've been discussing it in the previous lectures as well. The duties of an occupier should ensure that yes, health and safety and welfare to all workers are provided when they are at work in the factory. So, when you are talking about health and safety and welfare for all workers, what is the health and safety welfare that is already we discussed in the previous lectures?

Yes, whatever the provision, which are listed down under the health provisions under the safety provisions and also for welfare provision that has to be provided by the factory. And it is a responsibility of the occupier that yes, this has been supervised or time to time it has been

you know checked and verified that yes, it has been provided. One cannot, for example, we are talking about now employing a labour welfare officer.

So, we are already seen yes labour welfare officer has certain responsibility to oversee the activities and see the canteen facilities and various other facilities. That occupier should not you know, discount that yes, I do not know, because this is missing because the Labour Welfare Officer did not look into it, no, it is a responsibility of the occupier that, yes health and safety provisions are provided.

Then, the occupier shall prepare and revise a return statement of his policies with respect to health and safety of the workers. Now, I am just very critical. So, now, imagine that no one of you are going to be a manager and at the same time will also be an employee of the company, when the memorandum is also talking about a manager maybe you are responsible or also become an occupier what you have to do in a factory.

So, every factory has to have documents that a policy company has to create a policy with respect to health and safety aspects. So, you have to create a policy for your particular factory that what are your policies with respect to health perspective? So, health respect to is your policy should definitely cover all the mandated provisions, it is very very important, your policies should not exclude any of the provision which are mandated as per these legislations Yes, you have to have the policy.

Now, you have to time-to-time revisit, revise in mapping with the any amendment which are happening or maybe the standards are keep improving. And then it is important and that is occupied as to revisit, revise, review the policy and time to time. And then update the policy of health and safety to the workers. And any statement any revision which they are noting that they have to bring it to the notice of the workers, let us say they are making some changes on the employee welfare policies.

What will happen eventually, the workers may not be aware about the changes which are happening on this Labour Welfare Policies. So, it is also a duty it is not only about revisiting, reviewing, updating or coming with the new policies, it is also important that you have to communicate this to the workers who is concerned about these particular policies.

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Then what are the other duties of a manufacturers, so every person who designs every person we are talking about a manufacturer who is also again happened to be the responsible person who is going to look after the manufacturing activity of a particular factory, who design manufactures imports or supplies any article for using the factory shall ensure that yes. The article designed and produced should be safe without any risk to health of the workers.

Now comes very critical. So, there are possibility in some certain products with our, you know, having will likely to have health hazards to the workers. In that case what will happen? So, we happen to see 2 different types of categories of the factory which let us say x and y. So, why we are talking about? Yes, the products maybe in the process of productions, the missionary maybe other aspects may be risky.

But as the product as it is the output of the product or the end product may not be that harmful to the health of the workers. But there can be situations, there are some activities, which might cause health hazards to the workers. Now, what do you have to do? So, the factory management has to ensure that yes, you have adequate system and practice in place that it reduces any harm to the workers.

And you also provide ensure that yes, you are providing proper productive equipment and time to time regular health checkups of the workers and ensure that yes, held up the workers are ensured. So, you have to ensure that yes, it does not have any risk to the health of the

workers. And it they as I said, No, you have to as a manufacturer, you have to carry or arrange for tests and examinations.

So, you have to time to time examined conduct a test to see the health of the workers. For example, maybe some section in a manufacturing plant, where the noise level is really high, maybe 90 more than 90 decibels. Imagine this, you know, the noise is really high. And those people who are working in those noisy processes will be provided the earplugs are earmuff.

Maybe some of you would have seen earplugs where you have to it is like now that we have a handset in and that we can use the earphones. So that is been earplugs that actually reduces workers to be exposing to the higher level of noise continuously. Then also if it is it is even more, you know, I think you know, more than 100 decibels. So, it is always better to go for an ear muff which is kind of you know, headphones it is completely blocks reduces the noise which gets into one.

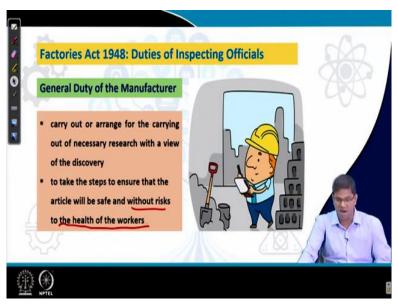
So, now comes the key thing every 6 months the factory management has to or check the you know hearing I do the examination of all the workers who are exposing to this particular you know noisy production processes to ensure that, yes, they are not having any health impact because of the production process they are engaged in. So as to conduct and examine so that is why we are talking about a test and examination to be conducted.

And also, when I were talking about as I was talking about the noisy production process, you have to see that ensure that yes, workers are not at a set not more than 5 hours they are exposing themselves to the high noisy production processes. So, you have to have a break but there should be rotations or after the break they have to come back. So, this has to be provided. So, you have to conduct the examinations for the workers.

For example, maybe you know, where you will see rays and UV rays or you know, X ray rooms or wherever you use laser operations. Now, you see that know many of the you know, laser cutters been used. There are many factories where they use laser operations. So, laser operations process are risky to the workers with the you know, continuous exposure to those lasers will create certain health impacts to the worker.

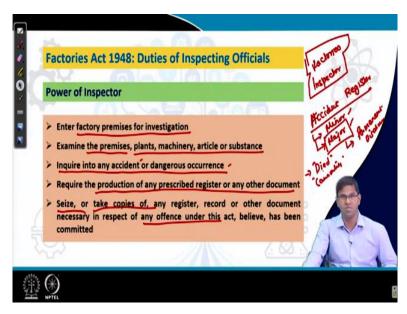
So, those workers has to be time to time go for an examination to ensure that yes, they are not having any health impact. And also, you have to take a man of steps may be necessary to ensure that as adequate information is available to the workers in terms of which are the processes which are going to have when a long term might have a health impact, what is the provision that factory has in terms of conducting examination of the health examination, all that information has to be available.

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Then carry out or arrange necessary research with respect to the risk area, what are the processes which are risky? And also, an auto is ensured that yes, the article will be safe without any risk to the health of the workers which if you look at know, this also goes with the same point as the duty of the occupier. So, these are the some of the duties of the manufacturer.

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Now, we are going to talk about the power of Inspector because we already said yes Inspector of a factory or we say Factories Inspector. They are our Government Servant. So, what are the power which are provided under this legislation. They can enter factory premises for investigation, we always see that you know, factories are fenced, they have a security service and nobody are the outsiders are not allowed inside the factory production premises.

Now, comes the Factories Inspector has the authority to enter the factory premises for investigation purpose. So, one cannot stop the factories inspected to entering a factory premises for the investigation. Then, they can also examine the premises plant machinery article or any substance. Maybe you know, now, we are India being the developing nations and we are also becoming a manufacturing hub.

And becoming a competitor to China you could see that a large number of foreign nationals' production process happens. Due to the product security and the IPR Intellectual Property Rights, certain products cannot be seen or verified but now the Factories Inspector for the purpose of examining so, they can examine the plants machinery article or any materials raw materials been used for the production process.

And they can also conduct inquiry into any accident or dangerous occurrences. Now, if we come into accident and occurrences the factory has to maintain, you know, register, which we will talk about accident register. They will classify minor accident, any major accident they have to have the accident register in place. So, regularly it has to maintain when the factories inspector inspects.

Probably you will see what are the occurrences of the accidents he can go examine the reason

for this accident, is it systematic in nature or is it a one-off incident in the factory. So, Factory

Inspector has the authority to inquire any incident or dangerous occurrence in the factory.

Then the factory inspector requires a production of any prescribed register or any other

document.

So, he can actually ask the factory management to show him whatever the registers they have

been maintaining because as per this register, there are a lot of registers to be maintained by

the factory management. You can actually ask them to show this you know, registers, for his

verifications. And you can also see take away some of the copies, I mean some of the

certificates are registers.

And they can also take copies of any register record other document necessary for in order to

examine the particular occurrence of incident in dispute any offence under this act. So that

you know he has the authority to see those register. For example, let us say we are talking

about an accident register. There is a major accident happened and it has been recorded know

some worker have no permanent disability permanent disability are probably you know;

somebody has died causality.

So, now, in this situation, yes, it is you know very serious things that have happened in the

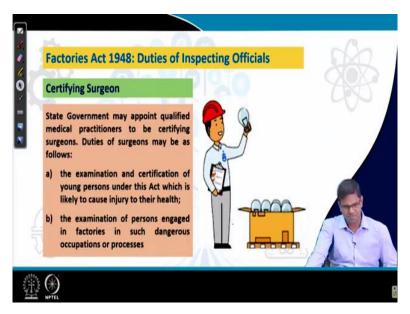
factory maybe because of the workplace accident. So, to investigate, he can seize those

register with him to see investigate the fact to understand what is happening on this particular

incident.

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And you know, these directors of the occupier that any premises or any shall be left disturbed, so long the purpose for the examinations. And you know, he can also take photographs or record such conversations for the purpose of the examination. Examination, we are talking about again examining these certain occurrences of incidences happen in the factory premises.

Which are offence you know, which are violating the norms of these our violating the provisions under this Act and any other power which he can exercise as prescribed in the legislations. And no person shall be compelled under this section to answer any questions give evidence in you know incriminate himself. You know, it is you know, you cannot actually be you know, forcing mineral one can actually force him to you know, not to perform his duty.

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Now, as I as I was discussing about the power of the inspector, now, we are coming to the next section, which I said no, in the beginning of the lecture, yes, we are going to talk about certifying surgeon. Now, let us talk about the appointment then I will talk about these duties. So, the State Government can appoint a qualified medical practitioner as a certifying surgeon.

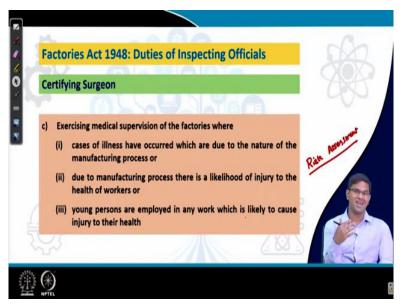
Now, when of our State Government is appointing what are his duties? So, the certifying surgeon and the can examine and certified young person under this act which is likely to cause injury to his health. So, now, as I said in the act, we are talking about child young person, we have had the when we are started with the first lecture, so, we discussed about the definition of this.

So, the certifying surgeon have to examine an issue a certificate declaring, yes, he or she is an in person and examination of the person engaged in practice such dangerous occupations or processes. He can also examine a person who are engaged in a certain dangerous occupations or processes. Now, we also understand so, what is generally happened in some of the you know, factories.

So, now, you see you know Aadhaar is being widely been provided everybody have holds Aadhaar that actually become a verification of your age of worker. But there are some instances where I visited many factories, which I observed that yes, based on their you know, school leaving certificate or their grade card, something like that they used to show their age. So, but again, anybody who is just between this, you know, coming into this year range.

So, there is always a risk if they do not have a proper documents and records. So, you know, the certifying surgeon has to certify the age of the person by you know, examining his age and ascertaining his age.

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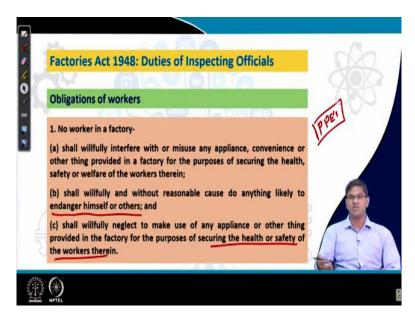


The certifying surgeon will also certify the age of the person. And you know, he is also exercise medical supervision of the factories where case of illness have occurred, where due to the nature of the manufacturing process. And you can also see whether this due to manufacturing process, is there a likelihood of injury to the health of the workers, it is kind of a risk assessment.

What are those process? Which are likely to cause certain health impacts on the workers and any young person are employed in any work which is likely to cause injury to their health. So, we should also know the certifying surgeon can also see what are the processes? Which are risky that prepare young or child worker cannot be placed on these particular processes?

Now comes as we discussed about various stakeholders, we started from the occupier right, occupier, we talked about the manufacturer. And we talked about the inspector and surgeon, certifying surgeon. Now comes the next important stakeholder is employee are the worker.

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So, now we are going to discuss about what are the obligations? What are the expectations from the workers? No worker in a factory shall willfully interfere or misuse any appliance or convenience or any other things provided in the factory for the purpose of securing health and safety of the welfare of the workers. Wherein, so, you know, should not interfere.

And similarly, no worker in a factory shall willfully and without any reasonable cause, do anything likely to endanger himself and others. So, one cannot engage willfully, wantedly to abstract something or do something, which is going to cause harm to oneself and also to others in the factory. So, it has to be a this very clearly stated that, yes, you know, workers cannot do it and if they do so, it is an offence under this act.

It is not only about this act is you know, protecting only trying to provide health and safety to the workers from the management perspective. It is also having certain obligations for the worker side that Yes, you are being one of the workers in a factory, what you he or she has to do to obey these certain provisions provided. And the workers are now shall willfully neglect to make any use of the appliance or other things provided in the factory to secure the health and safety of the workers.

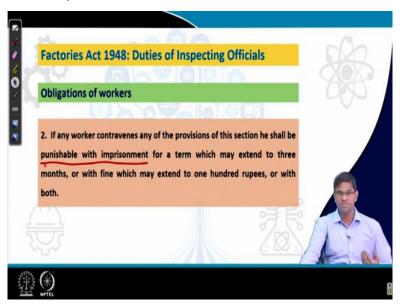
Now can I can give an example, let us say there is a process and this process has certain risks, so they are providing personal protective equipment, which should be called a PPE's. Let us say somebody is working in a welding operation or somebody is working on with chemicals you have been provided with the goggles, or maybe you are working with highly noise producing production process.

You have been provided earplugs or earmuffs or maybe you know, the proper suit when you are going in a chemical mixing room. Imagine that you know, you are being asked where a proper shoes and goggles and gloves and masks, there are pain sprays, if you visit any of the processes where the pain process happened, pain spray, there are which are dangerous operations.

You might you know, inhale those and you are sprinkles on the particles, so you are being asked to wear a mask. So, this is your requirement and factory is also providing those supplies of the personnel productive equipments. Now, despite that they give that these are the protective equipment that one has to wear when you are working in this workstation. And if a worker wantedly fails to use those, you know, PPE's, factory can you know taken action against these workers.

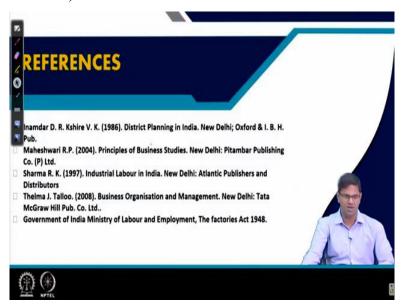
That is why you should not willfully you know, abstain doing something which are require to do because to protect your health and safety of the workers.

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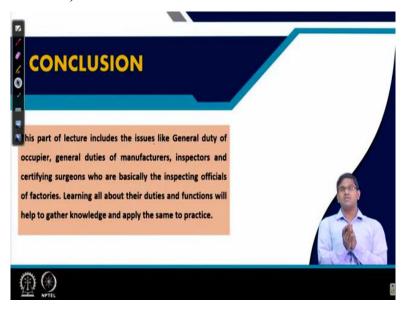


Then, if any worker contravenes which disturbs the provisions of this section shall be punishable with imprisonment, it should be noted that knowing the worker also punishable with imprisonment with can extend to 3 months or with fine or with both also. So, there is also an offence anybody obstructs are in a contravenes the centre which we discussed about all this you know willfully obstructing the any other workers are harming somebody within the factory he or she is can be imprisoned for 3 months or fine or both as well.

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So, what today the last lecture of this particular you know legislations we discussed about various aspect of it, where we discussed about the duties of the occupier, duties of the manufacturer. And we also discussed about in fact, the State Government or the competent Government has to appoint an factories inspector, the factories inspector has a lot of power.

Who can actually visit enter the premises of the factory, examine the factory and take the registers, verify the register, walk into the factory, talk to the workers and also if they observe any instances or occurrences happened, he can examine to understand what really caused this particular accident in the particular factory. And he can also take away the registered certificates for the examination purpose.

So, the factories inspector has a lot of power to even because if the factory violates, he or she can be the factory can be withdrawn with a certificate. Then we also talked about a certifying surgeon. The certifying surgeon is appointed by the State Government who can actually visit and examine any dangerous process for young person and also examine any health risks associated with the processes and also can declare the age of the certificate.

As I was discussing, yes, some young workers may work, some factory may prohibit the child workers only want to have the adult worker who does not have the certificate. You have to be certified by the certifying surgeon that, yes, this person is adult worker. Similarly, in case of a child worker, or adolescent workers are working in the factory. The certifying surgeon has to examine or the health of those child worker and the adolescent worker and provide a certificate.

That certificate has to be always handled by the HR department of the factory as in when which are required that has to be verified. And these are the surgeons and also as a stakeholder being a worker an employee, you are also having certain obligation on this particular aspect and what you have to do you should have to follow the rules and regulations which are going to secure your health and safety in the factory premises.

And we should not willfully disobey or create any risk for the other workers in the factory. So, with this what, we have comprehensive discussion about these legislations. This is one of the important legislations which are talking about health and safety, welfare and the regulating the working hours for the workers and also special provisions also be discussed about women employing women and also children and adolescent worker.

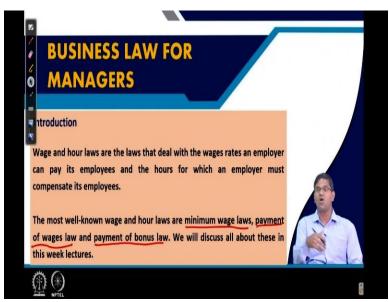
This is one of the important legislations if you are working in an industry or about to work in an industry, this will help you to be aware about what are the provisions? Or what are the mandated health and safety provisions are enshrined by the legislations? Thank you we will be seeing in the next module. Thank you.

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Module No- 06: Legislation on Wages Lecture No #26 Background, Concept and Importance of Legislation for Wages

Welcome to the lecture 26 this is the first lecture in the module. In the previous module we discussed about factors act wherein we discussed about a lot of health and safety welfare provisions and work hours. In this module we are going to primarily talking about you know the legislations with respect to wages.

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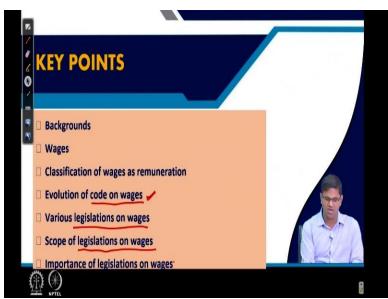
And today's lecture we are going to talk about introduction about the legislations which are with respect to wages provisions. And when we talk about the wages so the wage laws and hour laws are the laws that primarily deal with the wage rates that employer has to pay to its employees. And you know it is also associated with the number of hours an employee work in a factory that has to be compensated by the employer.

And if you look at the some of the major wages which are wage loss which is respect to the payment of the wages which are minimum wages law. And which also talks about you know what is the minimum wage that has to be paid to the workers and the payment of which is a law

in this one we will be discussing about what is that you know provisions with respect to how what is to be paid what is to be deducted.

When it has to be paid in case in there is a failure in a payment is there a delay in the payment what are the consequences? What are the remedies which are available for the workers and also there is another important legislation provision which is going to talk about the bonus law these are the major legislations with our respect to the wages of the worker who are working in particular manufacturing factories.

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So, we are going to discuss all these in this week lecture today we are going to primarily discussing about the backgrounds about understanding our concept of a wage and you know what the different classification of a wage as remuneration are? And we will also spend time on understanding the evolution of the code on wages. As I said in the beginning of the module 5 yes, we had various numbers of legislations which are with respect to wages with respect to health and safety now we that have been consolidated code of wages.

So, we will understand spend some time on understanding the evolution of code and wages. It is still been have to be implemented but it is already consented by the President of India. We will discuss on what are the evolutions what are the phases in which it has been happened? And we will also discuss about various legislations which are talking about the wages either it is talking about a minimum wage or the payment of which is and also bonus and gratuity in other aspects.

And we will also talk about what are the scopes of this legislation on wages? What is it going to offer for the employees? And also, what are the obligations for the employer to fulfill under these various legislations. And we will also discuss about some of the importance of this legislation on wages.

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Let us understand why this legislation on wages becomes so important after the independence. Post-Independence India has become a country which has become a signatory to various treaties of international labor organizations. So, India becomes first few countries which agreed upon to regulate the work day which is eight hours a day. So, you will be surprised why are we talking about you know (ILO) India being a party to the several treaties which India you know international labour organizations

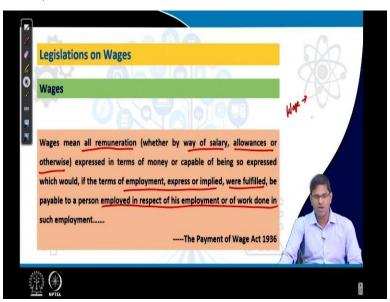
Which are talking about you will be surprised to know that even now there are many developed countries still not a party to many of these treaties of international labour law organizations which meaning that if you know when the treaty has been passed by the International Labor organization. If you become a party you, are you know signed the trainer treaty then you have to as a country you have to integrate that treaty into your country's legislations.

So, India has become party to these you know regulating the work hours so because we have become a party, we regulated that yes, we are going to go that now 8 hours is the maximum day

work hour 1 employee can do in a day. So, it also abolished child labour and restriction imposed on employment of women in the night.

So, it has become one of the founding members; of international labour organizations. That has legislated the equal remuneration act abolition of a forced labour act you in India become a party to the (ILO). And we have actually come up with the equal remuneration act ensuring that yes, we pay equally for both men and women. And there is no discrimination on payment of wages to the workers based on any of the ethnic parameters or any discrimination do not take place in payment of wages and also abolish the forced labour act.

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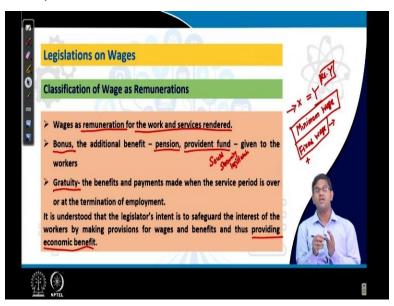
Now as I said yes when we become a party to the international treaties, we are implementing those changes in our legislations now we are getting into the important aspects. Which are wages what does the wage means? The wage here is defined here in this legislation in a very broader sense which means all remunerations it can be whether by way of salary or allowances or otherwise may be any other ways.

You know if you look at you know a few three decades ago or even in some portions some part of the country we still see by salary and also by means their salary has been compensated. May in terms of providing essential supplies to the family also half of maybe 20% of their salary has been compensated by providing means that is why the definition is large in nature. Wage means

all remuneration it includes salary or any other allowances or otherwise which are included expressed in terms of money are otherwise capable of being expressed which would.

If the terms of employment, express or implied, were fulfilled and it should be payable to a person employed in respect of his employment or work done in such employment. So, if you look at the wage so, wage is nothing but you know in a simple term which is remuneration paid in return to the work they have done for the particular establishment in a simple term. So, though the definition which are very comprehensive larger in nature in a simple term which is nothing but remuneration which are paid to the effort they put in the particular job so that is what; the wage is essential mean.

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Now lets us understand the classification of wages so wages are as remuneration. So, which we are primarily talking about the salary part which; are because you put in so much effort. For examples yes x is your input and to equalizing this input you have to pay y amount okay this is the amount y rupees y has to be paid so this is just remuneration. Now there is also other component which we are talking about bonus which is additional banner you know bonus is on top of these; remuneration of the basic wages.

One has to be paid so when you are talking about you know minimum wage or let say fixed wage. Fixed wage is the minimum which has to be paid for the amount of effort they put in then we are talking about a bonus which are all in additional right in top of fixed wages are the

minimum wages a factor will pay. Bonuses also additional benefits like you know pension on provident fund you know is also become a legal obligation which is part of the social security legislations yes employer will contribute.

We will discuss this in the following module but this is also coming into the various wage's component. And we are also talking about gratuity which is the benefit and payment made when employee work for a certain defined period in a particular factory at the termination time, when they leave the factory or during the superannuation meaning the retirement time the gratuity will be paid.

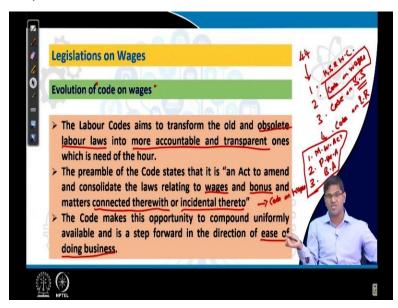
So, it is understood that you know legislators' intention which mean the state's intention the government of India is our government state government's intention is to safeguard the interest of the workers by making the provision for the wages and benefits thus so that now it provide give them the economic benefit. So why, these regulations or legislations are important? Because historical if you look at the worker sections are been exploited in various times you know.

That is why these legislations are trying regulate the factories on the wages to be paid now what is the minimum wages to be paid? Because, you cannot be exploiting the workers if they put amount of effort this to be paid that has to be paid equally to whatever their effort has been. And also, you know we have seen less several incidents that our payment has been you know delayed for so long.

So, there is a regulation where you know payment of which is act which is going to talk about. What is the requirement from the factory management to paying the workers within how many days one has to pay the workers? And also, if you look at you know bonus act it is going to talk about. What is the bonus amount which has to be paid to the workers? And it is also going to talk about the equal remuneration act all these legislations are regulating and trying to protect the interest of the workers.

In order to ensure that yes workers earn their wages which are right wage and also at you know at the proper time it is not there is a delay. And also, any additional benefits such as bonus and gratuity other things which are has to be you know entrusted to the workers that is why the intention of these legislations are.

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Now are going to discuss about the evolution of code on wages as I said in the beginning of module 5 you know there are 44 various labour legislations that are brought into four labour codes and already, I discussed about it. First is on occupational health safety and working condition then code on wages, code on social security. I am just, in an abbreviation what I am putting code on social security and code on industrial relations (IR).

So now we are talking about the code on wages so what is that how does it actually come under coded wages? So, the labour codes aim to transform the old which are you know the earlier versions of the legislations. And some are obsolete labour laws which are not relevant some of the legislations which are not relevant are become redundant not useful. So those are into more accountable and transparent one.

So, they are trying to bring the transform the old are some obsolete laws to make it more accountable and try you know a transparent one which is definitely the requirement at this point in time. And this preamble of this code preamble of the code which says that yes, the code on wages is an act to amend and consolidated the laws relating to wages. If you look at now pay attention this act attempts to consolidate the laws.

Whatever the laws already existing laws which are talking about wages which are talking about bonus that are other matters which are connected here with our incidental data. So, all these are

been consolidated and brought under this code on wages. Any laws which are talking about

wages for example you the minimum wages act. Payment of wages act and bonus act so those act

any other at which talking about the equal remuneration act.

All these things are consolidated into become a code on wages okay this code makes this

opportunity to compound uniformly available and is a step forward in the direction of ease of

doing business why this is actually an effort? As we are talking about you know there is a fierce

competition between the several countries that how we are going to attract the employers?

Because it is not about attracting investors and employers it is also that you know we have to

support our large amount of workforces now we have to provide employment.

So, if you have so many legislations which become very difficult for companies which are

coming from outside the country to come back and then understand what are the wages. Later so

many ways legislations are available how I am going to implement. Similarly, anybody want to

register or come up with the factory new factories. They also have a lot of difficulties there is its

going to be very cumbersome for them to know do and follow all these legislations and being

complaint with them.

So, they are getting into consolidation so that it becomes so easy and it will help in ease of doing

business that is why this consolidation is happening. And also, to remove any redundant you

know there are reputations there are overlaps and are some inconsistencies between certain

legislations. To come out of all, these inconsistency consolidations remove the redundancies of

which in the various legislations that are why the labour code has come into a picture.

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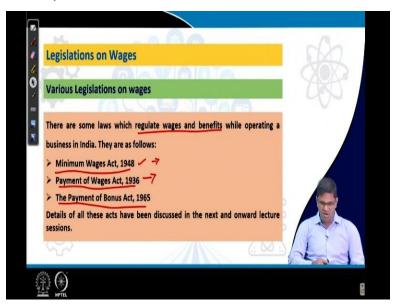
So now especially on this code and wages how does it been started so the wage code bill it is before the act it was a bill is introduced in the parliament in on tenth of august 2017 which was placed before you know the parliament for the discussions. And this wage code bill was referred to parliamentary standing committee in on twenty first August 2017 and this code was introduced and passed by the Lok Sabha on twenty third and thirty of July 2019.

Which is mean yes, the parliament and the Lok Sabha has actually approved this legislation and this bill was passed by Rajya Sabha. Once it is been approved by you know lower house and has been to the upper house in Rajya Sabha on august second in 2019 which were passed in Rajya Sabha as well. Once they got you know the approval from Lok Sabha and Rajya Sabha which has been accorded and consented by the president and as published in the officially on gazette on eight august 2019.

Now comes the question whether it has been effectively implemented all, this requirement has been met but it is still not effectively implemented as such. Because there are some stakeholders are giving their views on whether the employer and the union representatives all that is been you know considered and consolidated considerations happening. And also, off course the pandemics actually delayed this implementation we are expecting likely to be implemented very sooner but does it going to impact what we are learning now?

Not largely no because we are actually focusing on the major aspects which are already being part of this labour code. Now we are learning as an independent asset but the provisions are essentially the essence are going to stay with the code and wages as well.

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Now let us see the various legislations on wages there are many laws which regulate wage and benefits to the workers. As I said; yes, the intention of the legislation are wages to regulate the wage practices of the factories which are operating in India. So, the major ones we are going to see in this course are minimum wages act and what is it will it is going to talk about what is the minimum wage how the minimum wage are decided?

How often it is been revised so how the minimum wage has been decided for various industry if u look at, I cannot come up and say single minimum wage for all industries you know. There are in different industries different skill levels people with the different skill sets are going work in a factory. And also, you have administrative non-administrative shop floor people and also region wise there are you know inflate considering the inflation into considerations yes, some factory may operate in a city some operate in a village.

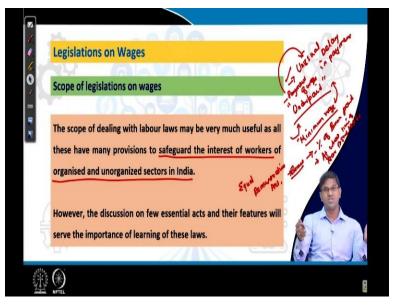
So based on considering all this minimum wage will be time to time reviewed and revised and it will be implemented. So, the minimum wage act we will be discussing it and also, we will be talking about the payment of wages. So, the payment of which is act is to going to regulate on the payment to be made to the workers. And what are the deduction which are allowed meaning

that the legal deductions? And which are those deductions which are not allowed which cannot be the part of the reductions.

And we also talk about a time of payment mode of payment the payment of wages act is going to talk about? What is the time at which the payment has to be made to the workers every month? And it will also talk about what is the mode of payment you know is it going to be a cash? Or in kind or in the bank transfer all that information we are going to see in this payment of wages act and the next is the payment of bonus act the bonus act is going to regulate on.

What is the bonus payment? How what is the minimum bonus to be paid what is the maximum bonus to be paid? Who are eligible entitled for the bonus? Who are not entitled for the bonus? What are the various aspects in which the payment has to be the payment of bonus to be provided to the workers? What is the time period in which the payment bonus to be paid to the workers? So those are to be covered in the payment of bonus act so this will be discussed on the subsequent lectures in this module.





Now let us try to understand the scope of various legislations with respect to wages. So, you know especially looking at a scope of these legislations which are related to the wages which are very useful and as all these have many provisions to safeguard the interest of the workers of both organized and unorganized sector in India. Now why we are talking about this? Because as long

as if you there are no regulations which are governing on the wages then it will be very difficult to protect the interest of the workers.

Where we are seeing that yes as we discussed in the beginning of the lecture there are potentially likelihood to have exploitation on the workers with respect to the wages, we have seen many instances. That you know there are workers being underpaid right underpaid is many instances this was case. So, the minimum wage act is going to help to ensure yes if you are employed you have to be at least paid the minimum wages which are going to be a decent wage.

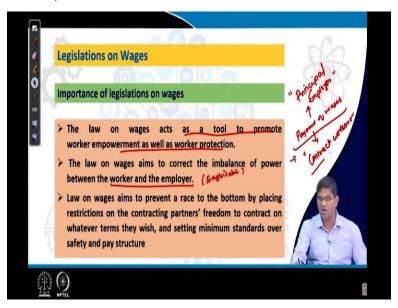
That you know with which man of the worker will be able to meet their bare minimum require you know needs of one's own family and that is why the minimum wage act is going to regulate. This instance underpaid is not in place and we are also going to talk about a payment of wage where we as I said there are instances you know unusual delay in the payment. So, there are incidences which are reported in various parts that yes workers are not paid timely.

So, the now how does it going to be addressed through payment of wages act payment of which is act which is to govern. So yes, if a worker is working you have to pay the worker within the stipulated time. And there also employer is asked to maintain a register on the payment to be made to the workers. So that is going to be governed and also when we talk about the bonus yes when a worker is working on a particular facility. Here she is working then it is going to regulate what is the percentage of bonus to be paid to the workers.

And it will also talk about at what time of the year it has to be paid okay it should be paid. So, all this going to help you know to safeguard the interest; of the workers and however the discussion of few essential act and the features will serve the importance of learning these laws. And we are also as we said we are also going to learn about equal remuneration act which is the one of the important legislations which is going to talk about.

So are we going to pay the workers both men and women are going to be paid equally no discrimination. On this so this labour legislations which are on wages which are one of the important legislations which are very essential for the workers. And either it has been you know implemented effectively or not; we are going to see. And during this course we will also discuss about various incidences of practices.

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And also, this law in; wages act as a tool to promote worker empowerment and also worker protection. If you see these laws on wages or either it is a minimum wage or is it going to be a payment of wages or it is going to be the bonus act or an equal regulation act which is going to empower the worker how it is going to empower the worker? Because if a factory management do not pay the minimum wage so they are actually violating the law and the worker have the protection.

So, this can be you know reported to the proper authority and they can act take action against the factory management who is not paying the minimum wages to the workers right it is also in a way it is going to empower the workers. Similarly, is the case that if there is an unusual delay in payment of wages this act is going to empower you that yes if there is a delay you can actually report it to the competent authority the competent authority will take action on the employer.

And also, will make an employer to pay with certain interest for the delay they make on payment of the wages. So, this actually trying to protect the workers also empowers the workers that yes, I can actually you know ask my employer to pay me on by this time if they violate so or not doing so. I can actually reach out to the competent authority so that my rights are protected and I am empowered.

And this law which is also aims to correct the imbalance of the power between worker and

employee. As I said this is you know with respect to the exploitations we have as we seen from

the you know post industrialization era where I observed a lot of exploitations on the worker

from the employer. So, these actually try to correct the imbalances of power between the worker

and the employer.

So here worker are given certain power to you know to hold their rights which were talking

about essentially yes, I have to be paid the minimum wage have to be provided my wages on

time and law of ages also aims to prevent you know to the bottom by placing their restrictions on

contracting partners freedom to contract on whatever terms they wish setting minimum standards

over the safety and pay structures.

So, these also trying to prevent any exploitation with respect to you know setting the wages

lowering the wages all this aspect has to be are prevented through these legislations. And we also

see that you know contract act regulations which are also one of the acts which are trying to

govern the contract workers. From the payment of which is act the payment of agents' act is

actually also talks about the contract workers payment.

Because we are seeing the several incidences of contract workers is not being paid by the

contract agency though the employer pays the contract agencies there is a delay by the contract

agencies in paying the workers. So, in these instances also the payment of wages says that yes it

becomes the duty of the principal employer to pay the workers and ensure then you are verifying

the payment made by the contract agency to the contract workers. In this way the contract

worker is also safeguarded through these legislations.

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So, these are the references. This is an introductory lecture; which are provided a very basic understanding on various legislations which are available on the wages act wages with respect to minimum wage or repayment of wages or bonus or equal remuneration act. Going forward in this module we are going to dwell into each of these legislations independently. We will begin with minimum wages act and then we will go with the payment of wages and we also see the bonus act.

How the provisions are implemented what are the mandates which are coming from those legislations. This is going to provide lot of insight for the working professionals also for an

employee who is going to work in a factory that yes. What are your rights? When; you are employed in a particular factory in terms of their payment in terms of your bonus; in terms of your protecting your wages, and your rights in the workplaces. So, which is going to be very interesting to look at all those legislations we will start with the payment of wages in the next lecture thank you.

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Module No- 06: Legislation on Wages Lecture No # 27 Payment of Wages

Welcome to lecture 27 this is a second lecture of module 6 in the previous lecture we have given a brief orientation about what are the legislation? We are going to discuss about legislation on wages because this is one of the critical wages. If you look at you know the term of employment everybody is employed in particular manufacturing organization or any company, they have to be paying their employees for the amount of effort they put in.

So, the legislations with respect to wages are very important from 2 perspective one is from you as being a potential employee or as an employee as a worker of a particular factory what are my legislation which talks about the payment of wages how much I should be paid? What I should receive? What I should not be get deducted from salary? And it is also talking about a bonus, gratuity and other benefits which I am going to earn.

So that is why the legislation and wages are very important now if you look from the managerial perspective. Yes, as a manager you are running a company and you are bestowed with the responsibility of taking care of your factory in terms of. When you are becoming a responsible person as an occupier or as a manager of a company you have to know what are my legislations?

What my legislation talking about in terms of fixing the wages for my employees that wage should not be lower that what my government is fixing timing to time. And that is same time how should I pay my workers? Of course, I fixed a wage my government is instructing me these are the minimum wages below at which you pay. Now I should know with what time how much I should pay the workers within the stipulated period I should make the payment.

And what about the when I engage the contract workers and also, we are going to talk about the bonus what is the bonus requirement. How much I should pay bonus? Who are my employees are eligible? So, what is why this legislation on wages is very important legislations. Today we are going to discuss about that the first legislations which is a payment of wages act.

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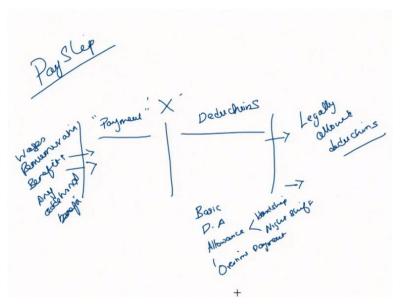


The Act guarantees payment of wages on time and without any deductions except those permitted under the Act. It list down the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government.

Also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages. Brief on various provisions of this act may be discussed in this lecture

So, let us get not the lecture see what does this act actually giving you? So, if you look at this act primarily talking about the payment of wages on time. This act specifically is going to talk about very important aspect is that yes how much I am going to pay my worker and what time I am going to pay? So essentially this is going to talk about wages I would be paid on time. And what are the deductions I am allow to go for it. For example, we know you know yes as an employee I will be paid x amount of money.

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So, of you are already employed you know that yes if your pay slip somebody receive a pay slip from a factory you would have r from your organization. You always see there are 2 important columns largely 2 columns which is talking about you know payment. I am just

putting a very large item so that you know it is consistent with anyone who is receiving in a different format.

But for people who are going to join a company you will be able to know this and there are deductions. Now this is what this legislation is talking about so this will all talk about wages remuneration then it will also talk about certain benefits or maybe any additional payment. These are all will be reflected here in this column now this will also talk about the deductions. What; are my deductions this act is going to be specifically talked about legally allowed deductions.

So, this act is specifically talking about what are the deductions a company can directly take it from the employee when they are crediting the salary. And also, this act is going to list down what are the deductions which cannot be made when they are making a payment to the worker. So those are become you know illegal deductions that deductions cannot happen when they make the payment to the workers.

That is why this legislation is important because you as an employee in a particular factory you should know. What are the deductions which can directly go from my salary with directly my employer can take away from my salary. There are deductions which cannot be directly taken away from your salary. So, this act will also talk about so what is the you know it is also going to list down the responsible payment of wages yes how much I should pay what time I should pay?

And it is also talk about fixation of a wage period so what is the period which I am going to calculate paying my employees? So certain factories may keep the first day of the month to the last day of a month. May be let us say 1 to 30 or 1 to 30 first that is my wage period calculation some factory or some company may have a different way of paying. So, for example the period of pay starts the calculation starts from twenty sixth of the previous month to the twenty fifth of the current one.

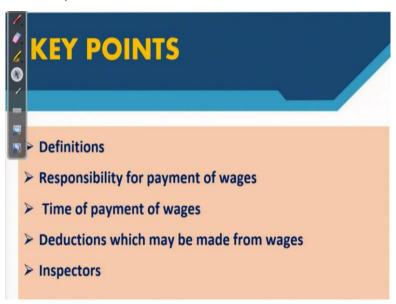
So that is also the 30 days period so some factory for the management of the paying the salary because. So, they have to pay their employees either on first or and we are going to discuss about what time they should also pay their employees. So, for keeping time to calculate their wages and any you know leave they made or any deductions to be made. So, they keep some buffer time so factory may or a company may keep a different wage period.

So, they have to discuss about the fixation of the wage period and mode of payment of wages how they are going to pay their employees or workers. Are they going to pay through bank transfer? Are they going to pay by cash? Or may be proportion of the salary in cash proportion of the salary in bank transfer? Or may be proportion of the salary in bank or may on some kind?

And also based on what are permissible deduction as I was already talking about, we are going to see in detail and it also sets a machinery to here and decide and complaints regarding the illegal deductions. Or which are not allowed to deduct from employees and also this also provides the mechanism or a machinery to see in case there is a delay in payment to the workers.

So that is also this act also gives a remedy and redressal system to in case there is a delay by my employer in paying my salary on time there is always a delay in making the payment to me through for wages. So, this act is giving a provision about what can be done in case there is a delay from the employer.

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Then so what are we going to discuss on this particular lecture is we are going to talk about key definitions as we are already seen that yes. Some definitions are important to understand the various integrities these legislations. Then we will also talk about the responsibility for payment of wages and we will also talk about time of payment of wages. And we will also talk about time of payment of wages and we are also going to see as I said yes, we are going to see the deductions which are allowed.

And also, deductions which cannot be made from my salary and the roles of the instructor this what we are going to primarily look at in this particular lecture.

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Payment of Wages

Meaning of Wages

"Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled by payable to a person employed in respect of his employment or of work done in such employment and includes –

- (a) any remuneration payable under any award or settlement between the parties or order of a court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

Now as I said the definitions is one of the very important definitions it as per these legislations to understand the term wages. Because we are talking about a payment of wages what are those are covered under the wages? So, wages means all remunerations which are inclusive maybe way of salary or allowances or otherwise maybe you know if you look some company may give.

Maybe I can just describe about your salary some company will say basic, dearness allowance and some factor may also say allowances. Some factor will say even in allowances they say hardship allowances. Some factor will say even in allowances they say hardship allowance or say you know night shift allowance. And it can also be you know overtime payment.

So, there are many components will come into the payment or the salary component so that is why you know it is also includes about all allowances express in terms of either of money or can be otherwise and it is also includes what does it also includes beyond this? We are also talking about any remuneration payable under an award or settlement between the parties or through a court.

For example, there is a dispute between an employer and employee on some terms so when there is an award or some settlement as to be made. Somebody is leaving the company that we call it as full and final settlement for the period that employee is worked. Any benefits which are acquired during the period of this stay here you know his or her stay that has to be paid.

So that also comes under the larger definition of the wages and any remuneration to which the person is entitled to in respect of overtime as I said no any overtime payment or holiday or any leave payment. For example, workers are eligible to have an earned leave every year. As you work for every 15 days you are going to accumulate one day on under leave. So, in a year you will have 15 days of earned leave that earned leave were leave a holiday payment or any payment are also included part of a wages.

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Payment of Wages

Meaning of Wages

- (d) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force

Or any additional remuneration under the terms of employment for example see the proportion of the bonus then what are the other things? You know any some by which a reason or termination of the employment. As I was saying that you know when you are terminating from an employment yes you have worked for a certain period of period in your company, you would have been liable to earn certain amount through either through bonus, earned leave any encashment leave encashment are allowed.

And any other benefits which are listed down as per your employment contract when I refer to employment contract I am talking about your appointment letter what are being stated? So then many other things which are, you know, some which is a person employed is entitled to under any scream framed under the law. So maybe, you know, if you are working under a mining or maybe, you know, seasonal or seasonal employment.

There is any specific legislation which guarantees you a certain number of benefits or maybe the gravity payment if you have worked for more than a certain period of time. So, those all comes under the larger definition of wages.

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Payment of Wages

Responsibility for payment of wages

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

☐ In the case of the factory, manager of that factory shall be liable to pay the wages to employees employed by him.

☐ In the case of industrial or other establishments, persons responsibility of supervision shall be liable for the payment of the wage to employees employed by him.

Now, when we are talking about responsibility for the payment of wages, what is that you know? Every employer shall be responsible for payment to person employed in the factory or a company wherever you are. So, who are those person? In case of a factory manager of the factory will become a responsible person or become liable to pay the wages to the era workers or anybody employed by him in the particular factory.

Then for example, we may or other industrial establishments, any person responsible for supervision will obviously become a liable person to ensure that. Yes, those employees who are employed in my particular establishment or my industry are paid the wages.

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Payment of Wages

Responsibility for payment of wages

- ☐ In the case of railways, a person nominated by the railway administration for specified area shall be liable for the payment of the wage to the employees.
- ☐ In the case of contractor, a person designated by such contractor who is directly under his charge shall be liable for the payment of the wage to the employees. If he fails to pay wages to employees, person who employed the employees shall be liable for the payment of the wag

So then in case of a railway, so railways are a person nominated by the railway administrations. So for example, if you see you know, in India, we have you know Southern Railways, Eastern railways, northern railways, south Eastern railways, right, so those, we have a commissioner for those regions, right. Those persons become a responsible person to ensure that yes, all the persons who are employed under the railways has to be paid.

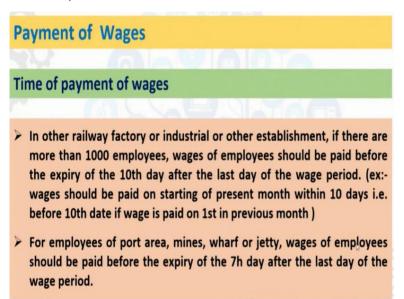
And in case of a contractor, who is become responsible in case of a contractor? So any person designated by such contractor is no class to pay the rest, pay the workers. In this case, you know, you have 2 perspectives when as a contractor, when for example, if you are a factory or running a factory, and you are employing a contract worker, or you are supposed to be a contract worker who is responsible?

Yes, first instance, the contract agency or a supervisor of the contract agency is responsible to make payment. Now, in case if a suit supervisor or a contract agency fails to make a payment or delays to make a payment then becomes a responsibility of a principal employer. I think I have even repeated in a previous lecture as well, if you remember the principal employer is for example, I am a factory i have a contract agency employ mean engaged to serve run through certain activities or functions in my factory.

So, now, I am as a factory management I am a principal employer. So, I pay my contract agency to pay the subsequently to the contract workers. In case there is delays are no payment by the contract agency, it is responsible the principal employer to oversee the payment made to the contract workers. In case there is an again an unusual delay by the contract agency not paying the workers.

Then as a principal employer, I should pay the contract workers and recover whatever the money I paid to the contract workers that is what the act says that. Yes, there is a responsibility of the principal employer in ensuring this all your contract workers are also paid.

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Now comes very important aspect of time of payment of wages. So, you know it is applicable to railways or any other industry displacement what is the time of payment?

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So, as per you know, the payment of wages the time of payment is you know we are classifying into 2 categories of you know establishments are any factory or any establishment for the sake 2 categories of you know. One is we are employing less than 1000 employees let

us keep it employee number of employees. Now, the second category is that more than 1000 now, the time period.

When a factory or a, establishment has to make the payment to the employees or workers. So, when you are an establishment, which is having less than 1000 employees employed in your establishment you have to make a payment on our before seventh of every month. Let us say this month 1 to 30 then the next day of by seventh you have to pay seventh of every month you have to pay. In case if you are employing more than 1000 employees or workers in your factory you have to make payment on or before tenth of every month.

Now, why these classifications? Because the amount of effort the employer has to put into you know process and also calculate and see what are the legal deductions for example PF, employee state insurance all that has to be calculated. So, that is why there is there is some sufficient time is provided to any employment establishment which has more than 1000. So, they can pay on or before 10 and if your employment industry or an organization were employing less than 1000 you have to pay before seventh of every month.

So, now comes the same thing which I was already discussed. So, our otherwise you know, there are some industry regular port areas mines valve or there it has to be paid before the experience seventh day after the last day of the wage period. Now comes if you look at know the last day of the wage period, it is very important to understand. Now comes how do we understand the wage period as I was discussing earlier.

See, for example, some I am going to give an example A is a factory which takes first to thirtieth is the wage period. Now, when they are allowed to pay? So, after the seventh of seventh day from the last day the expiry of the wage period, now let us say thirtieth. Now it is seventh of the subsequent month right seventh of subsequent month. Now, I want to give another example, where this is an employee, you know another factory which is taking 26 of the previous months to twenty fifth from the current month.

Now, what is the seventh day? Either it is first or second if it is 31 days of the month, so it will be either first or second of subsequent month. So, I need to ensure that yes, I pay in case this is my wage grade I should pay by first or by second or in case if I am calculating my wage, but it is one to 30 then you are allowed to pay by seventh of the subsequent month. So,

this is what it is talking about time a wage okay. Now, there is also no which I can talk about in case there is a delay in payment of wages if there is an initial delay.

So, there are mechanisms which are the employers or workers can actually escalate this to the concerned competent authority and for the delay that they make the factory management has to pay the wages. Whether you know additional interest which is 12% per year at a simple interest that is you know legal obligations on the employer. So, there should not be any delay in making the wages.

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Payment of Wages

Deductions which are acceptable

The following are said to be the deductions and which are acceptable according to this act:

- > Fines,
- > Deductions for absence from duty,
- Deductions for damage to or loss of goods made by the employee due to his negligence,
- Deductions for house-accommodation supplied by the employer or by government or any housing board,

Now comes another important aspect of this particular legislation is deductions which are acceptable. What are the reductions which can actually be done by my employer when they are making my salary? So, any fines part you know in there is you know, any mistakes which you have done, and fines and deduction for absence of duty. For example, you are supposed to work for 25 days excluding your weekly holiday.

Then if you are absent in case, you fare overshooting you are already available casually or any dedicated limits which are available to you to avoid. For example, sickly you earned leave if are beyond this, if you are taking those deductions can be taken from your salary. And deduction for a damage or loss of goods made by the employee due to the negligence it is not you know if it is by negligence.

Yes, that deduction can be taken from your salary and deductions for house accommodation. For example, you are staying in a quarter where your factories providing you or your company is providing a township where you are staying in a township where is been

provided by your organization. That yes, that deduction can directly taken from your salary or otherwise no.

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Payment of Wages

Deductions which are acceptable

- > Deductions for such amenities and services supplied by the employer as the State Government or any officer,
- Deductions for recovery of advances connected with the excess payments or advance payments of wages,
- > Deductions for recovery of loans made from welfare labour fund,
- Deductions for recovery of loans granted for house-building or other purposes,
- > Deductions of income-tax payable by the employed person,
- > Deductions by order of a court

Then comes a deduction for any amenities or services provided by the employer. For example, maybe a vehicle allowance or they are giving you a shuttle service. Or probably maybe they are giving you a phone facility or anything which they are giving you that services can be deducted from a salary. Or any advances you have already availed so then that may be such you know equated months they can actually deduct the advances from their salary.

And also, recovery of any loans from the welfare fund of the factory or welfare fund organizations. Otherwise, you know you have taken any loans for building your house or maybe any constructions or any marriage loan or education loan for your children. All that can be recovered means are deducted from the salary. And of course, income tax some states also has professional tax.

Of course, may all states have preferential tax but there are ceilings the difference with some states or some state for some states if anybody earns more than 10,000 has been deducted professional tax. Some states, anybody will earnings more than 15,000 are eligible to be director for a professional tax. So, those taxes which are bound to be paid by the employer that can be deducted from your salary.

Or any deductions by any court order that can be deducted from your salary and payment from a provident fund. Any payment to the provident fund or any payment that you have to make for a cooperative society or anything you have to pay for your insurances. For example, employee's state insurance or maybe health insurance policies every month, you know to contribute towards your health insurances.

Yes, that can be deducted or any other premium payment of life insurance policies, if you are allowed your employer to detect yes that can be deducted and any fund which you need to. For example, your factory has a trade union, where you are a member to the trade union that membership fee or a labor welfare fund that deduction can happen from your salary.

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Payment of Wages

Deductions which are acceptable

- Deductions, for payment of insurance premia on Fidelity Guarantee Bonds with the acceptance of employee.
- Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employee of fake currency,
- Deductions for recovery of losses sustained by a railway administration on account of failure by the employee in collections of fares and charges,
- Deduction made if any contribution to the Prime Minister's National Relief Fund with the acceptance of employee,
- Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees with the acceptance of employee,

As I said you know of course any incidents or recovery a loss and also any other you know, because of the negligence you have committed those can be determined largely from looking at yes what are those reductions? If we can put it in a very simple form yes, any incidents provident fund annual leave deductions you are any home loans. Or a house loan or any advance you paid any loan you have already taken any fines which are legally allowed meaning that.

Yes, this has been agreed by both employer and employee and welfare fund deductions or union contributions membership fee all that can be deducted from your salary.

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Payment of Wages

Deductions which cannot be made from wages

At the time of payment of the wage to employees, employer should make deductions according to this act only. Employer should not make deductions as he like. Every amount paid by the employee to his employer is called as deductions.

The following are not called as the deduction

- > Stoppage of the increment of employee.
- > Stoppage of the promotion of the employee.
- Stoppage of the incentive lack of performance by employee.
- Demotion of the employee
- > Suspension of the employee

Now, we are going to talk about what are those which cannot be you know called as a deduction which is will be qualified as an illegal deduction. Stoppage of the increment of an employee you know, that cannot be you know, called as deductions and you know, demotion of the employer a suspension of the employee are. Sometimes what will happen there are there can be some deductions which are not a lot that are maybe some which as an employee and employer relationship where you are union did not allow?

Or you are not given an accent are concerned that yes, this amount can be deducted then that is becoming illegal deductions. For example, without your; awareness that beyond these deductions; if some deductions can happen from your salary. For example, let us say no any complaints which have been come to qualify that as a fine that if they did have some money. Or you know they were illegally suspending you and then deducting the money from withholding some money from here paying your salary that is an illegal deduction. So those all becomes the not allowed it is becoming illegal deductions.

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Payment of Wages

Inspector and his powers

The state government may appoint an inspector for purpose of this act. Every Inspector shall be deemed to be a public servant. The inspector of this act is having powers mentioned below:

- Inspector can make enquiry and examination whether the employers are properly obeying the rules mentioned under this act.
- Inspector with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act.

Now we are going to talk about the last aspect of this legislation is about the role of an inspector and his powers. State government may appoint an inspector for this purpose, why? And we are going to see the rules of it he or she is going to be a public servant, as we seen in the factories act as well. The inspector is becoming an on public servant. Though, what the inspector can do?

The inspector can make an enquiry examination, whether employees are properly obeying the laws. So, what is that major aspect? Are they making payment? Timely, which I am referring to timely, if you are employing less than 1000, you have to pay your employees and workers by the seventh day of expiry of the wage period. In case if you are employing more than 1000 you need to pay by a tenth of the subsequent month.

Then, you know, and also any deductions, are they making any illegal deductions that can also be examined by the inspector and inspector with such assistance? If he thinks fit that yes, you can inspect and search premises of any establishments, railway factory or industrial establishment for the purpose of carrying out the objective of this app? Yes, they can do what for example, what kind of searches we are talking about? Say for example, a factory is making a payment.

Now, it is a responsibility that yes, they keep a record of the payment made to the workers. If you are making through a bank transfer yes, you have to keep that record of paying the employee through a bank transfer. You have to show the list of bank transfers which are being paid to the workers that has to be done and any signature been obtained from the employees on the payment acknowledgement for the payment.

Yes, that has to be made and that can be verified. And if you are look at the payment of

wages, you know, where we are talking about a mode of payment, where in you know earlier

the cash payment was allowed. Even now, there are some factors, but post the digitalization

and you know. We are talking about to know digital India all that government has mandated

that yes; all payment has to be made through bank transferred and no cash payment is

allowed in any of the factory premises.

So, that is also become one of the binding factors on the employer that yes, the inspector can

verify are they making any cash payment beyond which has been required.

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Payment of Wages

Inspector and his powers

Inspector can supervise the payment of wages to persons employed

upon any railway or in any factory or industrial or other establishment.

Seize or take copies of such registers or documents or portions thereof

as he may consider relevant in respect of an offence under this Act which

he has reason to believe has been committed by an employer.

So, then inspector can also supervise the payment of wages for example, there is a pay period

that he or she can be physically there and see how the payment has been happening or sees

any take any copies or register for the examination of this the ensuring that yes, payment has

been made, no illegal deductions are made. And this can be done and also, you know, to meet

the objectives of this act.

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CONCLUSION

his lecture session has covered the issues like – definitions, responsibility for payment of wages, time of payment of wages, deductions which may be made from wages, inspectors. It is very important part of learning about the legislations on wages which leaners can learn while they are attending the lecture session.

So, these are the references and today we have discussed about the payment of wage act. The payment of wages are primarily talking about 3 important perspectives, one is about time of payment, are they making a payment on time? So, as we already discussed the stipulations on the payment and then the mode of payment, how are they making the payment are they making through bank transfer, then we are talking about deduction.

Which are the deductions been allowed, are they making any illegal deduction which are beyond the list which has been provided. Because that is not allowed for any deductions which are beyond whatever they listed down. And if without the consent of the employee, although if they make some deductions, then that is also become an illegal deduction. And these 3 important things this legislation is talking about.

And is also confers and provides that yes, workers are entitled to receive on time and there is a delay. They can actually reach out to the inspector of inspectors who have been appointed under this act to see that yes, there is a delay and they are they will investigate. And then they the workers will be paid when on top of the salary with an additional interest. As I said 12% per year, which is simple interest rate that will be paid for the duration there is a delay in making the payment of the wages. So, next lecture, we will be seeing another; legislation on wages thank you.

Business Law for Managers Prof. S. Srinivasan **Vinod Gupta School of Management**

Indian Institute of Technology - Kharagpur

Module No- 06: : Legislation on Wages

Lecture No # 28 **Minimum Wages**

Welcome to lecture 28 on module 6, the previous lecture we discussed about the Payment of

Wages. And today we are going to discuss about minimum wages which is one of the

legislation on wages and what are we going to talk about in minimum wages. In minimum

wage we are going to discuss about what the government is stipulating about fixing the

minimum wage to be paid for the employees and workers in who is been employed in certain

specific establishment

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BUSINESS LAW FOR MANAGERS

Introduction

It must be noted that India's minimum wage and salary structure differs based on the following factors: state, area within the state based on development level (zone), industry, occupation, and skill-level. This offers foreign investors a range of options when choosing where to locate their set up.

The calculation of the minimum wage factors in the skill-level of the worker and the nature of their work. Broadly, workers in India are categorized as unskilled,

semi-skilled, skilled, and highly skilled.

So we are going to discuss about various aspects in the minimum wages the fixation of the

minimum wages, the revision of the minimum wages, how minimum wage is fixed for,

different categories of the workers. So let us understand how minimum wages are fixed and

how minimum wages are varied between different levels of workers. In India minimum wage

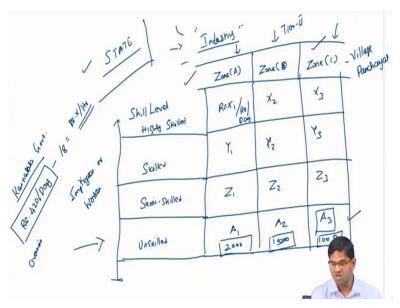
and salary structure is differ based on the following factors.

Majorly if you look at you know state were based on the specific state, and then area within

the state and the development level of the zone, industry, and occupation, and skill level.

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So let me put it in a simple way how does this minimum wage will look like? In a minimum wage how, this classification happens is of course state each state will have the different minimum wages. For example, let us say West Bengal, Maharashtra, Delhi, Mumbai, Rajasthan, Tamil Nadu, Andhra Pradesh, Telangana, Kerala, so each state will have their different minimum wages.

Because the geography is different, their inflation rate within the state is different, and also zone wise also there will be classifications, and also if you look at the state wise yes, first level is state wise there are difference in minimum wages. And if you look at the next level is about industry wise see now you know government or the state government cannot bring and talk about you know wage, same ways for all different type of industry no there are different ways structure for different industry practices.

For example, coir industry there is a different, toy industry there is a different payment, textile industry there is a different payment, general manufacturing activity there is a different, automobile industry there is a different wage structure. So, based on the industry minimum wage will vary, but now we are going into another aspect which are largely followed in all irrespective of the state, and irrespective of the industry.

What is that major classification happens? So they classify based on the skill level, so let me create a matrix. Now here comes the skill level so the skill level is unskilled, semi-skilled, skilled, and next is highly skilled, these are the categorization based on the skill level of the employees or workers. Now comes on this side what is that there is zone base zone A, zone B and zone C.

Now what are the zones are? If the particular factory is in any establishment which; is operating in zone A meaning that there are the metropolitan cities, within the city tier 1 cities that will be coming under zone A. Now come zone B are let us say tier 2 cities which are not a cosmopolitan or metropolitan cities it can may be a second level cities or maybe you know semi urban all those places fall under a zone B.

Now the last one is zone C, what is the zone z which is any comes under a Village Panchayat. So now so the salary will vary rupees X 1 here will be X 2, X 3, similarly if you look at Y 1, Y 2, Y 3, Z 1, Z 2, Z 3, and let us say A 1, A 2, A 3. So now if you look at the salary will be varying the minimum wage will be varying based on 2 aspects, one is about as I said the larger level yes state wise is the larger level.

And Industry wise and State level and Industry level is a larger you know level of you know salary difference how the minimum wage is fixed. But if you look at the you know granular level yes the primary aspect of is this, based on the skill level and also the where the establishment is located. Are you operating in a cosmopolitan metropolitan city? Or you are in a tire to city? Or you are operating in a village, based on that this minimum wages will vary.

So this is the primary aspect on under which the salary minimum wage is going to govern. So for example, somebody working as an unskilled hired as an unskilled worker and this factor is located in zones C, and he or she will be paid this is the minimum wage that employee worker or employee will be paid for this job. The same person maybe let us says for example, I call it you know just for a reference I am just putting some number.

2000 rupees for a same job in city, you will your minimum wage is 2000 rupees, in zone B you will be earning 1,500 rupees, in zone C you will be earning 1,000 rupees. So this is what a simple analogy I am giving you so that you will be able to relate and understand how this minimum wage is going to vary between the place and the location and the skill level of the employee.

Now if you look at know why this is classification is done primarily for and employer to choose where I can have my establishment. Again you know it should also consider the accessibility I should also attack large workers then I may I have to be close to the city

because the access is more, I can get more employees. So this calculations as I said is all based on this so that the industry investors foreigner.

Especially, to attract you know best you know foreign investors our countries also trying to be more favourable towards ease of doing business. If you look at the manufacturing activities largely if you have happened to see many manufacturing activities generally, this will operate outside the cities. Wherein; primarily some industrial zone falls under a village. Most of the time the manufacturing industries; are in the village panchayat regions.

So, they most often they are they will be paying the zone C salary. Coming back to this, so this is how the minimum wage is being fixed based on the skill and also the location where the establishment is located.

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KEY POINTS

- Meaning of wages and employees
- > Fixing of minimum rate of wages
- Procedure for fixing rate of wages
- > Advisory board
- > Composition of committee

So now let us get into the other aspects of the minimum wages what are we going to discuss today? We are going to discuss about meaning of wages as I said it is important. If you look at the definition of wages in payment of wages is going to be different in you know wages minimum wages we are going to talk about. And also we are going to talk about fixing the minimum rates of wages how do; they fix the minimum wages the procedure for fixing the rate of wages.

And we are also going to talk about the advisory board or compositions of you know wage fixations committee.

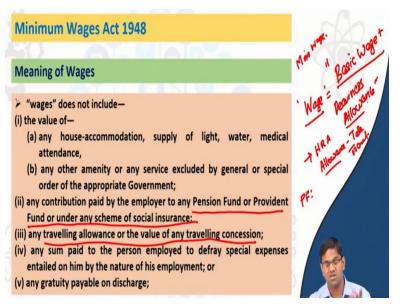
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Meaning of Wages

"wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance

Now Wages, what does a mean of wages in here? So, wages mean all remuneration, it has been expressed in terms of money, which you did not? For example you been employed for the particular job then for fulfilling the particular job you are being fixed a certain amount of payment towards for fulfilling the particular service, that is what the wage means.

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Now we are what we are interested in understanding is what does not be included in the minimum wage we are talking to, the wage with respect to minimum wage what is not included part of your wage component. If a company is paying any house-accommodation, or you know water facility, medical attendance, does not include.

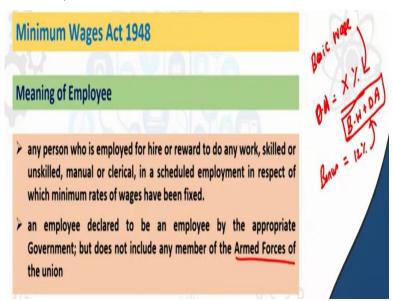
So for example sometime you know the most often the wage primarily basic wage plus dearness allowance this becomes the components of wage, with respect to minimum wage is

concerned. It does not include we are talking about HRA house rent allowance, or we are talking about any allowances. Maybe you know kind of a telephone, travel, all that is not part of your minimum wage. So let us come and pay space and spend some time here.

So for example; contributions paid by the employer towards your pension fund or provident fund. For example if you are you know include a part of a PF you will be contributing some amount, and then your employer will be contributing certain amount right, that is not included part of your wage. As I said yes no travelling allowance cannot be included part of your wage.

Some paid to a person for a special expenses, any graduate payment additional allowances they pay that cannot be configured as wage as per the minimum wage. So the minimum wage primarily focusing on the basic under dearness allowance comes in the major component of the minimum wage.

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So now we are going to talk about the meaning of employee, so why we spent you know time on understanding this minimum wage because minimum wage becomes a base for many other calculations. For example, your PF contributions are primarily based on your minimum wage, and your proportion of the calculation for your bonus payment is also going to be drawn from your minimum wage.

That is why the minimum wage becomes an important aspect because that becomes a base for your calculation. For example, let us say for a dearness allowance, the dearness allowance how does you are for example government is time to time fix certain percentage X percentage

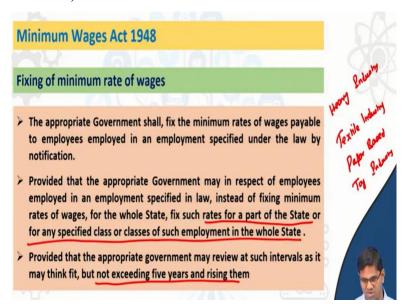
as your dearness allowance DA we call it DA right. So now this X percent will be calculated from where, the basic wage becomes the primary source for your calculation of D A.

Now if you are coming for other aspect remarkable bonus, for bonus payment what does it be concluded? It is a basic wage plus dearness allowance becomes a basis for your calculation of Bonus. For example, 12% is that yes it will be based on you are 12% of a basic plus dearness allowance, that is why we are interested in understanding what is the minimum wage. Now understand who is the employee?

Employees any person who is employed hired to do any work either it can be skilled, unskilled; same skilled, or highly skilled, in your scheduled employment in respect which the minimum wage has been fixed. That yes, you are doing this job and this is the minimum wage that has been fixed we are not including any other additional allowances like night shift allowance, or shift allowance, or special allowance, travel allowance no we are not talking about anything.

And we are talking about this is a minimum wage fixed. And in any other you know employee can be declared as to be an employee by the state an appropriate government and you know does not include armed forces we are not including the armed forces in this. We are only talking about a government employee or any other worker or employee in any other establishment.

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So now we are coming into the important aspect fixing of minimum rate of wages. The appropriate government we are talking about central government has entrusted the

responsibility for a state government. So each state government has their labour department,

that labour department will fix the minimum rate of wages payable to employees employing

different employment.

Why as I said yes industry-wise there can be differences the reason wise is also the wage will

vary. So, appropriate government shall have to fix the minimum rate of wages pay to be paid

to all workers in different employment establishments. So here we are referring to labour

departments of each of the state becomes an appropriate authority to declare the minimum

rate.

So provided appropriate government may in respect of employees you know employed in an

employment specified in law. Instead of fixing the minimum rate of wages, for a whole state,

they may fix rate for specific part of the state or some class or such employment in a whole

state, see what is this specific provision talking about? Sometime the revision of wages may

not be uniform across state maybe some revision can happen to specific region it is possible.

And also, the revision may be declared for specific categories of industry not for some

industry. But let me give an example say there is a revision for only for textile industry, or

maybe you know revision only for may know paper mills paper-based industry, or maybe for

toy making industry or maybe you know heavy industries. So, this is what it is referring to

know it cannot be uniformly across all industries based on specific industry, specific region it

can also make.

And then appropriate government may review at sufficient interval that yes the minimum

wages are time to time reviewed. So that now the employees do not go through the hardship

of not able to meet the basic needs of their life. So they have to revise and revisit and review

the minimum wage whether it is sufficient for the employees to meet the basic needs of their

life, and it should not be exceedingly more than 5 years.

So the minimum wage at least has to be revised in every 5 years but it is not restricting to

only in 5 years you can also revise every year or every 6 months as well some state

government do revise every year as well.

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Minimum Wages Act 1948 Fixing of minimum rate of wages The appropriate Government may fix: (a) a minimum rate of wages for a minimum time rate; (b) a minimum rate of wages for a minimum piece rate; (c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a guaranteed time rate; (d) a minimum rate (time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees as overtime rate

Now so the appropriate government may fix a minimum wage with respect to time rate. For example, let me go back here so here the minimum wage can be fixed for example, rupees X per hour can be fixed per hour or it can also be per day. So now what will happen there are official gussets released by Saturn state government, they might say a person is employed in unskilled let me talk about you know Karnataka.

Let us say Karnataka government I am just referring to Karnataka government. So they have released rupees 425 per day, this is the salary fixed per day. Now so how do we calculate per hour? So just divide this X amount by 8 you will get rupees X per hour. Why this hour salary is also important if you want to calculate the overtime rate it will be based on hour. And this minimum wage can also be fixed based on the piece rate; because now there are certain industries workers are paid a piece rate.

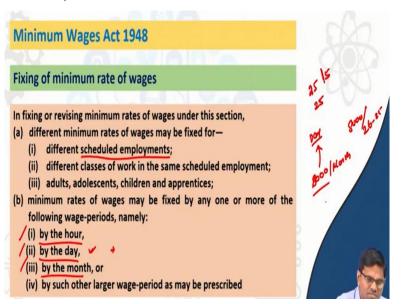
So even if you are fixing a peace rate it should be fixed in such a way that yes, this peace rate payment is not below the wage rate for per hour. For example, let us say 420 rupees as I said you know 420 rupees per day was fixed as a per day wage. Now if you are fixing for a piece rate, so the piece rate on a day average number can be produced. For example, the employee or worker working in some industry he or she can produce average of 30 products.

This is the minimum that is they can move this 30 piece they if they produce that has to at least come up to earn in making them eligible to earn this 420 rupees that is how the fixed way the piece rate can also be calculated. And minimum rate of remuneration to apply in some case of employed piece rate as I said you know it should not be lower no, it should also

try to see that yes the number of pieces they should do in every day should not bring down there you know earnings.

So it should be at least in such a way the in a peace rate can be fixed in such a way that these workers employed in those industry can at least earn or meet this per day minimum wage right. So this again as I said it can be piece rate, time rate, or an hourly rate, can be fixed.

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Now in case of fixing the rate of wages, so in fixing or reversing the minimum wage you know different minimum rates may be fixed for different schedule employments. As I was saying yes, you know different scheduled employment we are talking about a different industries, will have a different minimum wages, and different class of work in the same schedule employment.

As I said yes skilled, unskilled, same skilled, and also you know administrative, accountants, executives, there are different minimum wages. And for example, security personally employed in the particular industries there are different salaries minimum wages fixed for different categories of employees all right. It is now you cannot just simply put only highly skilled and semi-skilled this is our people who are working in a core manufacturing process.

But there are also administrative staffs those also have to be clearly defined as a different minimum wages. And also, for adult, adolescent's children, and any apprentices, also there should be different minimum rate for this category of workers also. The minimum rate may be fixed by one or more by following the wage periods. It as I said know it can be by hour, by day, or by month, and any such way the larger wage period has may be prescribed by the act.

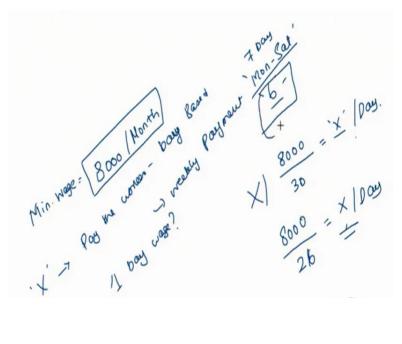
So sometime what will happen now? The minimum wage is fixed per month. Some state governments may release the minimum wages for a monthly minimum wage. Now why we are talking about monthly also some industry pay by monthly and at the same time if you want to convert yes just divide the number of you know my days to pay fix the per day wage. And similar is the case if there is a day wage then you needed to calculate for a monthly.

So it can be either way so but the minimum wage has to be fixed in either of this either it is an hourly or a day basis or a monthly basis. And of course, if it is a day basis it can be converted to a monthly basis also. And now one of the important things comes here is that there is integrity comes here. So when we are talking about a per day wage when you fix per day wage this you know you should also include the weekly off day we are talking about.

So this 4 or 5 Sunday is coming as a weekly holiday, so when the monthly wage they calculate. For example, monthly wage they said 8000 rupees per month. Now if they want to go for fixing the per day wages they should divide this 8000 divided by 26 days, or you know 25 days, not by 30 because you know to arrive at the period of wage. Because if they divide by 30 what will happen some factory which may not say let us say the worker is working for 25 days, because they will say all 5 or Sunday is a holiday.

When they wanted to pay per, day then per day will just be avoided by dividing the monthly salary by 26 or 25. So that you will the worker do not lose the weekly of day, any minimum wage is comprised of the weekly of day also.

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Let me explain in a better sense, let us say 8,000 rupees is there is a minimum wage so one particular state government is declared that minimum wage is 8,000 rupees per month. Now let us say I am talking about a factory X which pays the worker day wise, day based let us say it makes weekly payment. Now how do they calculate per day wage, one day wage how do, I calculate the one-day wage?

So now this is the 8,000, so what are possible ways? Let us say, I am fixing I assume that that month has only 30 days. So what factory can do simply they will divide 8000 by 30 and they will get some X amount, then they say this is become a per day wage. So in this case what will happen you say that the worker is based on a weekly payment, it is 7 day a week but they will be working Monday to Saturday, right.

If they work Monday to Saturday, how many days they are working essentially? 6 days, so by dividing this 30 and they say this is the X Day for amount. So they will be paying only 6-day wage what is that the loss for the worker is that, the Sunday is being a legally declared holiday for a worker.

So now what is the way, this is not the way to calculate it should be 8000 divided by either 26 let us say 4 Sundays. This is how they should arrive per day wage so this amount has to be calculated to pay the weekly wage. So that is why it is important to understand if it is an hourly or monthly or whatever we are talking about.

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Minimum Wages Act 1948

Minimum rate of wages

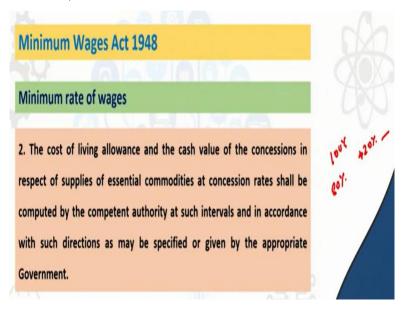
- 1. Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments which may consist of
- a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the cost of living allowance; or
- a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorized; or
- (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

Now, so minimum rates of wages what is the minimum rate of wages? The minimum rate of wages fixed or revised by the appropriate government in respect of the scheduled

employment, which may consist of as I said the basic rate of wages as we already discussed about basic rate and special allowance at rate to be adjusted. And basic wages with or without the cost-of-living allowance, and the cash value of concession with respect of supplies of essential commodities at a consistent rate.

Some industry may pay some areas you know still we see that you know there are in a kind payment also paid along with some salary component. And all-inclusive rate allowing for a basic rate, the cost-of-living allowance and the cash value of the concession if any that will be considered as the minimum wage.

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The and also what does it include it also you include cost of living allowance cash value of concession consistent respect of all supplies. Or any essential commodities paid at the consistent rate will be computed by the competent authority in configuring the minimum rate of wages. For example, let us say a 100% of wages is like you know 80% is wages by as you know cash component and 20% by you know kind component in terms of essential supplies.

That comparative has been provided maybe some places; they used to provide rice, or any other basic commodities essential commodities. Then that also to be configured by the; competent authority when they want to calculate the minimum rate of wages.

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Procedure for fixing and revising minimum wages

- In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall either
 - (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or
 - (b) (b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

Now, what is the procedure for fixing and revising the minimum wage? So now there are procedures which are listed on by this registration which says, to revise the minimum wage. They will have to appoint the appropriate government has to appoint many committees or maybe sub-committees, as it considers necessary to hold enquiries and advices with respect to fixation or revision as the case may be.

It can be you know for example when it is there is no minimum wage fixed, they can set up a committee to fix the minimum wage. Or they can also set up a committee to revise. As I said time to time know considering those changes or inflation rates conferring this inflation rate is also important in reversing the minimum wage.

Or also by notification in official Gazette, publish it is proposal for you know information of persons likely to be affected that yes the date on which the less than 2 months from the date of notifications. With which the proposal shall be taken into consideration by official Gazette that also they will be notifying the fixation of the minimum wage.

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Procedure for fixing and revising minimum wages

2. After considering the advice of the committee or committees appointed, or as the

case may be, all representations received by it before the date specified in the

notification of that sub-section, the appropriate Government shall, by notification

in the Official Gazette, fix, or, as the case may be, revise the minimum rates of

wages in respect of each scheduled employment, and unless such notification

otherwise provides, it shall come into force on the expiry of three months from the

date of its issue.

After considering the advice of the committees or committee or by the committee is

appointed, so all representation received by before the specified date of the notifications of

sub-sections, it should be you know issued. Or sometime what will happen? The minimum

wage will come into the existence before the expiry you know like three months from the

data if it is issue.

Let us say you know they have set up a committee and then they come up with some

suggestions have been floated, and this is what they are saying. And if it is even without the

you know official you are declaring that you know if there is been experience within three

months period, if that shall become the minimum wage thing. So that is how the procedure

for minimum is fixed.

In practicality what has been happening every state government the labour department have

set up a committee to revise the minimum wages time to time, based on the changes which

are happening on the inflation rate, and which is happening. And so that now there is a

purchase capacity at the employees to meet the basic needs of their life that is how the

minimum wages has been revised time to time.

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Advisory Board

As per provision of the act, the appropriate Government shall, by notification, appoint an advisory Board for the purpose of coordinating the work of the committees and advising in the matter of fixing and or revising minimum rates of wages.

And this act also allows to set up an advisory board, so the appropriate Government shall, by notification, can appoint an advisory board for the purpose of what? Coordinating you knows works of the committees and advising the committees on matters of fixing or revising the minimum rate of wages. So it is beyond this committee subcommittee story wise this act also allows to, set up an advisory board, who can time to time give inputs to the committees or the concerned authorities to on fixing or revising the minimum rate of wages.

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Minimum Wages Act 1948

Central Advisory Board

As per provision of the act, the Central Government shall, appoint a Central Advisory Board for the purpose of advising the state and central governments in the matter of fixing and or revising of minimum rates of wages and other matters under this act and for coordinating the work of the Advisory boards.

There is a central advisory board, so they will appoint a central advisory board for the purpose of advising the state and central governments. So as we said you know previous advisory board at the state level and also there can be central advisory board who can actually advise the central government. Also the respective state governments on the matter related to fixing or revising the minimum rate of wages other matter is related to the act.

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Minimum Wages Act 1948

Composition of Committees

Each of the committees, sub-committees and the Advisory Board shall

consist of persons to be nominated by the appropriate Government

representing employers and employees in the scheduled employments, who

shall be equal in number, and independent persons not exceeding one-third

of its total number of members; one of such independent persons shall be

appointed the Chairman by the appropriate Government.

And the Composition of Committees, so each committee, or sub-committee or advisory shall

consist of the person nominated by the appropriate Government. They should have

representative both employers and employees in the schedule employment. It cannot be one-

sided where only the representative of the management has been considered. It should also

have the representative from union the worker category who shall be an equal number.

Independent persons not exceeding one-third of it is total numbers of the members, one such

independence shall be appointed as the chairperson by the appropriate Government. So the

committee has been formed in such a way that it has an independent person, and also

representatives of the employee, and also an employer.

So the committee will be comprised of all 3 including independent people. X will be an

independent person, Y will be the representative of the employee, and Z will be the

representative of the worker, you know it maybe in a union representatives or the district

level representatives.

They will also because what will happen? This employer may not agree on revising the

minimum wage, or maybe they may propose a very marginal increase. Sometimes these

worker may be always demand more, there is always you know that is why you know it is

important to have a committee which is all independent person also part of the committee in

fixing or reversing the minimum wages.

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CONCLUSION

his lecture session has covered the issues like meaning of wages and employees, fixing of minimum rate of wages, procedure for fixing rate of wages, advisory board and composition of committee as laid down in the minimum wages Act. It is very important part of learning about the legislations on wages which leaners can learn while they are attending the lecture session.

These are the references, so we have today we have learnt a very important legislation, which are talking about the minimum wages. How minimum wages have been fixed, we discussed about based on the skill category, and also the location at which the factory, or establishment is located that is how the minimum wage is fixed. As I said then a larger level state-wide there is a difference and also industry wise there is a different minimum wages.

And also, category of the worker also plays a critical role in fixing the minimum edges. And we also see minimum wages is not including the travel allowance in any other allowance, it is only the component of basic wage, and DA's allowance are any specific allowance which are essential to need the basic needs of the life. That is where becomes; the core component of the minimum wage.

Why the minimum wage? Minimum wage that is the bare minimum required wage has to be paid to the workers, so that they are able to meet their minimum basic life need, that is why it is called the minimum wage. So, this is also fixed based on the committee's inputs time to time they will revise, understanding the inflations also been considered when they are reversing their minimum wages. So in the next lecture, we will be learning the next wage on the next legislation on with respect to wages thank you.

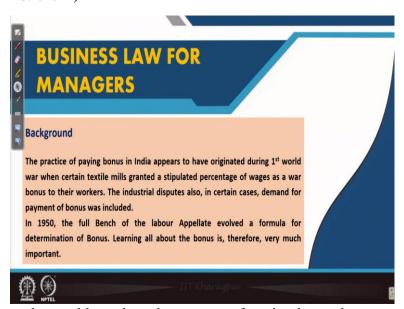
Business Law for Managers Prof. S. Srinivasan Vinod Gupta School of Management Indian Institute Technology - Kharagpur.

Module No- 06: Legislation on Wages Lecture No # 29 Payment of Bonus Act

Welcome to lecture 29 and this is the fourth lecture of module 6. In module 6 we are focusing on legislation on wages and previous lecture we discussed about, minimum wages. And today we are going to discuss about one of the most important legislations and wages that everybody is interested in which is about payment of bonus act. And this lecture we are going to discuss about various aspects of the bonus act, what is the minimum requirement?

Where it has been applicable? Who are eligible to receive the bonus if so? What is the percentage which the worker has to be paid with the bonus? And how the calculation has to be made? What is the time duration within which the bonus is to be paid? And what are the other aspects these acts discuss about? This is what we are primarily going to discuss in this particulate lecture.

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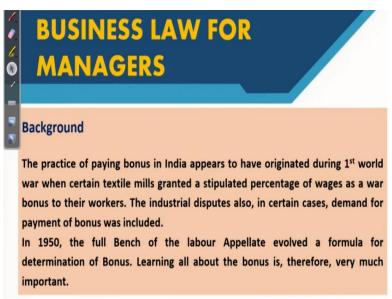


So, let us try to understand how does the concept of paying bonus have come into the picture in India? The practice of bonus in India has originated during the First World War time. Wherein certain textile mills are you know granted stipulated a certain percentage of the wages as you

know war bonus to their worker. That is where it has been originated, the concept of paying bonus to the worker originated during the First World War time.

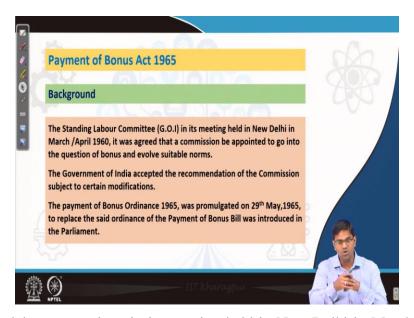
Whereas certain textile mills have started to pay the percentage of their wages as the bonus and it also some of the industrial dispute also in certain cases demands for paying bonus to the workers. And in 1950 the full Bench of labour appellate they come up with a formula for the determination of the bonus. And this becomes an important step towards you know, mandating the payment of bonus to the workers in India

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So, what are we going to discuss on this lecture, we are going to discuss about the background of this payment of bonus act and also, we are going to see what are the objectives of this act? And, we are also seeing the eligibility for bonus and how the bonus will be calculated? And we will also see the time we made for the payment of the bonus? And what mode of payment and also the inspector and his, power in this particular act? And also, we will also see the duties of the employer with respect to the payment of the bonus.

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Now so standing labour committee in its meeting held in New Delhi in March nineteen sixties they agreed that the commission to be appointed to go into questioning of bonus and dwell suitable norms. As I said know earlier there you know was no specific set of norms or there is no determined way to calculate the bonus or even to discuss about are they or these workers or employees entitled to earn a bonus on top of their salary.

So, the Government of India accepted the recommendation of the commission subject to setting modifications and the payment of the bonus ordinance has come into picture in 1965 which are promulgated and then made an introduced as a payment of bonus bill in the parliament. So subsequently that has been implemented as payment of bonus act.

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Payment of Bonus Act 1965

Definition

The term bonus is meant as a boon or gift over and above what is

normally due as remuneration to the receiver.

> 'Bonus' is something to the good; especially extra dividend to the

shareholders of the company; distribution of profits to the insurance

policyholders

Now try to understand the term bonus. What is this bonus term mean? It is mean as a boon or a

gift and what is normally due it is over and above what is normally due as remuneration? It is

meaning that which is not part of your remuneration it is added on top of your remuneration

that's called a bonus. The bonus is something that to the good or you know the extra dividend to

be you know to the shareholders of the company distribution of the profit to the insurance policy

holders.

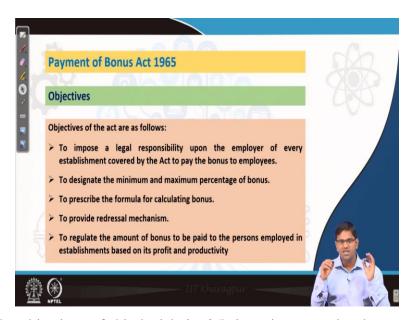
So, in this context largely we understand the term bonus whereas in terms of the employment

context the bonus is the one which are paid on top of your regular remunerations. So, you are

you know every employee will be earning their salary right. So, these bonuses which are talking

about paying bonus on top of whatever the regular payments these employees used to earn.

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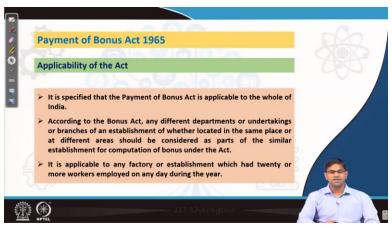


Now what are the objectives of this legislation? It is to impose a legal responsibility upon an employer so before this legislation it is not a legal requirement for employment organizations. Or we are talking about establishments to pay bonuses but this act has mandated that yes, it is a legal responsibility of an employer of every establishment covered by this particular legislation to pay bonus to the employees.

And it also designates what is the minimum and maximum percentage of bonus to be paid to its employees or workers. And it also describes the formula for calculating the bonus and it also provide for a redressal mechanism. In case there is no bonus being paid or is there any irregularities happening on the bonus payment or delay in bonus payments some sections of the workers are denied there is also reduced mechanism which are stipulated as per these legislations.

And also, very importantly this act come into picture to regulate the amount of bonus to be paid to the person employed in any establishment based on the profit and productivity. As I said you know when we talk about you know minimum and maximum there is also aspect of. So how the maximum can be faced? And that is what you know this bonus act also regulates based on the profit and productivity that you know this act also helps to fix you know what is the maximum bonus to be paid to the workers also.

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And the applicability where does this bonus act applicable? So, the bonus act is applicable whole of India. So, it also says that there are any different departments or undertaking or branches of establishment whether located in the same place or a different area should also be considered part of a similar establishment for a computation of the bonus under this act. Which is essentially meaning that yes, this act is applicable across India and also applicable to any factory any establishments which had 20 workers employed on any day during the year.

If you are an establishment, if you had at least 20 workers employed in your establishment in any day of the year, it is not that know you never had 20 or maybe you had only 20 during some months of the year, then you are also eligible. So, any establishment has employed 20 worker or 20 employees then eventually you are become liable to paying the bonus to your workers.

And if you ask the question of, I am having a company where I do not have or I am having a factory or establishment you do not have 20 workers in any day of the year. Then yes you are not mandated to pay bonus however between you as an employer and as an employee you can decided upon some terms to pay bonuses to the workers. But it is not legally mandated on any establishment which employs less than 20 workers.

So, but there are questions people always have this you know doubt that whether can I demand a bonus from my employer but we do not have 20 workers working in a particular establishment. See again it comes into the terms of the employment contract what type of an employment contract you are entering in. In case if your employers say that during the appointment letter, he said yes you will be paid a bonus every year.

Then based on that condition you will be able to demand your employer for a bonus unless

otherwise you cannot enforce the bonus payment from the employer. However, mutually both

the parties can discuss and discuss on the bonus payment. But incase if it is an employment

industry establishment which has more than 20 workers of course it is become mandatory that

that establishment has to pay a bonus to the workers.

And it does not apply to any nonprofit making organizations, there are NGO's not profit making

organization this act does not apply, they are not required to pay any bonus. And it is also not

applicable to establishments such as LIC hospitals which are excluded under section 22 of these

legislations. It is also not applicable to any establishment where employees have signed an

agreement with the employer.

Let us say there are some establishments where they have signed an employment contract or

maybe the worker representative or a union or a committee have entered into an agreement

between the employee that yes. We are not going to pay bonus maybe those industry may have

an incentive system maybe regularly paying differently. If there are existing agreement between

the worker representative committee and the employer then those organizations are excluded

from paying the bonus.

They are meaning that they are not legally bounded to pay bonus. And is also not applicable to

certain establishment exempted; by appropriate government like you know, sick units for

example government organizations are also excluded from the payment of the bonus. Whereas

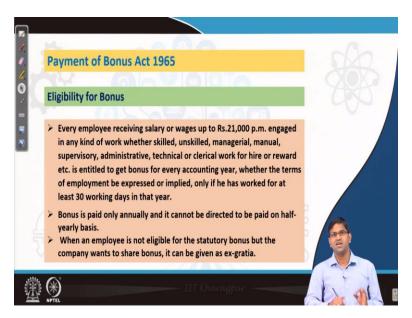
the railway is falling under the factory act definitions so they are bound to pay maybe if you

know you have seen very recently also railway has announced the payment of bonus to its

workers.

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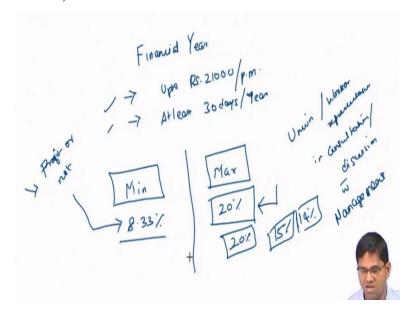
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Now comes the eligibility for the bonus, who is eligible to receive bonus. If you are receiving a salary or wages up to 21,000 per month engaged in any kind of whether it is a skilled, unskilled, managerial, manual, supervisory, administrative, technical, critical work, whatever kind of a work. So, if your earning is up to 21,000 per month you are eligible to receive bonus but what is the other condition comes into?

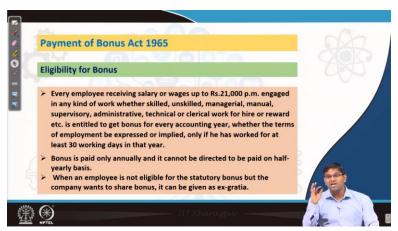
At least he or she should have worked for 30 days in that particular year. So, in this if you look at now what is that here they are calculating for a bonus,

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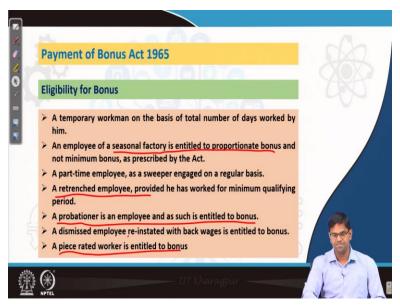
It generally they calculate consider the financial year. So, what is the eligibility at your salary should be up to rupees 21,000 per month. And you should have worked at least 30 days in the year then you are eligible to receive bonus.

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Now comes a bonus is paid only annually it cannot be paid in you know half year basis. And when an employee is not eligible for a statutory bonus maybe if company wants to share bonus, it can be paid as an ex-gratia amount to the workers, or the employees.

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Now comes so now we will be learning about you know eligibility of the bonus for other category, you know temporary workman is also eligible for bonus based on the number of days worked by the particular person in the particular establishment. And of course, seasonal employee are also eligible for pro bonus at the proportionate net bonus and not the minimum

bonus the proportionate bonus. Because seasonal employee why we are talking about a seasonal

employment?

Seasonal employments do not have the employment throughout the year right, so when they do

not have you know job throughout the year proportionately, they can be paid a bonus. And part-

time an employee or a sweeper engaged in a regular basis can also eligible. Retrenched employee

meaning that know retrenched this person who has been removed from the job role the

retrenched employee also eligible for a bonus if he or she has worked for those 30 minimum

days.

Let us say somebody is employed and resigned in some months then if the person is worked for

30 days yes, he or she is eligible for receiving the bonus. And also, if you look at you know

probationer yes probationer is also entitled to receive a bonus. Certain company where if you are

employed in a company where you may be asked to serve as a probationer for one year you will

be in a probation period one year.

Some extremely I have seen some companies used to have probation for 2 years so that period

you are also eligible for a bonus. And any dismissed employee reinstated with the back wages is

also entitled for a bonus in case if for any if you know dismissed due to any because you made

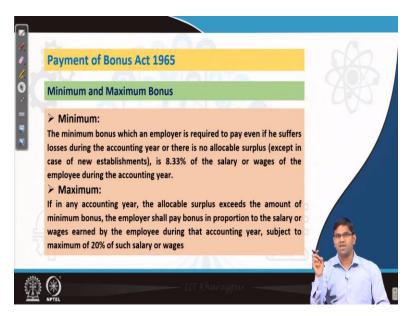
loss or maybe you know unethical practices yet you are not eligible. But otherwise, if you are

reinstated with the back wages then yes you are entitled to receive bonus. And piece rate worker

is also entitled for a bonus

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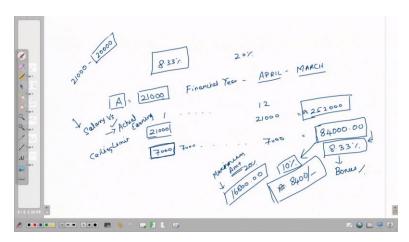


So now we will talk about what is the minimum and maximum bonus. The minimum bonus which employer requires to pay. So, if you look at now what is the minimum and maximum, I am going to discuss about this now. See the minimum and maximum as per this legislation it is 8.33% of your annual earning, which has to be paid your minimum bonus amount and maximum is 20%. Now comes the questions of how does this minimum fixed, whether your company makes profit or not?

Either you are making profit or not, you are entitled to pay 8.33% of the bonus to your employees or workers. Then when you are talking about a maximum is 20% is the bonus to be put out of their annual earnings. Now this 20% is fixed based on you know profit after deduction of tax and based on the productivity the union or workers representative in consultation or discussion with management, they will fix the percentage.

Where we see know if you know company really made a lot of profit, they want to share their they can even fix the maximum bonus at 20% or maybe some industry may fix at 15% or 14% based on the profit they made after tax. With the union representative and workers representative they will be discussing to fix the maximum bonus amount to be paid to the workers. Now we will also discuss about how the bonus has been calculated. So that is very important now we have discussed about you know minimum and maximum right.

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So, the minimum is 8.33% and maximum is 20%. Now what is this 8.33% we are talking about? So, there is a ceiling limit for considering the bonus payment what is the ceiling limit we are talking about? Lets I am going to explain it you know slowly so that everybody understands this. See now I am giving an example let us say employee A whose earning is let us say 21,000 because that is the eligibility per month.

This person is earning 21,000 rupees per month. Let us say I am we are talking about a financial year, what is a financial year? Financial year is nothing but April to March of the subsequent year correct, April of this year and March of the subsequent year. So now let us say this particular employee A is earning 21,000 now, 12 months let us say 1,2,12 months, what is this actual learning let us say 21,000 right.

So, let us say 21,000 every month so what is the total earning? Which is total 42 + 2 lakhs 10,000 + so 2,52,000 this is now this amount is not considered for paying 8.33%. Whereas this bonus octopus also says there is ceiling limit every month for calculating the earning. Now let us say the ceiling limit is 7,000 rupees whichever is higher we will discuss about it now. Now so every month this person earning is so for every 12 let us say 12 months right.

So, every month 7000 is the ceiling they will consider though this person's salary earning is actual earning, we are only talking about actual earning it is not about the salary it is about actual earning. Why, what is the difference between salary and actual earning, salary vs. actual earning? Salary is something fixed, actual earning is the person who is actually worked for certain years through the certain months in a certain day in a month that they earn right.

So let us say somebody's salary is 21,000 per month may not you know somebody has absent for

a few days then he or she might be earning 20,000 that particular month. So, there is only

considering the actual earning of the employee. Now the ceiling limit says the maximum amount

to be considered every month for calculation of the bonus is 7,000 rupees. Now 7,000 rupees in

the sense what does it mean?

The maximum earnings considered for payment of the bonuses is 84,000 rupees per year. So, on

this 84,000, 8.33% is the one which is being paid as bonus this is the minimum. Let us say if it is

10% is what it is decided so the bonus of this 10% of this 84,000 is 8,400 rupees is the bonus to

be paid to the workers. If it is minimum, then it is only 84,000 of this 8.33% will be paid as the

minimum bonus.

Now this is how the bonus will be calculated even though person will be earning more than

maybe 21,000 or 15,000 the ceiling maximum ceiling will be considered for calculation of the

bonus and the payment of the bonuses 7,000 rupees for every month. So, this is very clear so for

12 months it is 84,000 if the after minimum 8.33 % of 84,000 it will be paid as a minimum

bonus.

Let us say if you know a company decides to pay 20% then what is that it is 16,800 rupees is the

maximum bonus an employee can earn, this is a maximum bonus, maximum amount. Fine, so

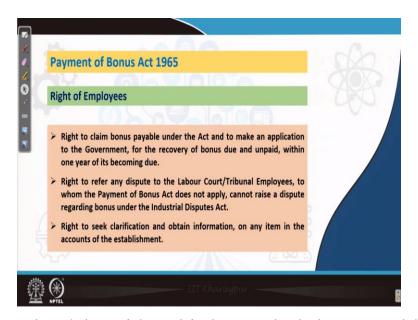
the maximum amount can be earned as a bonus is 16,800 rupees. So, this is how bonus is being

calculated. So, as we already learnt minimum and maximum and we, also learnt about how the

bonus has been calculated. Now, right of an employee

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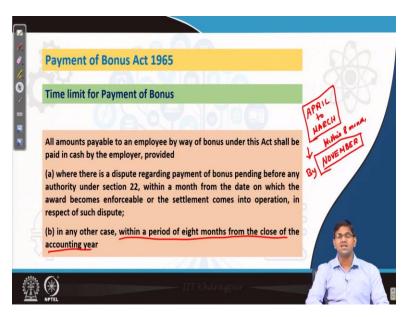


Now, right of an employee's has a right to claim bonus under the bonus act and they can make an application to the government for the appropriate authority. Meaning we are talking about you know inspector appointed under this act for claiming the bonus or recovery of the bonus which if in case it is not paid to the workers. And they can also refer this to any dispute to labor court or labor tribunals to whom the payment of bonus does not apply cannot rise.

For example, the payment of bonus is not applicable to your industry for example as I said know nonprofit making companies or you are working in LIC yes you are not eligible this is not applicable then you cannot claim bonus. Or you cannot even rise as a dispute to the labor court claiming for a bonus. Or maybe if you are having a contract that yes, we are not going to have a bonus, then that is excluded you cannot claim for a bonus.

And you are also having a right to see clarification, obtain information about any item with respect to accounts of an establishment.

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You can ask information about the payment of bonus related information's and time limit for the payment of the bonus. What is the time limiting the bonus to be paid? So, in case let us say there are 2 instances one is about first way instance we will talk about in generally when a factory will pay bonus? I will discuss this first and then I will come back to the first point. See this will be paid within the period of 8 months after the financial year is end. So, what is the financial year as I said April to March, right?

So, when the financial year is ended within 8 months so how many if we look at from March it is within November, by November bonus should be paid. Now generally what is the practice in industry what we are seeing is we always you know bonus paid during Diwali people some reasons they say during Diwali some reason they say during pooja, some places they say during Ramzan, during Christmas so all this all been we have been hearing, right.

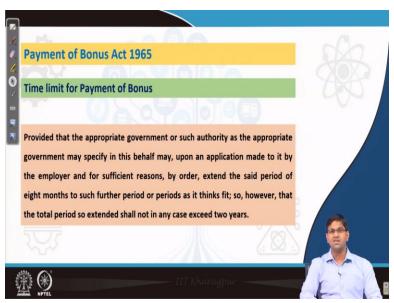
It is not the festival bonus as per the bonus act you have to pay the bonus in a within 6 - 8 months from the closure of the financial year. So, the worker who worked in this particular period and who is eligible or you know legally bounded bonus amount should be paid within November it cannot be paid beyond this time. So, the worker has to be paid with the bonus within this amount.

Now come back to the first point, see if there is any dispute regarding the bonus pending before you know labour court or any authority, so let us say if it has been decided that you know the

award meaning the dispute has been resolved within you know one month now within a month it has to be paid or otherwise the date which are mentioned on the award or the decision within that the bonus has to be paid.

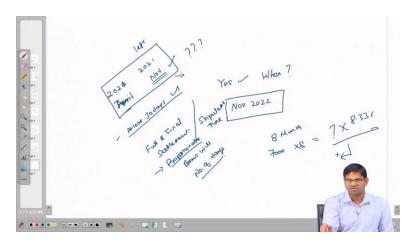
But otherwise in general within this 8 month after the closure of the financial year the payment as bonus payment of bonus to be; paid to the workers. How does it to be paid? It is now as I said know all become bank transfer the worker has to be paid through a bank transfer it can be either paid along with their regular salary or maybe as an independent payment also to be paid.

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So, as I said the time limit as if we already discussed the time limit which are 8 months. Maybe if this can be relaxed provided the appropriate government authority provides may specify or extend that set period otherwise it has to be paid within the next 8 months from the closure of the financial year. Now I will also want to discuss about one of the important aspects in the payment of bonus is that let us say a worker is working in an establishment.

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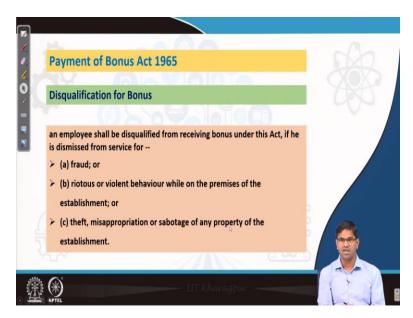
And let us say you are working from the year 2020 from January and you have been working till let us say 2021, let me put it this way. You joined in 2021 April and you left in November 2021. Now comes the question, so I left during November my bonuses I of course I worked for at least 30 days, yes. I am qualified; I am eligible to receive bonus right. Now in this case what should be done?

Should he or she should be paid a bonus or not, yes first question is yes, he or she is having to be paid bonus now comes when? What my access? Access bonus has to be paid within 8 months after the completion of the financial year. Now this person is left in the month of November 2021. Now when is the you know as per the stipulation it comes November 2022, this is just an example I am giving so this is the you know stipulated time to pay the bonus.

So, factory or establishment or any employee establishment can pay the bonus of this particular employee who left the company in November 2021 can be paid by November 2022. There are 2 ways one is about when they leave during the full and final settlement whatever they due to them will be paid along with the full and final benefit proportionate bonus will be paid. Proportional bonus I am talking about number of days this particular employee worked, against the actual earning.

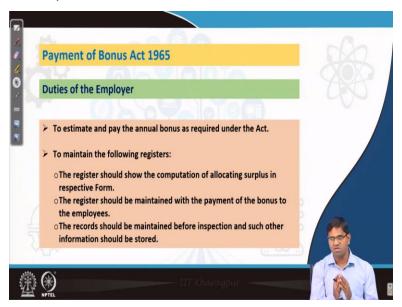
Let us say the person has worked for April, May, June, July, August, September, October, November the 8months earnings. So, let us as I said let us say 7,000 into 8 that X amount into 8.33% will be paid as a bonus to this particular worker. That is how the payment of bonus happens in the industry.

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Now a disqualification of bonus can an employee be disqualified for bonus, yes. The person the employee who was working in a factory can be disqualified to receive bonus in case if the person has been dismissed for the factor of in fraud or any violent behavior in the premises or involved in theft or misappropriation of money or sabotage of any property, yes, they can be disqualified in receiving the salary.

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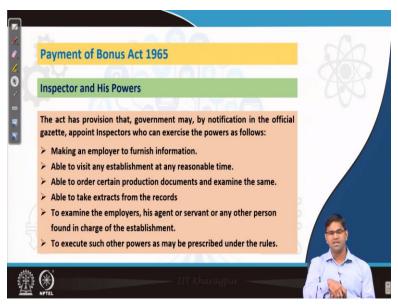


And now, comes' the duties of the employer. The employer has to estimate and pay the annual bonus as required by the act. Meaning that he has to calculate properly the actual earning of the employee based on number of days they worked and then they have to pay the workers and to

maintain the following register, what are the registers? They have to show the competition of allocating the surplus in respect of farm.

And they should be maintained the payment of bonus to be made and maybe the register to get the signature from the worker. How much has been paid each worker? What; are the actual earnings for the year all that has to be maintained so that the inspections can be made.

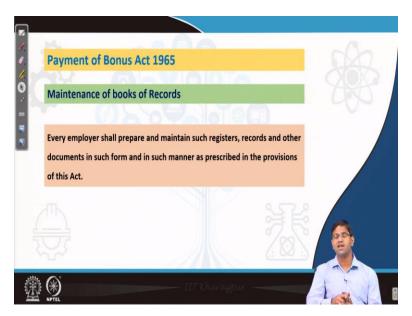
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And now comes the role of an inspector and his powers so inspectors have you know it can be appointed by the official through official gazette notifications. And they can actually exercise the power to you know make an employee to furnish the information, talk about how much you are bonus you are paying, how many employees are eligible to receive bonus? That information has to be provided and the inspector can visit any establishment ay any reasonable time.

He can order as a product of any documents with respect to the bonus payment and take the extracts of the records they can take copies or even seize the records for the examination purpose and whatever other power which are entrusted on this inspector.

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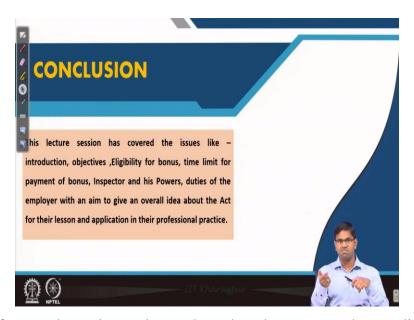


And maintenance of book of records, yes, every employer shall prepare and maintenance such registers the records which are required part of this act. Because it is important that you know the responsibility of the employer is that, yes you are actually identifying whoever is eligible for bonus. And those employees are being properly calculated and they have been paid with the bonus amount. That is how it is important these register records have to be maintained.

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These are the references but today we learnt about these bonus acts, who are eligible in terms of establishment in terms of the workers and what is the minimum and maximum bonus? How the bonus is being calculated, what is the ceiling limit we learnt about 7,000 being a ceiling limit the least being 8.33% and maximum being 20% and when the bonus will be paid. Within what time the bonus has to be paid and incase an employee is leaving how the bonus can be paid, what is the general practices all this we discussed today. Thank you and we will meet you in the next lecture on the equal remuneration act. Thank you.

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Module No- 06: : Legislation on Wages Lecture No # 30 Equal Remuneration Act

Welcome to lecture 30 this is the last lecture of this module 6 and on previous lecture we discussed about payment of bonus act. And then the last legislation on wages which is going to be equal remuneration Act, which is one of the important legislation and landmark legislations with respect to ensuring that yes, both men and women will be paid for similar wages.

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BUSINESS LAW FOR MANAGERS

Introduction

An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

Today we are going to discuss about this equal remuneration act and this act provide for an employer payment of equal remuneration for men and women workers. And the prevention of any discrimination on the basis of sex against women in matter of employment or matters connected therewith. This act was essentially trying to ensure that. Yes, both men and women who are carrying out a similar work or were engaged in a similar work have to be paid an equal remuneration.

We have been historically seen that there are discrimination between men and women in the fixation of salary or a payment of wages. Where we say no similar work being carried out male being paid higher than the women this act come into picture to ensure that there is no

discrimination of payment of wages with respect to gender. Whether the male and female no categorization to be made if they are performing a similar job.

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KEY POINTS

- > Backgrounds
- > Important definitions
- > Salient features
- > No discrimination
- > Advisory Committee
- > Duty of the Employer

So what are we going to discuss? We are going to discuss about the background of this particular legislations. Some important definition we also see the salient feature of this particular legislations. We are also seeing what does it talking about no discrimination and advisory committee and duty of the employer and also the responsibility of the inspector with respect to this legislation.

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The Equal Remuneration Act 1976

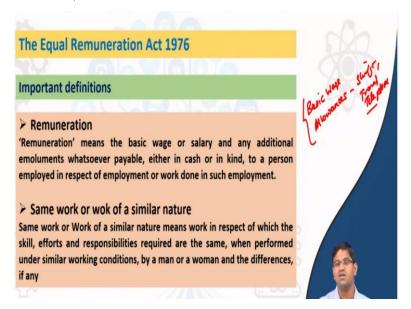
Background

The chief motive of the Equal Remuneration Act 1976 is to provide for payment of remuneration to men and women on a uniform basis. In order to avoid discrimination against women and to treat the women in a fair and just manner, this act is brought into force

The main motive of this particular legislations or the objective of this particular legislation the equal remuneration act is to provide payment of remuneration. The remuneration we are referring to the overall remuneration, it concludes all wages basic wage any other allowances to men and women on a uniform basis. So, there should be no discrimination in terms of fixing of the wages.

What we see is that? You know sometimes the factory or a company used to make the differences; they may be paying the basic wage. But maybe they will add additional allowances to men and women in a different rate. So, this act is trying to eliminate those differences and ensure that yes, both of them are paid uniformly. And it is primarily to avoid discrimination against women to treat women in a fair and just manner that they also earn equally to men.

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What is the remuneration which has been defined under this Act? Remuneration means it includes basic wage salary and also any additional emoluments whatsoever is payable either maybe in a cash or in kind to a person employed in a particular establishment. So, this remuneration includes as I said, basic wage and allowances whatever may be the allowances. It can be a shift allowance or it can be you know, travel allowance, telephone allowance, whatever your other allowances, we are talking about.

All the elements are also considered a part of remuneration if you are employed in a particular industry if you are qualified to receive this that also amounted as remuneration. Now comes say work or work offers similar and this is also one of the important term which as defined here, what is this concept of same work or work of a similar nature? Which means the work in respect of which a skill effort and responsibilities are same when performed under similar working condition by a man or a woman.

So, this talks about a similar work or work or same work of a similar nature or same work what does it mean it is talking about any work which required a same skill set effort and responds and also when performance similar working conditions. If that; is the case that will be qualified as a same work or a work of a similar nature. If you understand the same workers, maybe for example, manager and manager came the designation looks same.

But there may be somebody working here as a sales manager somebody is working as a production manager that the now the nature of work is different. So where, I cannot consider as a same work or work of a similar nature, where I can qualify? Let us say sales manager one and sales manager two. So, both requires a similar skill similar responsibility and the similar working conditions then it is qualified as a similar work the comparison has to be a similar work in nature.

So, when there is a similar work on the same work they both of them have to be paid at the same remuneration.

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The Equal Remuneration Act 1976

Important definitions

Worker

Worker' means a worker in any establishment or employment in respect of which this Act has come into force.

Man and Woman

"man" and "woman" mean the male and female human beings, respectively, of any age;

And worker who is the worker under this legislation which means any worker means worker was in any establishment employment. The respect to this actor know anybody who is working in the particular establishment are called as a producer, worker. And man and woman which; are directly which is referring to male and female human beings, that is what we are referring to men and women.

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No discrimination

On and from the commencement of this Act, no employer shall, while

making recruitment for the same work or work of a similar nature, make

any discrimination against women except where the employment of women

in such work is prohibited or restricted by or under any law for the time

being in force

And now, no discriminate what is this concept of no discriminate? From this commencement

or the implementation of that no employer shall while making recruitment. When I was hiring

somebody for same work or a work of a similar nature, make any discrimination against

women except where the employment of women in such work is prohibited? Now, what is it

talking about?

I cannot discount hiring a woman for a particular employment on the basis of their gender,

but it is allowed if the particular work is restricted. Example when we were learning about

the factories that we said that yes, women are not allowed to work on a dangerous machines

right. Or maybe on a heavy work load or maybe weightlifting activities, there are activities

which are women are restricted or maybe the cotton openers.

We will discuss about those activities, this Act itself was done and then restricts women

being employed in those activities. Then, in this case, if a factory hires only male only man

for his employment, then that cannot qualify as discrimination. Unless otherwise for any

other employment, there should not be no discrimination in hiring or recruiting a women

worker find the particular role.

So, if a factory or if a company purposefully engages are not providing an opportunity to

hiring a woman, then that qualifies as exclusion in describe the discrimination that will be

qualified as a discrimination practice and discriminatory practice by the organization.

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Salient features

- The Act doesn't make a distinction like employment or the period of employment and applies to all workers even if engaged only for a day or few days.
- No overriding effect is given to any agreement, settlement or contract to the provisions of the Equal Remuneration Act.
- Any settlement or any agreement with the employee that is detrimental to the employee isn't allowed.
- > The Ministry of Labour and The Central Advisory Committee are responsible for enforcing this Act.

Now, what are the salient features? These are does not make any distinction like employment or a period of employment applies to all workers even if they are engaged only for a day or a few days. So, there does not make any distinction between the employees whether it is person is employed for one day or a few days or a month. So, it does not look and it no overriding effect is given to any agreement or settlement or contract to any provision of equal denomination act.

Any settlement or agreement with the employee that is detrimental to the employee is not allowed. And you know, Ministry of Labour and central advisory committee are responsible for enforcing this act.

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The Equal Remuneration Act 1976

Salient features

- The equality of work is not based solely on the designation or the nature of work but also on factors like qualifications, responsibilities, reliabilities, experience, confidentiality, functional need and requirements commensurate with the position in the hierarchy are equally relevant.
- When the employer doesn't comply with the provisions of the act, he will be liable to pay fine, imprisonment, or both.

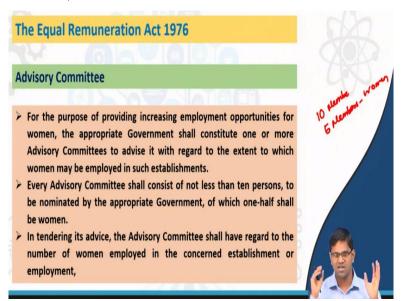
At equality of the workers not based solely on; the designation or nature of the work. But also factors like qualification responsibilities, reliability is experience confidentially functional

need requirements, everything has been considered it is not about the quality of work we say this by the designation purely not goes with the designation alone. You know it also includes the qualifications required responsibilities requires experience required all this will also be considered the quality work.

When an employer does not comply with the provision at that they will be liable to pay fine imprisonment or both. So meaning that yes the same work or the definition of some work or the work of a similar nature has to be strictly implemented meaning that no discrimination to be you know made between men and men women. Provided there are distinguished differences on the requirement or the qualification or designations.

Then there can be different payment can be made otherwise of them have be equally treated. And also know if there is strictly prohibited for hiring women for a particular set of processes then yes, they are allowed to hire only a male employee.

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Now comes; the advisory committee what is this advisory committee for the purpose of providing an increasing employment opportunity. When women the appropriate government can constitute one or more advisory committee to advice with regard to the extent to which the woman can be employed in such establishment. So as per this legislation, the appropriate government this central government can form lead or form one or more advisory committees to advise them.

How do we even know encourage and improve employment of women in many establishments? Now, we see you know, gender diversity is being highly discussed topic,

promote gender diversity, and in a woman been encouraged to work in every industry. So it is a responsibility of the appropriate government to identify let us say some industries which are having very less women participation.

They have to set up a committee to see how they can actually promote and encourage women being employed in such industries. Every such committee when they form such committee, that such committee shall not be less than 10 person to be nominated by to the by the appropriate government on this one half shall be women. Let us say a committee has been formed with the 10 members out of this 10 members, at least 5 members should be women.

Then, intending is advised advisory committee shall have to regard the number of women employed in concern establishment or the employment. So, now we have to consider the number of women being employed in the particular industry.

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The Equal Remuneration Act 1976

Advisory Committee

- The Advisory Committee shall regulate its own procedure.
- The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations,

The advisory committee shall also regulate this one procedure. For example the way to; conduct the procedures or maybe want to examine. Why women participation or under participation for a moment on the particular establishments or industry sector. So, they can actually make their own procedures to conduct their own day to day activities or how do they approach these things.

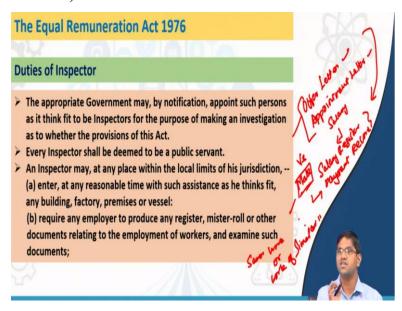
So, the appropriate May after considering the advisor and that by the advisory committee, after giving it to a person concerned with the establishment and employment opportunity to make the presentation. So, appropriate government can also consider the advices by the advisory committee. And then propose this to the concern industrial establishments are you

know, group of industrial establishments to implement those suggestions coming from the advisory Committee.

Which; are essentially trying to promote more women participation in those under represented industries. So now we will look at know, maybe I can give an example, in a manufacturing activity, if you would have happened to see a few decades ago, or maybe one or two decades ago, where you would see primarily largely male being employed. Now, if you look at the proportion or percentage of the women participation is ever increasing.

Now, you will be surprised to see the larger manufacturing organizations now have more number of women workers working in a manufacturing plant outnumbering the male counterparts. So, that is the kind of change which has been happening, these are some of the efforts which are resultant of this kind of legislation, which promotes and encourages women participations. By way of ensuring their safety and providing others supports activities so that women is encouraged and allowed to work in those industries or under represented.

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Now, we also are going to discuss about the duties of the inspector. So appropriate government by notification has to can apply and think fit to be an inspector for the purpose of making investigations as to whether this provision of the act has been implemented or not. Every inspector can be shall be deemed fit as a public servant and inspector at any place within the limits of his jurisdictions.

So, when we are talking about jurisdictions, it is a geographical jurisdiction. So, the inspector will be appointed on a geographical basis. Within this jurisdiction, he can enter at any

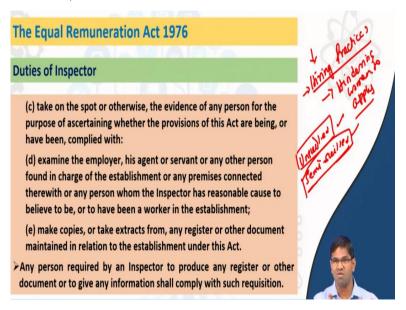
reasonable time with the assistance as he thinks fit, you know, building a factory premises or vessel. So and they can actually ask the employer to produce any register or a muster roll or any other documents relating to the employment of the workers.

So, when we talk about why this also as an effort to see how many women employees are working? And also see there, you know wage records the employment records for example the inspector can examine the offer letter or appointment letter. Why this is important, they will see what is the salary being fixed for the woman workers? Now, they can also verify their salary registered and payment records why this is important?

To verify whatever fixed is same and similarly, they will also compare male counterpart who been provided a similar job and their salary history and payment record to see there is no discrimination on the payment of wages with respect to male and female. As we say, you know same work or similar work, work of similar nature that is asked to be verified. So, the practice inspector can see the proportion of the participation will remain on.

Also see verify all these records to ensure that, yes, the factory practices and no discrimination practice has been existing in terms of employment also.

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Wherein you know way there are instances where we have seen that no certain, applying no in the end the hiring practice itself. The factors inspector can also see the hiring practices. Are there any practices which are hindering women to apply for the position? So what if they are not even applying it? So, how do you talk about the discrimination? So, the factors inspector

can also examine the hiring practices as it actually hindering the woman in applying for a

position.

So, they can also learn spot otherwise evidence of any person for the purpose of you know,

ascertaining whether the provision of tracks being implemented, no discrimination exists.

And they can also examine the employer is agent or servant. For example, they are engaging

in contract agencies, the inspector can examine the contract agencies register their

appointment letter, their way of hiring people.

What is the process of hiring is women are being offered in different subcategories and the

inspector can also take copies take extracts or any register or other documents in relation to

the implement as you have with us act. For example, I have visited many factories where and

we were talking about in the minimum wages where we talked about unskilled semi-skilled

all categories.

So, there were instances of discrimination which are observed that know many women are

hired as an unskilled worker rather, but a women and male workers are hired as a semi-

skilled worker. There are a prima facie to see that yes, is there a discrimination based on the

gender. So, when we have investigated this pattern, then we are able to find yes work of a

similar nature and same work has been performed, but women are hired as an unskilled

worker.

And whereas the male counterpart has been hired as a semi- skilled worker meaning that they

are paid in a higher level or this is also ground for discriminations. So, the inspector can

investigate and take the records to verify whether this qualified to the term of work of similar

nature on the same work then if there is discrimination. Then the particular establishment can

be sued on the discriminatory practices.

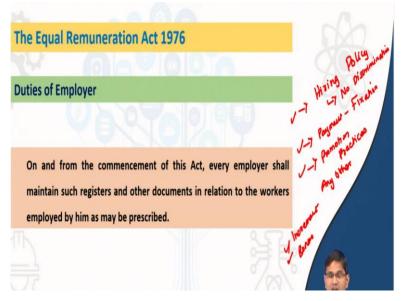
So, any person required by an inspector to produce any register or other document shall have

to comply with that requisition and has to produce whatever the document are requested by

the inspector.

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And now comes the duties of them and what is the duty of an employer? See it is employer's duty that yes, shall maintain all register and other document with respect to employment of the worker. So, what are the documents? So let us talk about right from hiring, what are your hiring policy? Specifically on discuss you know discrimination policy with respect to you know, diversity you have as women and men and also payment we will salary fixation then also about promotion practices.

Any other all this has to be clearly documented policy has to be maintained register has to be maintained. So that they; are complying with the requirement of the equal remuneration practices. There is no discrimination on the hiring policy on the payment or on the promotion practices or increments we are talking about are on a bonus payment, all this we have to ensure that.

Yes, all these documents are registered and maintained by the employer so that they are ensuring that they are complying with this legislation, they are not making any discrimination between male and female employee.

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Power of appropriate government to appoint authorities

1. The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer, as it thinks fit to be the

authorities for the purpose of hearing and deciding on

(a) complaints with regard to the contravention of any provision of this

(b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature,

2. Every complaint or claim referred to that shall be made in such manner

as may be prescribed

And the power of the appropriate government to appoint authorities the appropriate

government through a notification appoint officers, not below the rank of a labour officer.

You know, to purpose of hearing and deciding on what the complaints with regard to

contravention of any provisions. Let us say that any complaint come from the section of the

society or maybe the labour union or maybe from an NGO.

That yes, this particular factory or establishments are engaging in discriminatory practices or

maybe paying a different salary, then they can actually appoint a special officer who can

actually decide on the complaints made with respect to these activities, and are claiming

claim arising out of non payment of weigh at equal rates to both men and women. These

officer appointed by the appropriate government can investigate and you know look at it.

And you know, whatever been the claim or the complaints been raised, this officers can make

such you know, proper investigations in a manner which are prescribed to them.

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Power of appropriate government to appoint authorities

3. If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority

appointed.

4. Where a complaint or claim is made to the authority appointed it may, after giving the applicant and the employer an opportunity of being

heard, and after such inquiry as it may consider necessary.

5. Every authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for

the purpose of taking evidence and of enforcing the attendance of

witnesses and compelling the production of documents.

And if any question arises whether two or more works are of the same nature or similar

workflow shall be decided by the authority appointed. So, that can be a question on whether

can we call it as a similar work of nature or the same work that can be clarified by the you

know appointed authority. That he or she can actually go visit understand the job description,

what are the skill requirements? What are the qualification requirements? What are the

experiences required?

And is it can be qualified as are classified as a same worker or work of similar nature or they

are both different that way there is any questions to be clarified. Yes, the appointment

authority can do that. And where a complaint or a claim is made to the authority appointed,

after giving an applicant and employer an opportunity for both parties has to be given and

heard with the perspectives. Let us say somebody says there is a discriminatory practice, then

the appointed authority has to hear both the parties before he or she makes a decision about it.

So, both of what they have to be heard and then all the document has to be verified. And

every authority appointed under this section has the powers of a civil court. Civil for the

purpose of taking evidence; enforcing the attendance of the witness reaching or taking the

evidences and witness being heard to ensure that yes. There is a fire practice being followed

to hearing both parties.

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Power of appropriate government to appoint authorities

- 6. Any employer or worker aggrieved by any order made by an authority appointed, on a complaint or claim may, within thirty days from the date of the order, prefer an appeal to such authority as the appropriate Government may, by notification, specify in this behalf.
- 7. The authority referred to, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified, allow the appeal to be preferred within a further period of thirty days but not thereafter

Then any worker or employer agreed by an order authority appointed within 30 days of the date of the order up in to such authority to you know make notification on this behalf. So, they can be going for it and I know appeal and if the authority referred to and if it is satisfied. The appeal was prevented by the sufficient cause from preferring then appeal within the period of spread allow, special appeal to be prepared within the next 30 days but not thereafter.

So there is no appointed authority is not given a proper in whether or not a proper diet. And if you are not happy with the outcome, then you can actually go for an appeal within the next 30 days of it.

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CONCLUSION

In this lecture session, discussion has been made on the backgrounds of equal remuneration act, important definitions, salient features, no discrimination, advisory committee, duty o the employer. Learning on all of these will be very good lesson to all learners

These are the references and this legislation is one of the legislation which are very important for promoting the women participation in the underrepresented industries. And also it tries to ensure that yes both men and women who are engaged in the same work or work of a similar nature are paid the equal remuneration. In respect of all practice and are also hiring there is no discrimination on the gender basis.

Which is actually one of the very progressive legislation which promotes more gender diversity ensures women participation in the underrepresented industries. And with this, we are completing this module 6, we discussed on some of the key important legislation on the wages. We will be discussing on the other aspects of religious legislations from module 7 thank you.

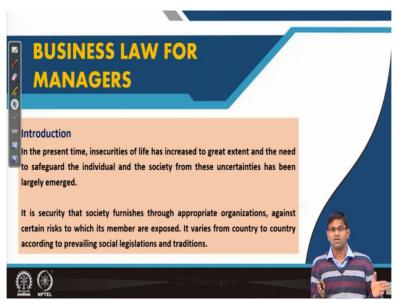
Business Law for Managers Prof. S. Srinivasan Vinod Gupta School of Management Indian Institute of Technology, Kharagpur

Module – 7: Social Securities Lecture - 31 Social Securities

Welcome to lecture 31, week 7 and module 7. In the previous modules, we were discussing on various legislation on wages, which are primarily coming under the code on wages, which are going to be implemented sooner by the Government of India. And this module, we are going to discuss about social securities. We are going to discuss about various legislations which are covering on social securities of employees working in various organised and unorganised sector.

And this, if you look at the various legislation we are going to discuss during this module, which are primarily and essentially coming under the code on social securities, so, today the first lecture, we are going to discuss about and understand the concept of social securities and what are the various legislation which are governed under these social security legislations. Then, going forward in the rest of this module, we will be independently discussing on each of the legislations. And let us get into the lecture.

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Why we are concerned about social security? Why employees in an organisation are concerned about social security? In a present time, everybody is really worried about

insecurities of life and especially the last few years or maybe the few decades, we are seeing that the insecurities are ever increasing that to need to safeguard individual and societies from these uncertainties has been largely emerged.

So, it is this social security that been ensured through various organisations or through legislations, which are going to protect the interest of the people against certain risk which the members of the society or the members of the working class are exposed to.

If you look at the social security's legislations or the social security benefits which we are going to discuss, which varies essentially from country to country according to the prevailing social legislations and the traditions and also based on the country's economic viability or the larger classification of developed nations and developing nations and underdeveloped countries are those countries are primarily differ with respect to their kind of a social security benefits they offer to their citizens, also to their working classes.

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So, now, what are we going to discuss in this lecture? So, we are going to discuss to understand the backgrounds of social security legislations and we will try to get a more clarity on the concept and definitions of social securities. We will also learn about elements and features of social securities, social securities in unorganised and organised sector.

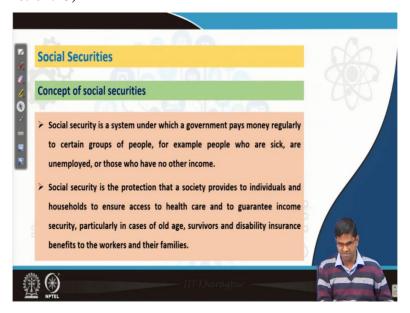
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So, now, let us develop more understanding on these social securities. International Labour Organisation which we always refer to ILO, in different conventions have been giving new emphasize on social security aspect and subsequently since India is one of the signees and sign the conventions or a treaty of ILOs, we have subsequently now added various laws and also amended the existing legislation in order to be in alignment with what ILOs are stating on the social security benefits to be provided to the larger working forces.

So, ILO has suggested various methods of organising, establishing and financing various social security schemes. So, social security schemes, as I was stated, is different in developed, underdeveloped and developing countries. In underdeveloped countries, we would find very few social security schemes with having very low level of benefits.

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So, now, the concept of social securities: Why we are discussing about the social securities? The social security is a system under which a government essentially tries to pay money regularly to certain groups of people. For example, people who are sick, people who are unemployed or those who have no other income. So, the concept of social securities, we are trying to learn from a larger concept, then we will be narrowing down to the especially in an organisational context, what are the social security legislation which are governing the employees or working class in an organisational setup?

Now, we are trying to understand from a larger perspective. What is the social securities? As we are saying, this is a kind of a system where every government does develop to secure people who are vulnerable, who are exposed to different uncertainties such as people who are sick and who are an unemployed. We are talking about certain unemployment allowances; there are several schemes which are existing in various states to secure the people who are unemployed.

So, then, we are also talking about people who do not have any other income facilities. So, how these people are to be covered? So, these people are supported through some of the social security schemes. So, now, we are talking about; yes, these are the people who are covered under social security schemes, but what is the social securities about? The social security is providing a protection that society provides to individuals and households to ensure that yes, they have a better access or ability to access the health care because they are not deprived of access into the health care because they do not have an employment, they have uncertainties.

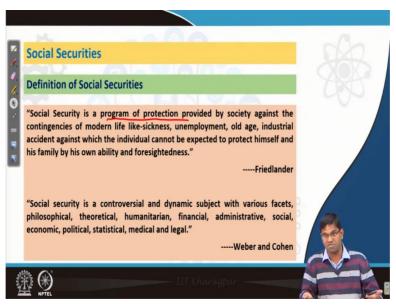
Suddenly if they met with an accident, that person, the mere, core earning member of the family become disabled or deceased because of an accident, what will happen to the family? So, how does the family will have an access to what they were earlier had to the health care? So, the social security legislations are the schemes which are essentially trying to develop or create a protection to those vulnerable or people who are exposing to the uncertainties; everybody in this case are covered.

To ensure they have an access to health care and to guarantee the income security and also particularly in case of an old age or a survivor or a disability insurance benefit to the workers and their families; that is what the social securities aimed at. It is essentially trying to create a

protection and also ensure that yes, even if you are exposed to a certain vulnerable situations or uncertain situations, there are schemes which are going to protect you to have a better healthcare and secured basic income that you do not need to suffer when you lose your income.

Or any member in a family is deceased, what will happen to the family? So, the social security protection schemes are essentially going to help the families to access the health care and also to have a decent life.

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Now, so, we will also understand the definition of the social securities. Social security is a programme of protection. As I was repeatedly bringing on this concept, yes, it is about a protection provided by society. The society we are talking about in this place, we are referring to the institutions; institution, we are talking about the government as an institution against the contingencies of a modern life like sickness, unemployment, old age, industrial accident against which the individual cannot be expected to protect himself and his family by his own ability and farsightedness.

So, the social security is kind of a programme of protection that has been enabled, facilitated by the institution, primarily a government institution, government as an institution, to see that people who are of old age or met with an accident or having an employment accident or workplace accidents, how do they manage to protect himself and also his family? So, that is what the social protection is primarily talking about.

Social security is also, if you look at, it is more of a debated concept, where it cuts across various facets, its philosophical, theoretical, humanitarian, financial, administrative, socioeconomic, political perspective. It has various way facets it has. And these are largely to understand the social security.

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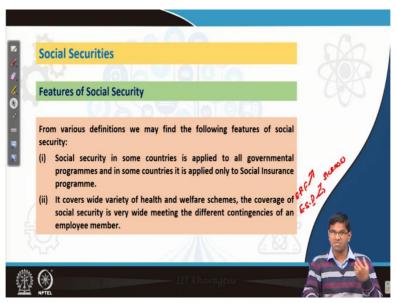
Now, let us spend time to understand the elements of social security. ILO and its experts have put in lot of joint efforts from the Government of India for introducing important elements of social security, like creating health insurance schemes. If you look at some of the health insurance scheme for especially to the working people, which is Employees' State Insurance where we used to call it as ESI.

And also, in absence of ESI, those other establishments which are providing group insurances and also revision of Workmen's Compensation Act. As a facility, as an organisation, as an industrial establishment, every industrial establishment pays a premium towards the Workmen's Compensation Act. Under this Workmen's Compensation Act, in case any of the employees working in the particular organisation become, because of the workplace accidents become partially disabled or permanently disabled or deceased, those employees are provided with a monetary support to his family and his dependents through this Workmen's Compensation Act.

And also, there are Central Law of Maternity Benefits. There are 2 ways to look at. One is about through ESI, Employees' State Insurance. There are Maternity Benefits provided to the employees who are registered under this ESI and contributing. And another is about larger

open public access to the Maternity Benefits which is offered from the Union Government as the state has a responsibility to ensure that yes, there are Maternity Benefit Schemes which are ensuring to provide minimum financial support and also the access to health care support under this Maternity Benefit, and also extension of these schemes to the other classes of workers. So, these are the elements of some of the social securities.

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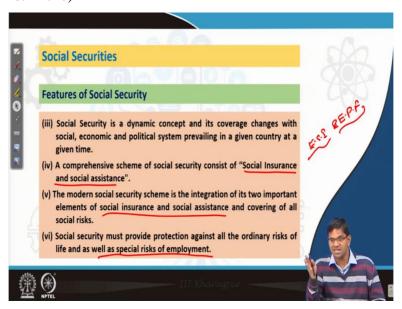
And now, we will understand the feature of social security. So, now, we have looked at various definitions. All these definitions are primarily talking about protection or a programme or a system that has been facilitated by the government as an institution. So, what does it actually talking about? Social security, in some countries is applied to all governmental programmes; in some countries, it is applied only to social insurance programme.

So, for example, life insurance programmes; if you all recollect that yes, our country also has Pradhan Mantri life insurance scheme, accidental insurance scheme, which are covering all citizens of this country. And also, it covers wide variety of health and welfare schemes. The coverage of social security is very wide meeting the different contingency of an employee, a member.

So, for example, when we are talking about ESI, Employees' State Insurance covers about sickness; it also covers about when an earning member dies, there is financial security provided to his family. Similarly, Provident Fund, EPF, we call it Employees' Provident Fund; this also provides the securing their financial aspect of an; in case an earning member

during his retirement or if during the service if he or she has died, and its dependent members will be provided with a financial support to ensure that yes, the family do not get into a distress of economic loss. So, that is how the social security tries to secure the working member employee as well as its dependents and family members in an untoward or uncertain situations.

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And social security is also a dynamic concept. Coverage changes with social, economic and political system prevailing in a given country. So, based on each of the country, as political, socio-economic, political situations, the social security legislation changes. If you look at the western countries, they have much larger social security schemes in comparison to the countries, with the developed countries.

For example, take as an example United States of America vis-a-vis the India. If you look at the unemployment programmes and the social security schemes for the elderly people who are retired or superannuated, it is really large compared to the kind of a social security programme we have as a country. It varies; as I said, it depends on the socio-economic, political perspective of those nations.

But India also have a wide variety of social security schemes, trying to protect the larger sections of the society. A comprehensive scheme of social security consists of social insurance and social assistance. The primarily, a social security is focusing on 2 major aspects. One is about social insurance and another about social assistance. The modern social

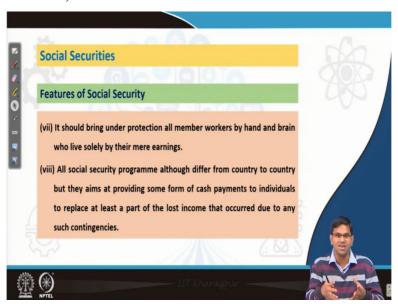
security scheme is integration of its 2 important elements as we are talking about; yes, social insurance and social assistance, covering of all social risks.

So, for example, comprehensively if you look at, we know, in an organisational context ESI and EPF is sum of these two aspects which are covering about social insurance as well as the social assistance schemes, which one is looking at the economical perspective, one is about looking at the access to the health care, because these two are absolutely important aspect when you wanted to protect the citizens or the employee of an organisation.

So, social security must provide protection against all ordinary risk of life as well as the special risk of employment. So, why the social security benefits or a social security legislation we are talking about? Because we know that life is very uncertain and anything can happen to anyone at any point in time.

Given the perspective when you are employed in an organisation, it has become a responsibility if an employer also at the state to facilitate, to ensure that yes, you are coming up with a social security scheme which have both social insurance and social assistance in place where employer and employee contribute together to secure the employees towards these uncertainties or any risk which they can encounter owing to the other possibilities we are talking about.

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Then, it should also bring under protection all members workers by hand and brain who will live solely by their mere earnings. Then, also social security programme differ; as we said

already, differ from country to country, but the aims to providing some form of cash payments to individuals to replace the least part of the lost income at least some part of the lost income that occur due to any such contingencies.

So, the social security schemes are essentially, as we said, trying to secure you economically, so that you do not have to face the hardship of how do you manage the routines or a day to day life to meeting your needs. If you are losing your job or if you have met with an accident, you are not able to perform the work you were earlier doing, that is how the social insurance scheme is going to cover and protect these employees.

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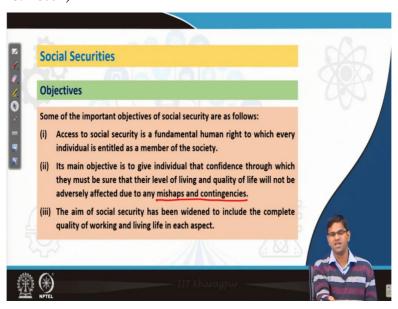


And it also provides financial help in terms of contingencies such as unemployment, unemployment allowances, Maternity Benefits during the maternity period. So, post the delivery, there are a few months, 26 weeks been covered under ESI with a full payment. And in case of a miscarriage, it gives 6 weeks of Maternity Benefit, which means ESI, Employees' State Insurance will be paying the workers for the 6-weeks period.

So, these are just an example I am talking about. It provides a financial help during the work injury and also in disease or old age or a widowhood or orphanhood, etcetera. Under social security, the members of a particular category are offered a safeguard and benefits such as medical, financial and to injured and financial aid to widows, orphans and educational assistance in form of scholarships and free ships to the needy students.

So, as we are talking about Employees' State Insurance, which also, it provides health access to all family members. And also, in case the working member lost his life, it also tries to protect the, secure the other dependent members in the family. As in case with the EPF is also, it provides the benefit to its dependents and also post retirement it also provides financial support to the working member.

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Now, what are the objectives of this social security? See, it provides; the major objective is, it provides access to social securities of fundamental human right to which every individual is entitled as a member of the society. And know, it becomes one of the fundamental rights, yes, social security scheme should be provided in a way; when we are talking about a larger sense, yes, if the unemployment allowances, who do not have regular income, how they will be living in a society?

The social security schemes have to come up with some support. That is why it has been treated as one of the fundamental right, human right. And its main objective is to give individual that confidence that yes, they must be sure that their level of living or a quality of life will not be adversely affected due to any mishaps or contingencies. So, if we look at, yes, the social security schemes which is going to build a confidence among individual, yes, we understand there are potentially uncertainties existing in life for every individual.

So, the social security scheme is going to build a confidence that yes, we are going to provide you support to make sure that yes, your level of living or your quality of life do not suffer because of any mishaps or contingencies. And it is also widened to include complete quality of working and then living life of each aspect of the workers.

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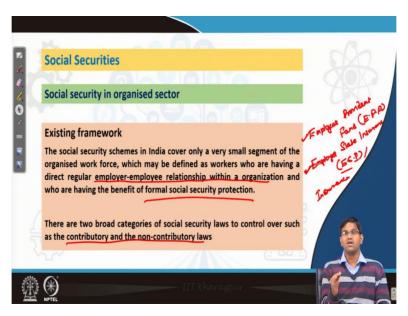


And it is also, a social security is a wise investment which motivate employees and boosts their morale. When we are talking about a social security schemes or the Employees' Provident Fund as an example, when you contribute, employer also contributes and there is a money which both of you are contributing towards securing your future. So, this will actually, is a good investment and also will enable a higher quality production because employees are feeling that yes, I am being protected in some, through Employees' Provident Fund, Employees' Pension Scheme.

So, these are all the social security benefit which are going to of course, reflect on the quality of the production. And it is a basic instrument of social and economic justice among the members of the society and social security leads to adoption of the scheme of unemployment, insurance and creation of new employment through a drive for rational planning and industrial development.

And social security emphasize covering more different types of risks like sickness and employment injuries. So, as we said, we have legislation which are essentially covering upon these two aspects. When a worker met with an accident, what does that insurance schemes which are available that is going to secure him? Similar is the case of a sickness and also.

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And now we will spend time to understand what are the social security in an organised sector. So, the social security schemes in India cover only very small segment of the organised workforce. So, when we talk about an organised workforce, the employees who are working in an established organisation, registered companies and factories, those are all called organised workforce. How do we define these workforces?

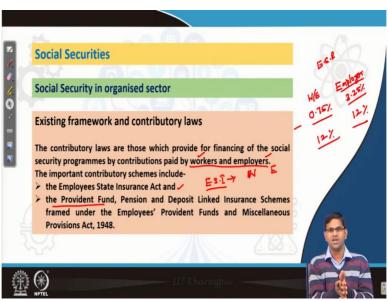
Organised workforce are the one who have a direct regular employer-employee relationship within an organisation and those who are having a benefit of formal social security protection. So, when we say an organised workforce, this is what it refers to. It refers to, yes, they have a direct employer-employee relationship, meaning that they are employed in an industrial establishment where they have an employer and they are serving as an employee with a certain terms and conditions and they are also covered by the formal social security protection.

The formal social security protection is that, yes, there are established legislation policies and programmes. So, when we talk about formal social protection programme, let us talk about Employees' Provident Fund; we call it EPF. It is about Provident Fund and Pension Scheme and Employees' State Insurance Act, state insurance which we called ESI. So, as you are being a formerly having a relationship with an employer as an employee, then you have compulsory access to ESI and EPF.

In absence of ESI, you will have other insurance schemes; other insurance, health insurance. So, now, because of your formal relationship with your employer, you are having an access to both of these, Employees' Provident Fund to secure Pension Scheme and also One-Time Grant, and Employee Deposit Linked Insurance Scheme for your family members and also Employee's State Insurance schemes covering about their health aspect of it.

These two broad categories of social security law control over such as contributory and non-contributory laws. So, what is this contribution and non-contributory? We will look at it and also explain what are those contributory legislations and what are those non-contributory legislations which are primarily focusing on social security aspect.

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Now, so what are those contributory laws? So, the contributory laws are those which provide financing of social security programmes by both the parties; worker and employer will be contributing certain portion for towards the particular scheme or a programme. Let us say Employees' State Insurance Act, we are going to see in detail in our lectures, the subsequent lectures; but let us look at ESI.

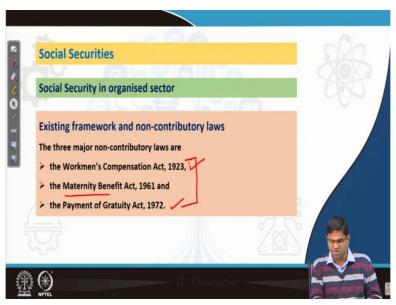
This is primarily looking at a health, securing your health and sickness and Maternity Benefit, all that has been covered under this Employees' State Insurance Act. Here, both the parties, as we said, contribute here. That is why we call contributory. As an employee in a company, you also pay some for this particular scheme and the employer also contributes for your scheme, for a let us say ESI.

So, employee, let me put it worker, W an employee. So, W refers to worker; E refers to employer; so, worker an employee; this is employer. Now, for ESI, this 0.75% of your wages

or income, salary, you will be contributing towards this ESI scheme. Then here, 3.25% is the contribution from the employer. Similarly, if you look at Provident Fund, yes, for a Provident Fund and Deposit Linked Insurance Scheme, all that; so, here as an employee, you will be contributing 12% and your employer will be contributing 12%.

That is why these social legislations are called as contributory legislations because you also contribute and your worker also contribute towards these schemes or a programme which are trying to cover your sickness and also your post-retirement economic security.

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Now, what are the other framework which are non-contributory laws? Why we say non-contributory? These three legislations which I will talk now, where, as an employee you will not contribute, but as an employer they will be paying the premium to secure their workforces. For a Compensation Act, yes, Workmen's Compensation Act, as an employer, your employer will be paying towards this legislation as they will secure their workforces.

And for the Payment of Gratuity also, you do not contribute for this Payment of Gratuity insurance, the employer will be paying. Similarly, the Maternity Benefit, but Maternity Benefit also partly covered in ESI. There is one scheme which is contributory. There can be potentially in the absence of ESI, your employer will be contributing to certain insurances which are going to cover the Maternity Benefit. That is why this legislation are called non-contributory laws and those legislations are called contributory law.

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Now, so what are those social security? Unorganised sector. So, now we say the difference between organised and unorganised, we really understood, yes, there is a formal employer-employee relationship; we are working in an established industrial establishment, where they have been registered and you are having a formal relationship as an employee and an employer.

Where in an unorganised sector where you do not see a such existence of a formal employeremployee relationship, those sectors are all called unorganised sector, which can be broadly; what are the social security arrangement available for those unorganised sectors? Because, for organised sector, as I said, you have Employees' Provident Fund, because you will contribute, your employer contributes; Employees' State Insurance, you will contribute, the employer contributes.

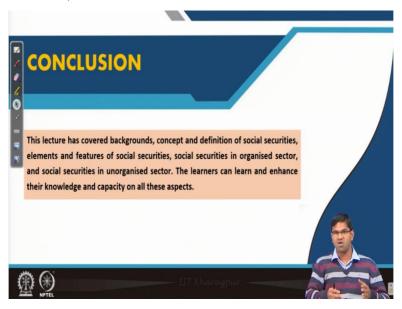
Whereas in the unorganised sector, there is no formal existence of relationship between employer and employee. So, in absence of this formal employer-employee relationship, what type of a social security schemes are available to these unorganised sectors? There are broadly classified into 4 groups. One is centrally funded social assistance programmes as the Union Government is providing certain social assistance programmes, social insurance schemes, social assistance through welfare funds of Central Government and State Governments and certain public initiatives also in place which are securing the unorganised sector largely.

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So, these are the references.

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In this lecture, we have started with an introduction to understand the concept of social security and especially the social security for organised and unorganised sector. And we also talked about contributory and non-contributory laws with respect to social security benefits for the organised sector. And also, we talked about what are the broadly available social security schemes for the unorganised sector.

So, going forward, we are going to learn about various specific social security legislations. In the next lecture, we will be discussing about social securities for unorganised sector. Then, later we will be spending time on each of the legislations for the organised sector. Thank you.

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Module - 7: Social Securities Lecture - 32 Social Securities in Unorganised Sector

Welcome to lecture 32. This is the second lecture in module 7. In the previous lecture, we have introduced to the concept of social securities and we were broadly classifying the social security schemes with respect to organised and unorganised sectors and where we briefly discussed about what type of social security schemes are available to these two different sectors. Now, in this lecture, we are going to discuss about social security schemes which are available to the unorganised sector.

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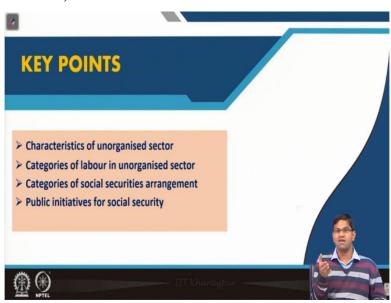
So, now, we have to understand the concept that, yes, India being the welfare state, it becomes a responsibility for the government to extend social security benefits and social assistance schemes to citizens. As we have already discussed that yes, the unorganised sectors are large in number in our country, wherein we talk about, yes, in this they lack formal employer-employee relationships.

In this situation, what happens, the social security schemes are relatively less; the reason being nobody contributes towards the social security schemes when these large sections of the workers who are working in an unorganised sector. So, the social security legislation in

India is one of the important perspectives because it is going to cover large number of unorganised sectors.

So, this social security's efforts are driven through the strength and spirit from the Directive Principles of State Policy which are enshrined from our Constitution of India. So, several attempts have been made to address the problems of Indian workers through legislative as well as the programme initiatives. So, as we are seeing that our Labour Ministry is making lot of effort in order to providing social security assistance and social security schemes to these unorganised sector workers through various legislation as well as through various national level programme initiatives to cover these unorganised sector workers.

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So, what we are going to cover in today's lecture? We are going to understand the characteristics of this unorganised sector. So, what are the characteristics which make those workers being classified as unorganised sector workers? And we will also see categories of labour in organised sector. We were classifying the unorganised sector worker, but what about the categories of labour they exist in the unorganised sector?

And we will also see categories of social security arrangements which are available to these unorganised sector labour and we will also discuss about public initiatives for social securities, wherein these public initiatives are independent of what the government is putting in place for social security schemes. That also we are going to briefly discuss.

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Now, let us try to understand the unorganised sector with their various characteristics. So, the unorganised sector workforce is characterised by this. So, they are largely scattered and fragmented areas of employment. So, they do not have very formal employment of with things, rather they have a very scattered fragmented areas of employment or their work is seasonal nature of employment, they do not have a continuous employment.

They may be intermittently having their job. When there is a requirement, they work. It is a very seasonal in nature. That is why they are classified as unorganised sector. And also, they lack job security; meaning that, yes, there is no assurance provided to them about securing their job for a defined period. As we are saying that if you see, it also refers to the seasonal nature.

There is no assurance on the definite term that they will have an employment for in this particular workplace or worksite. And they were low legislation protection. The reason being is, since they work in an unorganised sector or do not have a formal relationship, they are, there the scope for legislative protection is very less, because why? When you are working in a formal setup, there are legal support which are available to you to claim your certain benefits from your employer, whereas since the lack of formal setup, that is why they have very low legislation protection with respect to the social security we are talking about.

And they lack awareness and high unemployment level and they enter into the primitive production technologies. They are not into a very formal production technology, they are into very primitive production technology, where we have seen artisans, the people work in a very

unorganised employment categories, where they are not registered organisations and their relationship is based on the, there is a work, you come and work and that is how they do not have a very formal structure. That is going to have an impact on their social security or securing their social security benefits.

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Now, let us try to understand the categories of this unorganised labour. So, there are classified into 4 categories. One is about occupation based; based on the occupations, they are classified. One is about small and marginal farmers; they are also unorganised. Landless agricultural labourers, sharecroppers, fisherman, those engaged in animal husbandry activities in villages, in beedi rolling, beedi labelling and packing, workers in building and construction, all of them are becoming unorganised sector largely.

Now, if you look at on building and construction activities, there are formal workers as well, those who are directly working with the construction companies on their payroll or a muster roll. Unless otherwise they do not been reflected on their muster roll or on their payroll, they cannot qualify themselves into a formal relationship, employment relationships. So, but of course large sections, still we have lot of migrant workers working in this construction and building activities; they are all, based on the occupations, yes, these are all people who are into the unorganised labour.

Next is based on the nature of employment. Attached agricultural labourers, bonded labourers, migrant labourers, contracts and casual labourers, they all come under this particular category of based on nature of employment. So, nature of employment also, they

are falling into the unorganised labour. So, they may be migrant workers, they may be casual workers or a contract worker or we are talking about a bonded labourer; those who are all people who are into these unorganised sectors.

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And we see specially distressed categories. What is this specially distressed categories? Which is very niche employments or maybe; if look at toddy tappers, scavengers, carriers of head loads where this is most prevalent in Maharashtra. They have specific associations also looking after these people who carry loads on the heads. Drivers of animal driven vehicles, loaders and unloaders belonging to this particular category which is called specially distressed categories.

Where if you look at know largely loading and unloading people and people who carry weights on their heads, scavengers; those people come under this specially distressed category. And then last one, we are talking about service categories, those who are large in number in the, as classified into unorganised labour. Those who are midwiferies, domestic workers, fisherman and women, the barbers, vegetable vendors, fruit vendors, newspaper vendors, they all come under this category.

They are all service categories. So, though they will be earning their livelihood to do these services to their owners, but they do not have any social security coverage or any other schemes which are covering their social security. So, that is why these are the largely broad 4 categories how these unorganised labours are classified either based on occupation, based on

nature of employment or distressed, especially distressed or maybe the service categories. These are the large level of categories of unorganised labour been classified.

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Now, what are the categories of social security arrangement which are available to this unorganised sector? So, the existing social security arrangements for these are broadly again into the 4 groups. One is about centrally funded assistance schemes; centrally funded in the sense, we are talking about Union Government facilitated funded social assistance programmes.

And social insurance schemes; and social assistance through welfare funds of central and State Governments. There are welfare funds are available from State Government and Central Government. And of course, public initiatives, which is beyond the support from the formal institution like government where State Government or Central Government. There are public initiatives which are also provide social security arrangement for this unorganised labour.

Now, we are also seeing that there are several states have associations for these unorganised sector workers. And they also try to have membership through their associations and also, they are trying to build some type of social security support for those members of this unorganised sector associations registered in various states and various parts of the country. Now, let us spend time to understand what are those centrally funded social assistance programmes.

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So, there are broad, majorly there are 3 as per social assistance programmes, which are National Old Age Pension Scheme, National Family Benefit Scheme, National Maternity Benefit Scheme. So, under the centrally funded national assistance scheme, social assistance scheme, which we call NSAP, which is National Social Assistance Programme, NSAP; under this, as I said, the 3 important schemes are available for this unorganised labour.

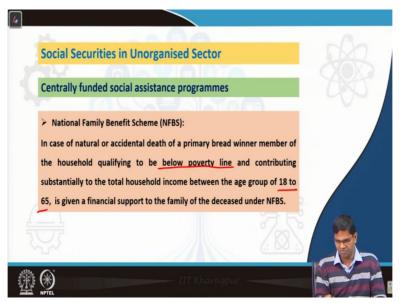
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Let us look at one by one. So, National Old Age Pension Scheme: So, this is a destitute Old Age Pension Scheme for the people who are destitute old age persons having very little or no regular means substance from his or her own source of income or through financial support from their family members. So, they are eligible to get this Old Age Pension Scheme.

And if you see, this National Old Age Pension Scheme, which are facilitated by the; it is centrally funded scheme but are facilitated by these State Governments to identifying that yes, there are destitute person who do not have proper income source, either by themselves or through their family members. In those case, they are provided with an Old Age Pension Scheme, so, which provides rupees 1000 for every month for this Old Age Pension Scheme.

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And now we are talking about a National Family Benefit Scheme. So, in case of a natural or an accidental death of a primary breadwinner of the family or household, they are in a below poverty line and they are substantially contributing to the household income; so, between this age of 18 to 65, they are given a financial support to the family of the deceased person. So, in case a person died, either because of the natural calamities or of the accidental death, he or she is the sole breadwinner of the family and we are contributing to the financial sustenance of the family, if they between 18 and 65, those family are provided with a financial support under this National Family Benefit Scheme.

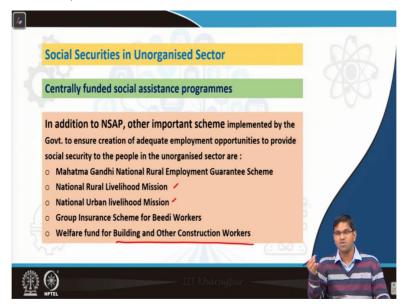
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Next is the National Maternity Benefit Scheme. This National Maternity Benefit Scheme is a cash assistance provided to the woman of household below poverty line. Again, they have to be under a below poverty line. The women who are pregnant or they are all falling under the below poverty line, from the age of 19 years and above up to 2 live births; we are talking about for the first 2 pregnancies, if they successfully deliver the baby; for until the two the birth, the National Maternity Benefit Scheme, they provide financial support to these pregnant women who are below poverty line.

So, these are the 3 important centrally funded social assistance schemes available to these large sectors, unorganised sector and to a larger coverage to the citizens of the nation as well.

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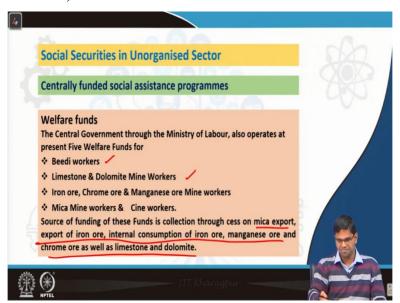


And in addition to this National Social Assistance Programme, there are other important schemes implemented from the government to creation of adequate employment opportunity to provide the social security to the citizens. Though one is about a very famous one, which is Mahatma Gandhi National Rural Employment Guarantee Scheme, which secures at least 100 days of employment to a family in villages.

So, this is very much prevalent across the country. So, so many beneficiaries for this particular scheme, which is trying to provide at least 100 days of employment to the family living in villages. So, that is one of the employment schemes. And next is a National Rural Livelihood Mission and National Urban Livelihood Mission. People who work in urban places, this facilitates providing loans and facilitating self-help groups, that those they are trying to provide through various programmes and schemes that are facilitated through these National Rural Livelihood Mission and National Urban Livelihood Mission.

And group insurance schemes for beedi workers, welfare fund for building and construction workers, these are all some of the facilitated support from the Central Government beyond this National Social Assistance Programme.

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Now, so, there are also welfare funds as we said, welfare funds available through Ministry of Labour and operates at 5 labour welfare funds. One is about for beedi workers; they have a welfare fund for a beedi workers. They have welfare fund for people working in limestone and dolomite mineworkers; there are welfare funds available. And there are also welfare

funds available for the workers who are working in iron ore, chrome ore and manganese ore mineworkers.

And there is also welfare fund for mica mine workers and also cine workers. The source of funding this is collection through just the government collect from mica export or export of iron ore, internal consumption iron and manganese ore and chrome ore and limestone dolomite. So, through this chess they collect, they create a welfare fund to support these workers who are working in these sectors.

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Now, as we are discussing about centrally funded insurance schemes, now we are talking about public initiatives. So, the public initiatives: In addition to the government efforts, there are public institutions; we are all seeing that many multinational government, non-governmental organisations also Indian non-governmental organisations and agencies also providing various kinds of social security benefits to selected group of workers.

So, there are so many. In every state, various agencies, non-governmental organisations, even multinational corporations through their corporate social responsibility fund also they do lot of other activities, but we are going to talk about 2 outstanding examples of this kind of a public initiative. One is that Self Employed Women Association which is SEWA and another we are going to discuss about Mathadi Workers Boards in Maharashtra. These two as an example we are talking about public initiatives which are directed towards social security for these unorganised sector workers.

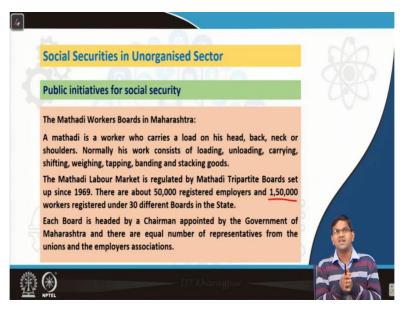
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So, let us discuss about this SEWA, Self Employed Women's Association. This social security experiments SEWA, they started in the year 1975 with the demand from members for a maternal protection scheme followed by the healthcare and childcare. So, they were actually started with providing health care and child care facilities. And this followed by starting an insurance programme in collaboration with the insurance companies, because largely these unorganised sector workers are not covered under the insurance, formal insurance programmes as such.

That is why this organisation has facilitated to have an insurance programme with an insurance company. And then, insurance scheme started through SEWA Bank was based on realistic estimate of the capacity of the members to pay the premium. So, because the members also have to pay the premium, so they actually created an insurance programme looking at what is the viable contribution this premium can be paid by the workers working in this unorganised sector. This is one such initiative.

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And we also looked at the next one. The next initiative, public initiative is the Mathadi Workers Boards in Maharashtra. The mathadi worker is one who carries load in head. So, we were discussing on the specially distressed workers; it is one of the categories in unorganised sector. So, the mathadi is a worker who carries load on the head, neck or back or shoulders. So, normally this work consists of loading, unloading; generally, they engage in loading, unloading, carrying, shifting, weighing and all these activities.

So, this Mathadi Labour Market is regulated through a Mathadi Tripartite Boards set up in the 1969. There are more than about 50,000 registered employers and there are 150,000 registered workers under 30 different boards in the state. So, imagine the number of workers who are working in this specially distressed category of unorganised workers. So, each board, they created boards which are trying to protect the interest of these particular workers.

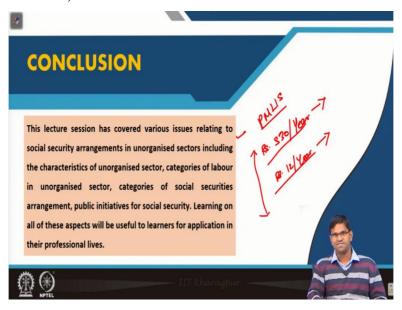
Each board is handled by a chairman appointed by the government of Maharashtra. They are equal number of representatives from the unions and also employer associations. So, this kind of a public initiatives also some of the efforts that are directed towards securing these unorganised sector workers.

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So, these are some of the references.

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And we were actually discussed today in this lecture primarily on unorganised sector workers. These unorganised sector workers, as we said, what are the characteristics? They work on a lack of; for job security, they do not have a defined employer-employment relationship. These unorganised sector workers often become vulnerable because there is an absence of formal legislative frameworks that are securing their income or loss of income or the post-retirement or the health risk they go through.

So, for these unorganised sector workers, we looked at there are 3 ways of support systems comes from socially funded, centrally funded schemes and also State Government welfare funds are the ones which are available to them. We were discussing about some of the

National Social Assistance Programme; one is through a National Old Age Pension and Family Benefit Scheme, National Benefit Scheme and also Maternity Benefit Scheme.

Beyond this, very recently, I think it has been there for last 4 or 5 years, Pradhan Mantri Life Insurance Scheme, where every citizen can be a member of this open life insurance scheme, where they will contribute 330 rupees per year. Many of them have enrolled for this particular. So, this provides a life insurance coverage, Pradhan Mantri Life Insurance Scheme.

And also, one more is the Accident Insurance Scheme wherein they were rupees 12 per year, which are due to secure in case of accidental death up to 2 lakh rupees have been covered. These are all some of the larger social insurance scheme which is again a, where you have to pay the premium. So, this is open for all citizens in our country, which is also some of the efforts which are directed towards creating or enabling the social securities to secure through the uncertainties of the life.

So, this actually tries to secure the social securities to their dependents and their families. So, these are the larger social security schemes available for the unorganised sector. In the subsequent lectures, we are going to specifically spend time on understanding the legislations for the formal organised sector which are very critical and important because, as an employee who is going to be working in a company, you will have to understand from both perspectives, as a manager or as an employee, what are those benefits or a scheme which are available to me? How do I avail? What are the conditions which are there? How I have to contribute? Those we are going to learn in the subsequent lectures. Thank you.

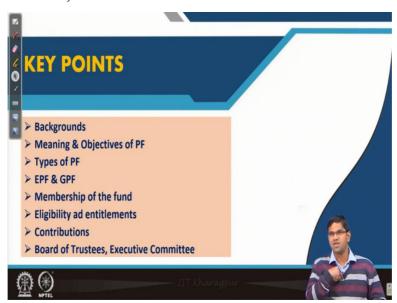
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Module – 7: Social Securities Lecture - 33 The Employees' Provident Fund Act

Welcome to lecture 33. This is third lecture in our module. In this module, we have been discussing about social legislations. And today's lecture, we are going to discuss about Employees' Provident Fund. And previous lecture of course, we discussed about unorganised sector and various benefits. Now, this legislation is one of the important legislations as an employee.

And also going to be the supervisor or manager of a company, you need to understand, why this legislation? What are the important perspectives for this legislation? What is the contribution that employer make? What is the contribution employee make? What happens to your fund if you are contributing towards Employees' Provident Fund? We are going to discuss about that in this particular lecture.

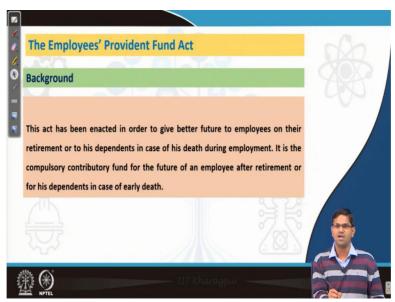
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So, what are we going to discuss in this lecture? We are going to discuss background about this Employees' Provident Fund, main objectives and meaning of this Provident Fund. We will also discuss about types of Provident Fund; we will find out the difference between Employee Provident Fund and then Government Provident Fund; membership of the fund; eligibility and entitlements; contributions.

What is the contribution that employee make an employer make? And we will also discuss about the Board of Trustees and Executive Committee; on who is going to manage this fund, Employees' Provident Fund.

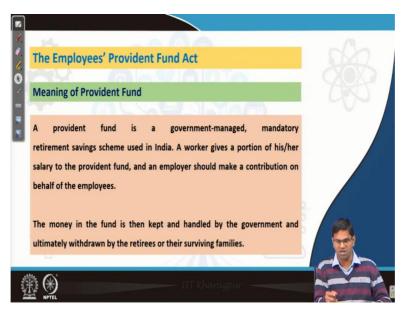
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So, background to understand this act has been enacted in order to provide better future to the employees post their retirement or to his or her dependents in case of his or her death during the employment. So, essentially, this is one of the important social security legislations which are trying to give a better future for post-retirement and also in case of a death of the serving employee to secure the dependents of this employee.

That is why this Employees' Provident Fund has actually been enacted. It is a one of the compulsory contributory funds. Compulsory contributory fund, why we are saying compulsory? You do not have an option to opt out of this Provident Fund contribution when you are an employee of a particular organisation. If you are joining as an employee, you are mandated to become a member for this Provident Fund contributions; you will also contribute and your employer will also contribute towards your Employees' Provident Fund. So, this is for an employee after retirement or for his dependents in case of an early death.

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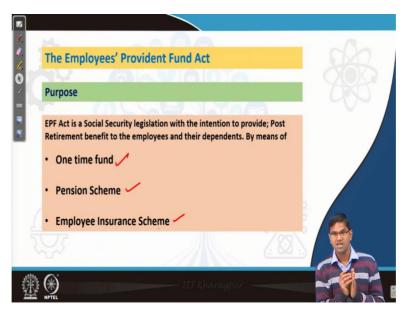


So, now, the meaning of the Provident Fund: The Provident Fund is a government managed mandatory retirement savings scheme which is available in India. Here, a worker; worker I mean employee; gives portion of his or her salary and we are going to discuss what is that portion? What is the contribution from the both the side as an employer and employee? We will discuss about it in this particular lecture.

What is the percentage which as an employee I am going to contribute and what is the percentage my employer is going to contribute? Once you contribute, what is going to happen to the money you are contributing? The money in the fund is then kept and handled by the government and ultimately it can be withdrawn by the retiree and for their surviving families. And you will also be getting the pensions every month post retirement.

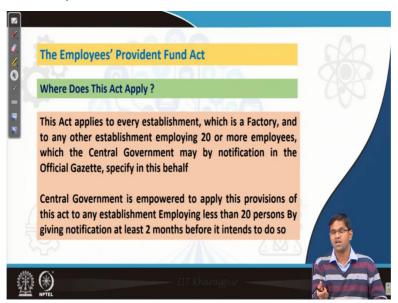
For this purpose, through this Employees' Provident Fund Act, they have created EPFO, Employees' Provident Fund Organisations. Some of you would have seen that every state has got their Employees' Provident Fund Organisations and some regions also have their offices where this has been managing the funds of the employees who are working in this particular region.

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Now, under this act, what is it actually providing? This Employees' Provident Fund is a social security legislation with an intention to provide post-retirement benefits to its employees and their dependents by means of 3 ways. One is through One-Time Fund. During the retirement, it gives One-Time Fund to the retiree and also it covers, it provides Pension Scheme and also there is one more benefit out of this Employees' Provident Fund Scheme, that is Employee Insurance Scheme. So, we will discuss this aspect. What is this One-Time Grant, One-Time Funds which is going to come, and the Pension Scheme and Employee Insurance Scheme?

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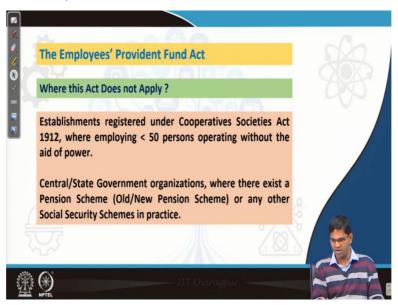
Now, we will also understand where does this act apply. This act applies to every establishment, whether you are a company or a factory, you are registered under Shops and Establishment, you are registered under Factories Act, whatever it is, every establishment is covered if you are employing 20 or more employees, which the Central Government by

notifications, they will specify; so, if you are having 20 or more than 20 employees, any type of an organisation, you have to have this Employees' Provident Fund.

And time to time, Central Government has the authority to instruct, give instruction to the covering the other section, other employment industries which do not have 20 as well. So, now, currently any organisation which has 20 or more have to enroll for this Employees' Provident Fund; it is mandatory that, yes, if you have 20 or more employees, your company has to enroll for this.

Invariably, all your employees will become the holder of this Employees' Provident Fund account. And every employee and employer will be contributing towards the Employees' Provident Fund.

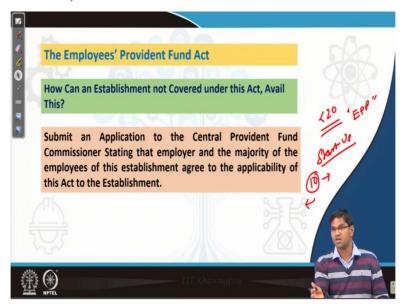
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Now comes, where does this act do not apply? So, if it is a Cooperative Societies Act, you have registered under cooperative societies and you are having less than 50 persons employed under your society without the aid of the power, then you are excluded not to avail this Employees' Provident Fund.

And Central Government or State Government organisation, if they have an alternative Pension Scheme, either an old Pension Scheme or a new Pension Scheme or any other social security schemes in practice, if there are alternative Pension Scheme and Provident Fund scheme is available, for those organisations, then they are excluded from this particular Provident Fund scheme; otherwise, they are also covered.

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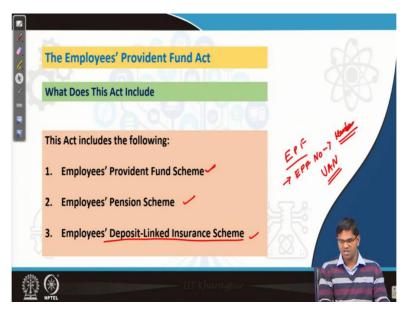


Then comes, let us say you are a company and you do not have, less than 20 employees, but we are interested in covering my employees under this Provident Fund; what one has to do? So, you can submit an application to the Central Provident Fund Commissioner informing that yes, as an employer and as an employee, my employees also, majority of the employees are agreeing to the fact that yes, they want to avail this Provident Fund.

By making this application, those organisations can also be covered under this particular legislation. So, in a very simple form, let us say I have less than 20 employees, let us talk about a startup. I have less than 20 employees; let us say only 10 employees working in my company, but we do not want to; it is not mandatory to have an Employees' Provident Fund, but we are interested in associating our company that we also wanted to offer this Provident Fund Scheme to provide know Pension Scheme for my employees.

So, then you can submit an application to the Central Provident Fund Commissioner stating that yes, we are interested, because my employees also agree, because they are also contributing, because the compulsory contributory fund. So, then, through that application, your company can also be enrolled under this EPF.

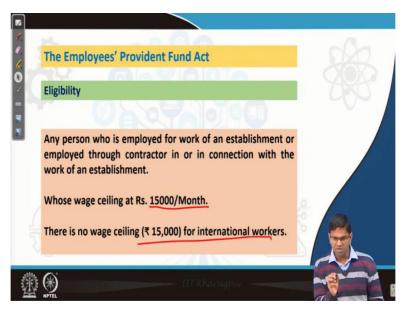
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Now, so, what does this act include? As I was saying, One-Time Fund and the Pension Scheme and an Insurance Scheme; now you see that Employees' Provident Fund Scheme, this act has 3 important things; which has a Provident Fund Scheme, which is a One-Time Fund; then Employees' Pension Scheme, which is providing a pension to these employees; and Employees' Deposit Linked Insurance Scheme, which also provides an insurance, Deposit Linked Insurance protection to its members.

Member I mean, all employees when you are enrolling, you become a member of EPF. So, when you are joining a company and you are enrolled, you will be getting an Employees' Provident Fund number, because then you will become a member of this Provident Fund. So, UAN, Unique Account Number you will be having. That we are going to discuss in the latter half of this lecture.

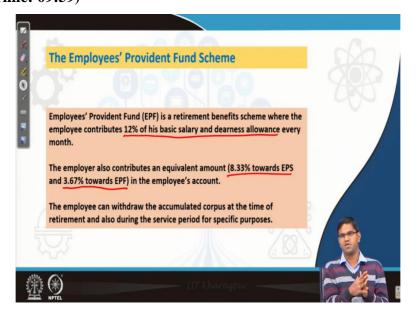
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So, now, what is the eligibility? Any person who is employed for an establishment or employed through a contractor in connection with an establishment, they are obviously become eligible to be an EPF member. And the wage ceiling is 15,000 rupees per month. For a foreign international or foreign worker and international worker, there is no wage ceiling. Now, let me discuss about what is this wage ceiling.

So, I will discuss this once when I am talking about the contribution amount also, so that I can give you more examples about what is the contribution they make. So, the wage ceiling is 15,000 per month, meaning that the contribution which you will make proportionate to the maximum of 15,000 per month.

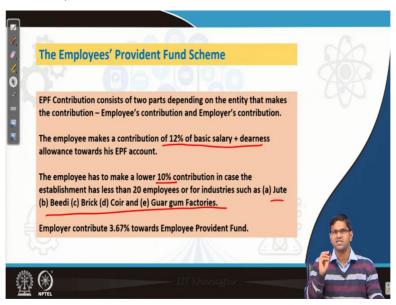
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Then, so, what is the contribution? So, the Employees' Provident Fund Scheme is a retirement benefit scheme where the employee contributes 12% of his or her basic and dearness allowance every month. Now, what does my employer contributes? My employer contributes 3.67% of my basic plus dearness allowance and 8.33% towards Employee Pension Scheme.

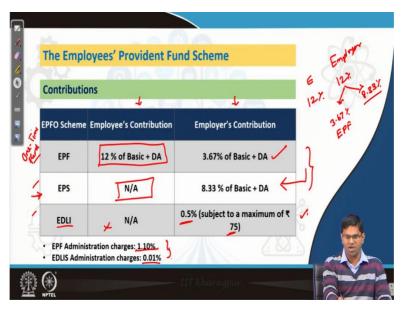
So, now, the employee can also withdraw this accumulated corpus at the time of the retirement or during the service period for a specific purpose. For example, for a marriage purpose or my children's education or for health reasons, you are allowed to withdraw the proportion of this fund from your account, your EPF account.

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Now this has 2 different contributions. As I said, all employees will be contributing 12% of your basic and dearness allowance, there are some sectors, some industry which are given lower contribution. So, people who are working in jute, beedi or brick industries, where it is less than 20, they can contribute 10% of their basic and dearness allowance; however, the employer will contribute 3.67% towards the Provident Fund.

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This is what I wanted to say, from here I will be discussing the contribution amount. So, now, if you look at 3 schemes, Employees' Provident Fund, Employees' Pension Scheme, that is called EPS; EPF is a Provident Fund; and EDLI is the Employees' Deposit Linked Insurance. What is your contribution as an employee and what is the contribution by the employer? Now, for the Provident Fund, whatever you contribute, the One-Time Fund during your retirement, your 12% of the contribution is directly going only to this Provident Fund.

Now, see 12% is from employee and 12% from your employer; but this 12% of the employer is further divided into 2 components. One is 3.67% towards your EPF, which is a Provident Fund, which you are talking about to a One-Time Fund, which is a One-Time Fund during your retirement. Now, another percent which is 8.33% of your contribution of the employer, which goes to Pension Scheme.

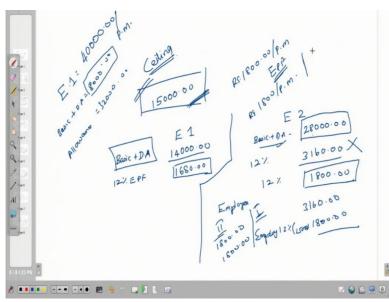
Ideally, you do not contribute anything on your Pension Scheme; whatever you contribute goes to the One-Time Fund and your employer contribution goes to the Pension Scheme. And the third one is about Deposit Linked Insurance, which is actually, you do not contribute anything, you have nothing to contribute, your employer contributes 0.5% or the maximum of 75 rupees as a contribution towards the Deposit Linked Insurance.

What is this Deposit Linked Insurance? This is an additional benefit. This Employees' Deposit Linked Insurance is an additional benefit on top of these two; this is an additional benefit. In case a serving member or the serving employee died during the service, so, now,

this Employees' Deposit Linked Insurance which provides maximum of 6 lakh rupees to his dependents or nominees on top of the other benefit available under this scheme.

So, this is the Employees' Deposit Linked Insurance which are, this contribution is only made by the employer; employee do not contribute anything. And also, these are the administrative charges paid by the employer which is, 1.1% is done by the employer and the 0.01 by the employee. So, these are only by the employer. Now, coming back to the contribution discussion which I said; I will discuss now.

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Let us say the ceiling limit is 15,000 rupees. What is these 15,000 rupees we are talking about? I am going to discuss about 2 employees, employee 1 and employee 2. So, the employee 1 whose earning is, let us say, my basic plus DA. What I am earning is, mine is 14,000 rupees. This is employee 1. And employee 2, basic plus DA is, let us say 28000. There are other components of course, allowances. Now, I am talking about the ceiling.

Now, you are contributing 12% to EPF, you have to contribute. What is the 12% of this? Is 1400 and 280. This is what your contribution towards the Employees' Provident Fund. This is on your employee basic plus DA. So, now, if you look at this person who is earning 28,000, let us say if it is a 12%, what will be the 12%? Is ideally, if we will look at, 3160, because 12% of its basic and DA. However, what is my PF?

EPF act says the ceiling limit is 15,000 rupees, which is a ceiling limit. How much ever you earn, the ceiling limit is 12%. So, I will be contributing on this 12% which is ideally 1800.

This is what the contribution will be made towards the Provident Fund. It is not the 12% of

the basic, DA; that is what the ceiling limit is 15,000. Now, there are 2 ways of practice

which are prevalent in the industry.

One is, see, my contribution as an employee; you may be contributing 3160; you say, I am

fine, let you take 12% of my actual basic plus DA, but my employer will contribute only 12%

of 15,000, that is a maximum ceiling limit; he will be contributing this. So, this is one way of

practice. And another way of practice is that, yes, both of them will be contributing only 1800

and 1800. So, these are all the most 2 ways of practice which are prevalent in industry.

If you look at what are the benefits? If you are higher you contribute, higher it is going to be

on your account. It is going to secure the benefit. Now, if the new labour code which is going

to talk about, see what the generally the organisation does is that, if they do not want to

contribute more, they used to have; for example, basic plus DA is 14,000. Let us say one of

the employees, employee is there, employee 1's the overall salary is 40,000 per month,

imagine.

Now, what this organisation does, so, to reduce their contribution on this Provident Funds,

they keep their basic plus DA the lowest, basic plus DA, they keep it 8000 rupees. And they

will have multiple allowances which will amount to 32,000. So, what is happening? So, they

will be legally liable to contribute 12% of 8,000 only. In case if it is 15,000, they have to

contribute more.

So, now, the new labour code which is saying that any other allowances cannot be more than

50% of their basic and DA. So, these are the some of the important things which you have to

understand how the contribution happens towards the EPF. So, now, this is a 2 different. As

you know ceiling limit, yes, you can, organisation will contribute rupees 1800 per month on

your EPF account as per the ceiling limit and employee who is earning more than 15,000

rupees can do this:

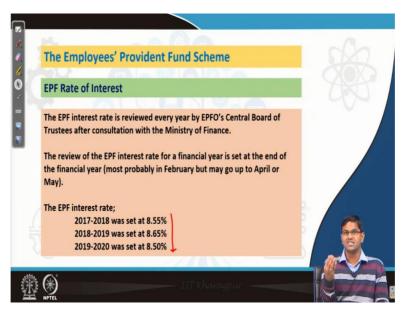
One is, rupees 1800 per month, you can have more disposal income; at your hand, you will

have more income. Otherwise, to secure your future, you can contribute more also. So, that is

how the Provident Fund contribution takes place in the EPF.

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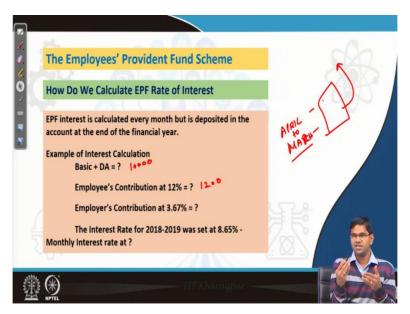
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Now, so, what is the rate of interest? So, now, we are contributing fund towards your employee provident account. What is this interest towards the money you keep? So, this is one of the highest income, interest earning deposits in our country. See, the EPF interest is reviewed by the Employees' Provident Fund Organisation Central Board of Trustees after the consideration of the Ministry of Finance.

So, every year they review and then they will release the interest rate for every year. It may probably, mostly they will inform this interest rate in February or it may go up to April or May; but they will say what is the interest rate for the previous financial year. If we look at the last 3 years 8.55%, 8.65% and 8.55% was the previous year's EPF interest rate which are that your Provident Fund is going to earn, the deposit which you are making on your EPF account.

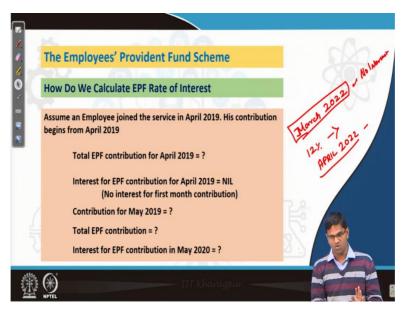
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Now, how this EPF interest is calculated? EPF interest is calculated every month, but it will be accumulated and deposited at the end of the financial year. Meaning that, let us say from April till May, every month you will be contributing; you will be contributing every month, because it will be directly deducted from your salary. Sorry, not May; March, April to March. So, after they calculate and cumulatively, they will deposit on your account after the financial year is end.

So, let us say, you have 10,000 rupees is this and you have to contribution is 1200 and the employer will contribute 3.67% of this. And the interest rate will be calculated and monthly interest rate will be calculated and then accumulated, it will be added and it will be deposited on your account after the end of the financial year. So, this is how your Provident Fund interest rate is calculated.

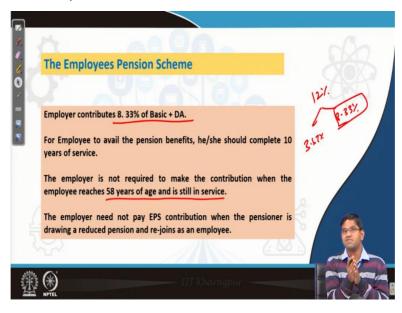
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Now comes, let us say you are joining and availing the service in the month of April. But your contribution begins from April, because the first month you are joining and your contribution begins, but you will not earn any interest for the first month of your contribution. For example, let us say you are joining a company in March 2022.

So, you will be contributing 12% of your salary in March but for this particular month of March, there will be no interest will be paid, only the interest will be calculated from the month of April; your contribution of April and of course the cumulative percentage will be staying there; that will be earning interest, but not your first month of contribution will not have any interest. This is the practice under this Employees' Provident Fund.

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Now, coming into the Employees' Pension Scheme. So, what is this Employees' Pension

Scheme? As we already discussed, you do not contribute anything to this Pension Scheme,

only your employer contributes 8.33% of your basic and dearness allowance. On this 12% of

employer contribution, as we already said, 3.67% and 8.33%. This 8.33% will go into the

Pension Scheme.

Now, you as an employee, to avail this Pension Scheme which is a monthly Pension Scheme,

one has to complete at least 10 years of service to have the recurrent Pension Scheme. Unless

otherwise, you are not eligible, but that will stay as a fund, then when you retire or maybe

terminated, then you can withdraw that fund from your Employees' Provident Fund account.

So, if you have already a working in a company, you could see that there are 2 different

deposits happening.

If you go and see your account, you will be able to see 2 different amounts been reflected. If

you can see the passbook of the Employees' Provident Fund, 2 different amounts will be

shown; one is about Provident Fund, one is on the Pension Scheme. The Pension Scheme

money will be staying and you will be able to get pension if you are serving at least for 10

years of service.

So, employer is not required to make the contribution when you reach 58 years. And if you

are still continuing service after 58 years, you will not be contributing towards the Pension

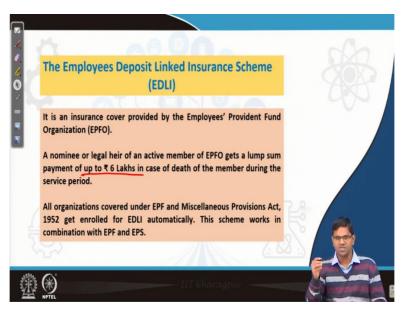
Scheme. So, employer need not to pay the contribution if the pensioner is drawing reduced

pension, rejoins as an employee. For example, you are joining as an employee post

retirement, then you do not need to contribute towards your Pension Scheme.

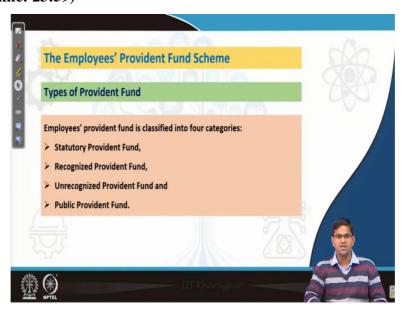
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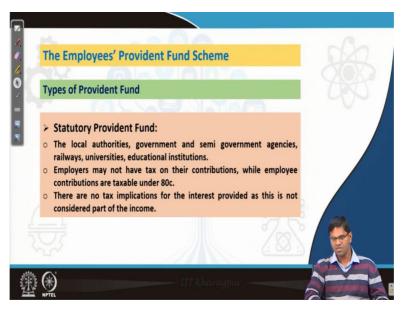
Now comes the Employees' Deposit Linked Insurance. I have already discussed this. This is a One-Time Fund lump sum money provided to the dependent or a nominee or a legal heir of an active member of a Provident Fund. In case a person, a member dies during his membership or during the service that there is up to 6 lakh rupees which is provided in case of a death of the member. So, this is Employees' Deposit Linked Insurance. This work in the combination of EPF and EPS.

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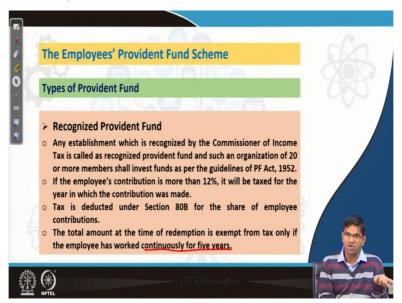
Now, we are also looking at the types of provident. What are the different types of Provident Fund here? One is the Statutory Provident Fund, Recognised Provident Fund, Unorganised Provident Fund and Public Provident Fund, PPF. So, we will see all that.

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So, what is a Statutory Provident Fund? This is through local authorities or government and semi-government agencies, railways, university and educational institutions which is legally required statutory benefit. Employers may not have any tax on their contribution. However, the employee contributions are taxable under 80C. There are no tax implications for interest provided as this is not considered part of the income. So, this is a Statutory Provident Fund which as by the act, you are being an employee, you have to contribute this money towards your Provident Fund account.

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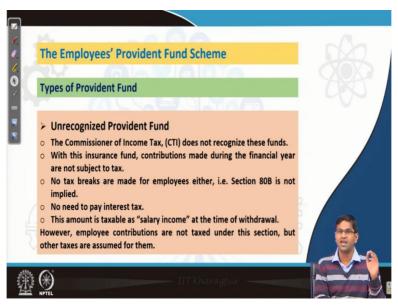


Recognised Provident Fund: Any establishment which is recognised by the commissioner of income tax is called a Recognised Provident Fund. Such organisation of 20 or more employees can also invest as per the rules of the Provident Fund Act. If the employee

contribution is more than 12%, it will be taxed for the year in which the contribution was made. If it is less, okay; but otherwise, this is regulated under 80B of the Income Tax Act.

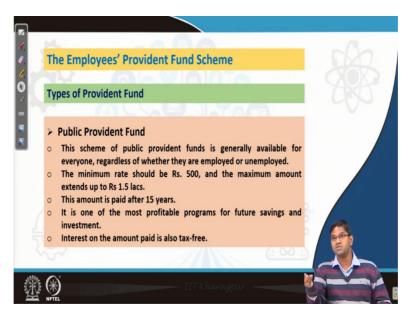
And the total amount at the time of the redemption is exempted from the taxed only if the employer at least works for 5 years. It is a Recognised Provident Fund. It is which your organisation not governed by the Provident Fund but your wanted to contribute towards the Provident Fund, manage the Provident Fund; yes, you are allowed to do so. This is what the Recognised Provident Fund.

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Now, the third one, the second last, which is Unrecognized Provident Fund, which is a Commission of Income Tax does not recognise this fund, which is, with this insurance fund, contribution made during the financial year are not subject to tax. So, tax breaks are made from, again 80B is not implied. No need to pay interest tax. This amount is taxable as a salary income at the time of the withdrawal. So, this is an Unrecognized Provident Fund; means it is not recognised under Provident Fund, it does not qualify to enjoy the benefits as the informed in the Provident Fund.

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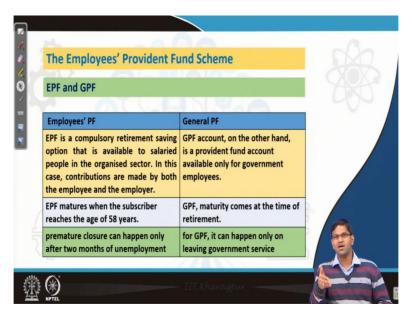


Now comes Public Provident Fund where there is also, now if see, the last few years, this Public Provident Fund comes into picture, because we are also seeing that large section of the workers who wanted to contribute towards the Provident Fund, they are beyond what my employer is doing; or independently also you can open a Provident Fund account, need not to be associated with an organisation.

In this case, there will be no contribution coming from their employer, because you are voluntarily as an individual, you can also enroll in the Provident Fund Scheme and then you contribute. So, the minimum should be at least 500 rupees per month and the maximum can be 1.5 lakhs. It is a Public Provident Fund. You as an individual, you as a citizen of this country, you wanted to enroll for the Provident Fund Scheme; you can contribute every month and this is amount to be paid after 15 years.

So, this will also get the interest rate of what this Provident Fund Organisation provides, which is higher than the any banks provide. So, it is one of the most profitable programmes for future savings and investment. It is also a tax free Provident Fund scheme. So, now you see recent past, many people enrolled on this Public Provident Fund Scheme.

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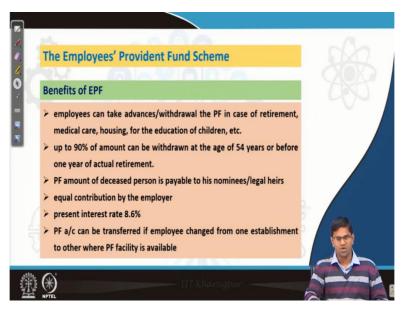
Now, let us also look at the difference between Employees' Provident Fund and General Provident Fund. So, Employees' Provident Fund is a compulsory retirement scheme option available to all salaried employees. Contributions are made both by employee and employer of course, yes, 12% from employee and 12% from the employer. And GPF account is an, other hand is a Provident Fund available for a government employee.

It is not open for other people; it is only for government employees. This is called a GPF, General Provident Fund. So, EPF matures when a subscriber reaches the age of 58 years. And GPF matures at the time of the retirement. Whereas in this case, it is a government employee, at the time of their retirement, it either; if it is State Government employee, different states have a different age and different Union Government have 60 years and some institutions have 65 years.

When they attain the retirement age, that will the time it is get matured. And premature closure can happen only after 2 months of the unemployment, meaning that if you are an EPF member and you want to withdraw your amount, so, after you resign from a particular organisation, then, after 2 months of your job, then only you can make the withdrawal. So, for it can happen only leaving the government service.

You can withdraw this amount when you are leaving the government service, means you are terminated or maybe want to resign from your service, then you will be able to withdraw this amount.

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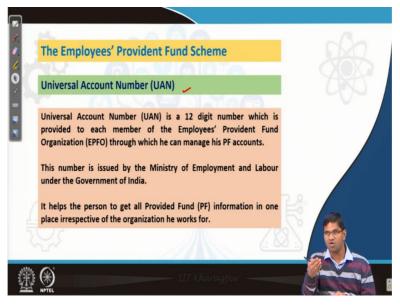
So, we have already discussed this.

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But I am going to discuss about the regulatory bodies. They have a Central Board Executive Committee and also have the Central Provident Fund Commissioner, Chief Accounts Officer, EPF Appellate Tribunal and Inspectors. These are the regulatory bodies which are looking after the various activities of the EPFO.

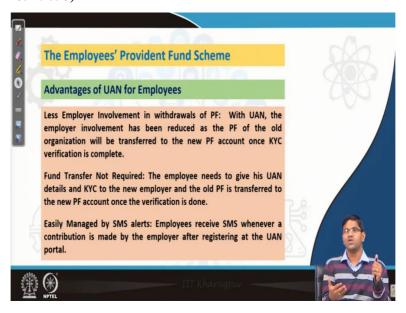
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And very important aspect of this lecture we are going to talk about is Universal Account Number, UAN. When you are enrolling or become a member of this EPF account, you are provided with a 12-digit number which is a Universal Account Number which is provided to each member, wherein you will be able to manage your PF accounts; meaning that you will be able to see whether my contributions are made or not, what is my employer contribution, time to time you can see my interest amount has been deposited, what is your current amount and all that.

And also, it is you can use this account, where for example, previously, when you are resigning from one organisation and joining a new organisation where you need create a new provident account from that particular employer.

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Now, after this UAN where it has become an advantage that yes, you will be able to transfer this existing Provident Fund account to the new employer also, meaning that you no need to open a new account, you do not need to withdraw the existing amount, you can actually carry forward to the new employer and you still have the same account, you will be keep contributing towards your Provident Fund with the current employer also.

And also, another benefit of this Universal Account Number is that now less interruption from the employer side, when the moment your Aadhaar and your PAN card has been verified by your employer, you will be able to withdraw your amount. When you are leaving the company previously, the previous employer has to sign. So, there are times when they have, because of the bad terms they leave and there are hindrances that they cannot withdraw the money.

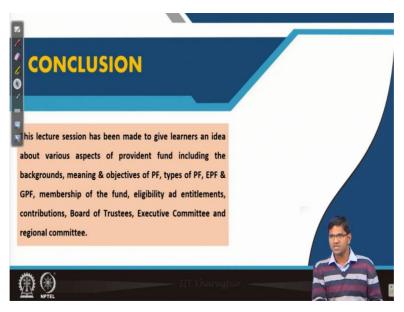
After this process, now, it has become easier that you will be able to withdraw your Provident Fund account or at least you will be able to transfer to the next employer. And it is easily managed by the SMS alerts employee receives whenever the contribution made by the employer, when you are registering at UAN. So, you will be able to see, what is my contribution? How much my employer has contributed? All that are advantages of this Universal Account Number which is becoming so useful for the users.

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So, these are the references.

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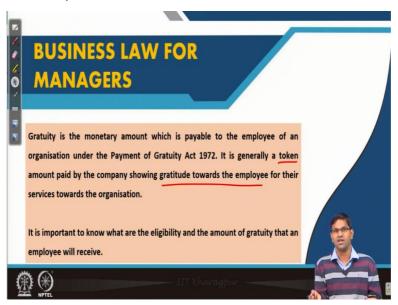
This is one of the important legislations. I think anyone who is going to be employed will definitely will have this scheme. Now, you will have a fair idea about what is my contribution? What happens to my contribution? What is the amount of interest it is going to earn? When I can withdraw? Whether I can make a partial withdrawal? What will happen to my Pension Scheme? What are the Employees' Deposit Linked Insurance? So, in the next lecture, we will be discussing about Gratuity Act. So, we will meet in the next lecture. Thank you.

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Module - 7: Social Securities Lecture - 34 Payment of Gratuity Act 1972

Welcome to lecture number 34. This is the fourth lecture in module 7. And previous lecture, we discussed about Employees' Provident Fund and various benefits associated with it. What is the contribution you as an employee make and then as an employer, what is the contribution? We discussed about Provident Fund, Pension Scheme and Employees' Deposit Linked Insurance. Now, in this lecture, we are going to discuss about Payment of Gratuity Act.

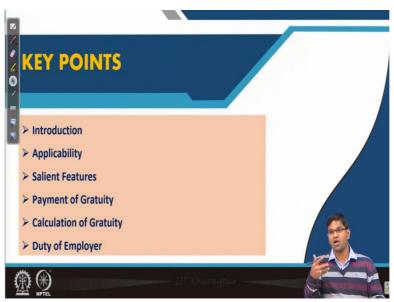
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So, what is gratuity? So, gratuity is a monetary amount which is payable to an employee of a particular organisation under the Payment of Gratuity Act. It is generally a token or a gratitude or a kind of a gift paid by the company showing the gratitude towards an employee for their service towards their organisation. If you look at importantly, how this kind of a gratuity or a token or a gift provided to the employee for a service as provided to their employer; meaning that, can we pay a gratuity to an employee who served for a very brief time.

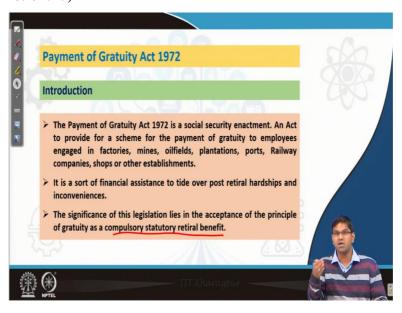
So, this Gratuity Act is going to talk about who is eligible to receive this gratuity which is we call a token or a gift from an employer for the service they rendered to the particular employer. It is important to know the eligibility and amount of gratuity that an employee will receive a part of this Gratuity Act.

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So, what are we going to discuss? We are going to have an introduction, small introduction about this particular legislation. We will have a very brief about this legislation. And we will also see applicability of this legislation. Who are those companies or organisation or establishment covered under this legislation; and salient features. And we will also talk about a payment of gratuity; how the payment has to be made; how the calculation to be made for the gratuity and duty of the employer under this legislation.

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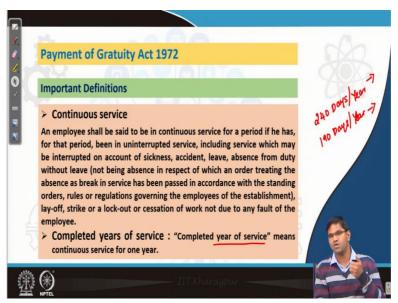


Now, the Payment of Gratuity Act is one of the social security legislations which provides a scheme for a payment of a gratuity to all employees who is engaged in, either in factories, mines, oil fields, plantation, ports, railway, companies, shops or even any other establishments. So, this act is going to be covering all establishments, either you are registered under a Factories Act or a Companies Act or a Societies Act or Shops and Establishments Act, whatever the legislation have been covered, those organisations or all establishments will be covered under this legislation, meaning that they have to pay gratuity to its employees.

What does this gratuity amount? It is a kind of a financial assistant tied to the post-retiral hardships. So, essentially, this gratuity amount is paid during the superannuation or at this, we call, otherwise called as a retirement of the employees, as a financial amount support to the employees. And the significance of this legislation lies with the principles of acceptance of the gratuity as a compulsory statutory retiral benefit.

It is not an obligation, it is not an option for an employer, it is compulsory for an employer to pay gratuity. Generally, if you say gift, gift is a voluntary in nature; you can either desire to give a gift or you may not to give gift; whereas this gratuity which is a compulsory retiral benefit or a gratuity benefit which has to be provided to employees.

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Now, there are some important definitions which is very important, because this is going to help in qualifying somebody to receive gratuity from a company. So, there is a one important definition, continuous service. So, employee shall be termed as a person who is in a

continuous service if he or she, that person, without any uninterrupted services, including

service which are interrupted due to sickness or accident or leave of absence from duty

without leave, and also, it does not include any lay-off period or during strike or lockout

which is not because of him.

So, the continuous service means a person who is serving in a company without interruptions

in their services, otherwise owing to other factors like strike or lay-off beyond his or her

control, then that person is termed to be a person in a continuous service. So, what is the

completed years of service? Completed years of service means a continuous service for 1

year. If a person has served for 1 year, that is called a completed year of service.

Here comes, one important point comes here, the completed years of service for in general

employment in any industry; if a person, he or she has worked for 240 days a year, per year,

then it is called a 1 completed year of service. In case if an employee or a worker who is

working in a mine which is under the earth, which is the field which are under the earth, who

are employed in that kind of an employment, then 190 days per year counted as 1 completed

year.

So, you will be surprised to see why we are interested in saying continuous service. Yes, why

are we want to learn continuous year and what is the importance of learning completed year

service? Because the gratuity is proportionately paid based on the number of completed years

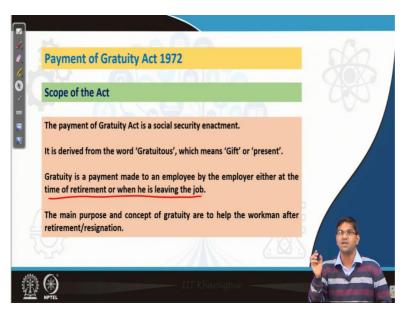
of service they have in the factory or the any industrial establishment. So, that is why it is

very important to learn the concept of continuous service and also the completed years of

service.

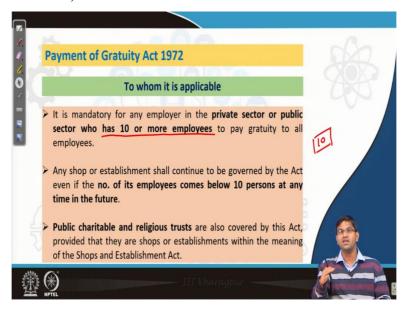
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So, scope: This is applicable to all industries and this term which is the gratuity, derived from the word gratuitous which means a gift or a present. So, gratuity is a payment made to an employee from their employer at the time of a retirement or at the time a person leaves the particular company. So, the main purpose of this gratuity is to help a workman after either a retirement or a resignation.

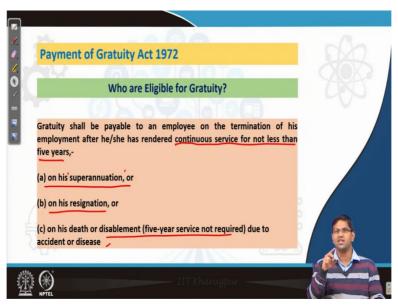
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Now, whom it is applicable? Any organisation, private sector or a public sector, is a government organisation, any other organisation, if that particular company or organisation has 10 or more employees, they have to pay gratuity to all employees. Now, you also see, let us say hire 10 employees in the beginning of the year, maybe probably the number have gone down less than 10; even though you have to pay gratuity to all employees because you already had 10 or more employees in your organisation in different point in time of the year.

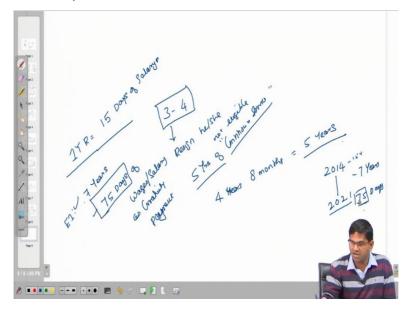
And public charitable and religious trust also covered under this act and any organisation registered under Shops and Establishment also covered under this act. So, meaning that, largely all organisations are mandated to pay gratuity to its employees.

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Now, who are eligible for gratuity? It is very important. Can I ask a company to pay gratuity to everybody? No. So, the gratuity shall be payable to an employee on termination or retirement after he or she has served continuous service. That is where; now you see why we have to learn this continuous service. So, continuous service not less than 5 years. So, if a person worked for 5 continuous years in a company, he or she qualifies or become eligible for the gratuity payment. So, now, the question comes.

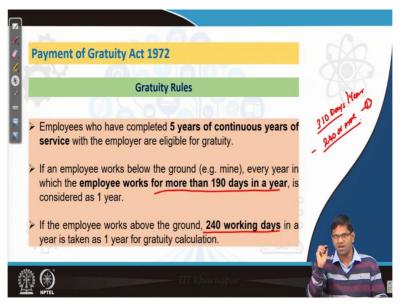
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Let us say 1 employee worked for 3 years or 4 years; can the person be; let us say he wanted to resign the job; can the employee is being paid? He or she is not eligible, because this act clearly states that yes, you have to do at least 5 years of continuous service without a break. Continuous service, I mean that the continuous service, we already defined, if it is due to the lay-off or any health issues, that is not considered; otherwise, you have to do at least 5 years of continuous service to be eligible for this gratuity benefit, either during your superannuation; let us say you work for few years and you are getting retired.

If you are already passed 5 years and then you are retiring; the superannuation is nothing but your retirement; then you are eligible. Or during your resignation or in time of a death or disablement; so, in a death or a disablement, 5 years of service not required due to accident or disease. So, if it is a natural death, not eligible, but in case of an accident or any disease that yes, this person can be eligible for a gratuity payment. This is very clear now. So, who is ca, who is eligible to receive gratuity? Anyone who worked at least 5 years of continuous service, he or she is eligible to receive gratuity payment.

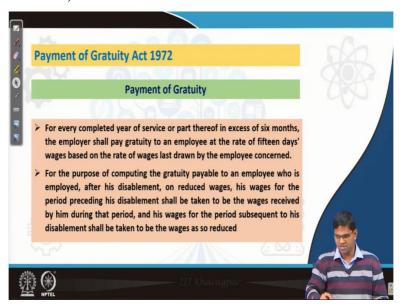
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Now, what are the gratuity rules? So, as I said, yes, 5 years of continuous service is the minimum eligibility that you are, you will be eligible to receive the gratuity. Now comes as I already indicated that yes, if somebody has worked in a mine which is below the ground, then for them, to calculate 1 year of continuous service, which is 190 days. If a person worked for more than 190 days in a year, then that considered as a year. Otherwise, in other establishment, if a person worked for at least 240 days in a year, in a calendar year, then that is counted as 1 year for gratuity calculations.

So, let us say my company is open for 310 days a year. Now, if a person has worked for 240 days or more, then it will count as 1 year. So, you do not need to say that okay, this person has not worked for all 310 days, but if a person, he or she worked for at least 240 days or more in a year, then it is counted as 1 year of continuous service. If that is the case for 5 years, then he or she becomes eligible to receive this gratuity payment.

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Now comes what is the payment for this gratuity? So, for every completed year part or thereof in excess of 6 months, the employer shall be paying the 15 days of salary as the gratuity amount. Let us say, so, now comes, it is always a rounded off year they calculate. Let us say a person worked for 4 years and let us say 8 months. The next closest year will be counted as 1, so, it is 5 years, service will be counted.

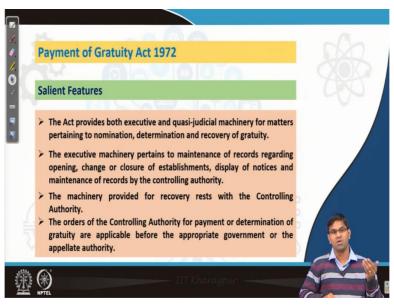
Now, what is the gratuity we are going to get, the money from the employer. So, for every completed 1 year, every 1 year, you will be eligible for 15 days of salary. Let us take an example. Employee 1 worked for 7 years. So, what, how many days this person will be getting? This person will be getting 75 days as the gratuity payment; the 75 days of wages or salary as gratuity payment.

So, every 1 year, 15 days will be considered for the gratuity payment. Now, so, for this purpose of computing the gratuity payment to employers which employed; for example, what is the wage you will be paying? Now, going back to the wage also. So, what is the wage you will be earning? So, let us say this person has worked for 7 years. Let us say one has joined in the year of 2014 and this person left the service in 2021. Let me say 7 years.

Now, 75 days of salary will be paid as a gratuity. Now, what is the amount you will pay? You will be paying the recent salary and then you will pay 75 days. It is not okay for 15 days of 2014 salary, 15 days of 2015. No, the recently earned, the last taken salary will be calculated to pay this gratuity amount, 75 days. Now, in case; so, if you look at this particular point which says in case somebody has because of the disablement reduced wage that person is leaving, the previous salary which was the full salary, what is the higher salary, which will be considered for making the gratuity payment.

So, the gratuity payment is associated with the number of years you worked against for each 1 completed year, you will be earning 15 days for your gratuity payment. And how much will be paid? Your recent salary will be considered for payment of gratuity.

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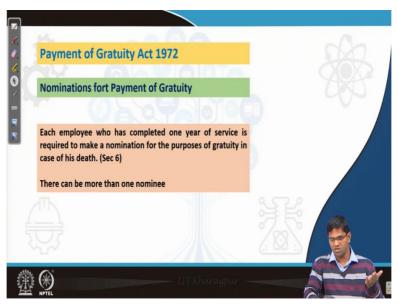
Now comes what are the other salient features of this. So, this act is both executive and quasi-judicial machinery, matters which are pertaining to the nomination of their nominee to be filed, a determination recovery of the gratuity. And also, they have an executive machinery pertains to the maintenance of records regarding the opening or change or closure of establishment in case when you wanted to start a company, when you are closed, display of notices, maintenance of records of controlling authority.

This machinery also provided to recovery rests with the controlling authority. And this also orders for controlling authority for payment or determination of gratuity are applicable before the appropriate government or the appellate authority. So, this act actually provides lot of

other missionaries to ensure that yes, the payment of gratuity his been made. And also, for an employer, employer can also start paying on the gratuity as an insurance amount.

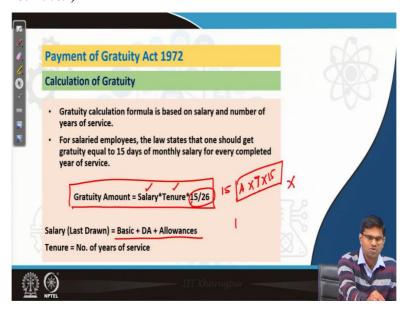
So, there are lot of insurance packages available for an employer that they can contribute the gratuity amount, so that when the employee leaves, that gratuity benefit can be paid to their respective employees.

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Now, the nomination for the payment: So, each employee who has completed 1 year of service is required to make the nomination purposes for the gratuity in case of a death. There can be more than 1 nominee also possible. So, one can have more nominee for receiving the gratuity payment.

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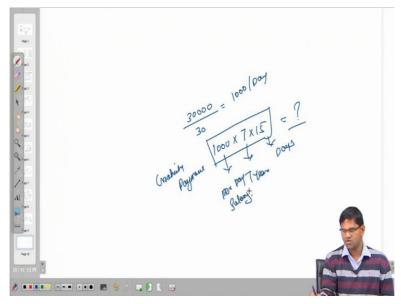


So, now let us spend time on understanding the calculation of the gratuity. How the gratuity is being calculated? So, as I said, this is a simple formula for gratuity payment. How? See, tenure is the number of years of service which you have done and the salary which is the last salary. Salary is including all; it is not only basic and DA, it is also including all your allowances; and which you say 15 by 26, otherwise, you can say just simply put 15 days for every year.

Let us say 7 years 1 person worked; let me put it this way. A is the salary into 7 years into 15 days; this will be the gratuity amount for the particular employee who worked for 7 years. Let us say if it is 1000 rupees, so, that is how you will be calculating the gratuity payment for any employee who is leaving the company. So, it is simply 15 days per year and into number of years served into the salary they are earned.

So, the salary we are, why? That is why they are dividing by 26 means the salary per day; I cannot just multiply the monthly salary. So, that is why the denominator comes into the picture of 26 days, means you will have to calculate per day salary into 7, how many years you served and also 15 days for each of the year.

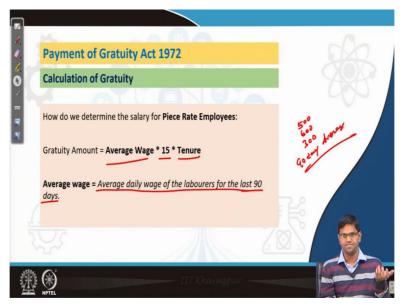
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So, in a simple way to put, let us say you are earning 30,000 per month, in a simple formula let us say 30 days, then your salary is 1000 per day. So, 1000 rupees into 7 years into 15; that is how we will calculate your gratuity. That is how you will be calculating the gratuity payment for this particular employee who worked for 7 years. This is 15 days for each year;

then this is per day salary. So, this is clear now. So, now, let us also talk about; this is for a general employment.

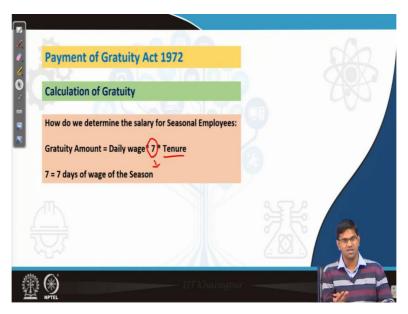
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Now, there can be a case where we are also talking about a piece rate worker. How do I pay my piece rate worker? You would not know, every day somebody only be earn more money, someday there may be a less money. So, there should be an average of last 90 days will be calculated considered for calculation of this average wage. The last 90 days salary; let us say 1 day 500 rupees, another day 600 rupees, 1 day 300 rupees; so, all 90 days, the 90 days average will be considered here.

And 15 days of course; and then number of years. So, that is how in somebody worked on a piece rate employee in a particular factory or an organisation, though that is how their wages will be calculated, the gratuity will be calculated.

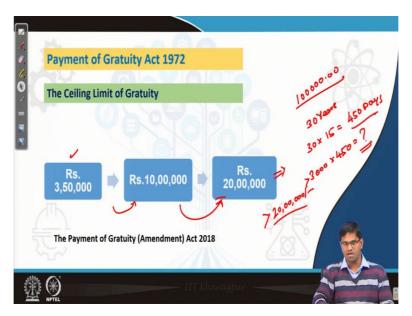
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Now, so, how do we pay the gratuity? Or how do we calculate the gratuity for seasonal employees? The seasonal employees do not have the employment throughout the year. So, now, instead of 15 days a year, it will be 7 days of the season. So, how many season this person has worked, that will be the tenure, let us say 10 years and it will be 7 days, because it is the seasonal employee, it is not a throughout the year employment.

So, daily wage into 7 days into the number of years the person worked; that is how the gratuity is being calculated. Why we are discussing all this? Because you might be in a position to help your own self or maybe you will be in an organisation to looking after this perspective as a manager or as an executive that it is important that you know this legislation to perspective that how do I calculate the gratuity for my employees. If somebody approaches me to understand the gratuity, you will be in a position to explain how the gratuity is calculated.

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Now, what is the ceiling limit of the gratuity, meaning that the maximum one can take the money? So, in initially when the act was implemented, it was a maximum of 3.5 lakhs and it has been increased to 10,00,000 and then subsequently to 20,00,000. Up to 20,00,000, one can take the gratuity amount. So, you will be surprised to see how. Is there a possibility that I will be able to earn maximum of 20,00,000 rupees as a gratuity? Yes, it is possible.

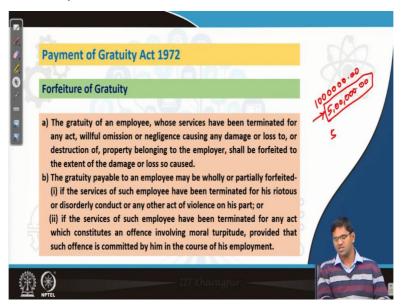
You imagine a company where somebody is earning know 1,00,000 rupees as his salary and worked for 30 years in a particular organisation. So, imagine 30 years into 15 days; so, it is like almost 450 days. So, then, per day salary will be calculated. So, per day salary is above, more than 3000 rupees. So, into 450 days right; that is how the calculator is comes. So, previously, in this case, even if it is exceeding the 10,00,000 rupees, only 10,00,000 rupees is paid; but now, this ceiling limit has been increased up to 20,00,000 rupees, you will be able to take the gratuity amount maximum of 20,00,000.

In case your gratuity amount is more than 20,00,000, you will be taking only 20,00,000 rupees as the maximum gratuity amount you will be able to draw from your employer. So, now, the indication here is that the longer the year you serve, you are going to have other social security benefits. Now, if you look at the current employment situations or the current the employer-employee relationship, we see that most of the employees used to have a very shorter duration of working life with their employer, current employer.

They keep switching to employer to employer. They look at the growth opportunity, the development opportunities. The gratuity is one of the legislations which actually reciprocates

the employees who work in a particular organisation for a longer period. So, that is why the gratuity is being mandated that yes, if somebody served you for at least 5 years, you have to pay them gratuity which is a mandatory benefit to be paid to the employee who work in a company for more than 5 years.

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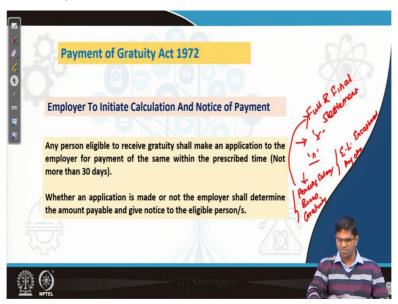
Now, can you forfeit the gratuity payment from the employees? Yes, you can and you will see at what conditions you will be able to do it. So, gratuity of an employee whose service has been terminated for a willful omission or negligence causing damage or loss or a destruction or property belonging to the employer, shall be forfeited to the extent the damage has been caused.

Let us say somebody's gratuity is 10,00,000 rupees and this person is leaving. Now, he has caused damage which is amounting to 5,00,000 rupees. So, then you can forfeit these 5,00,000 rupees and only pay 5,00,000 rupees as the gratuity to the particular employee. So, you can forfeit the gratuity amount to the extent of the damage or a loss so caused to the employer. This gratuity payable to the employee wholly or partially can be forfeited, as I was saying; and if the service of such employee has been terminated for his disorderly conduct or any other violence on his part, then you can as an employer, you will be able to forfeit the gratuity amount.

And if you are an employee, then you should be, do not violate or do not get into any of this willful disobedience which will cause the damage to the organisation. And if services of such employee terminated for which the offences involving moral turpitude or provide such

offence is committed during the course of his employment, then as an employer you are allowed to forfeit the partial or the full gratuity from an employee.

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Now, let us say, employer to initiate the calculation notice period. When a person is eligible to receive gratuity, so, what you can do? Now, when you are terminating yourself from an organisation or retiring or resigning from an organisation and if you are eligible, means, at least served 5 years of continuous service in the organisation, then you are eligible for a gratuity. So, what you can do?

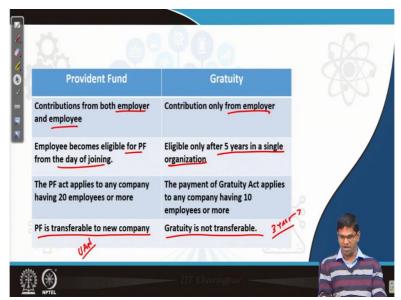
So, you can make an application to the employer for making a payment within the prescribed, not more than 30 days, that yes, you have to pay me the gratuity because I am eligible for a gratuity. Now comes the question; in absence of application, will the employee receive a gratuity or not? Irrespective of whether an employee makes an application or not, the employer have to calculate and pay the gratuity amount to all eligible employees in an organisation; meaning the time of resignation or the time of retirement.

So, generally, the gratuity the amount is paid along with the full and final settlement. So, I have been repeating this in other lectures as well. So, let me explain what is this full and final settlement. Let us say you are working in a company called X for n number of years. When you leave and whatever due to you; whatever due to you meaning that the pending salary, bonus, gratuity, earned leave encashments, EL(earned leave) encashment and any other; all has to be considered as a full and final settlement when you leave an organisation, an

organisation has to calculate and make this payment, and that is called a full and final settlement.

So, the gratuity has to be paid irrespective whether you make an application or not. The responsibility of an employer is that yes, you have to calculate and pay your employee whoever who was eligible for a gratuity.

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Now, we are going to see the difference between a Provident Fund and gratuity, because we learnt about a Provident Fund and gratuity; both of them are a social security legislation. Now, what is the difference between the Provident Fund and gratuity? See, in the Provident Fund, it is a compulsory contributory law, wherein both of you, as an employer and employee contribute, 12% from employee and 12% from the employer; whereas in this case, it is only from an employer, employee does not contribute anything, that employee is only served for more than 5 years but no contribution from an employee.

So, employee become eligible for PF from the day of joining. So, the moment you join a company, you will be able to contribute and employer will also contribute. Whereas for a gratuity, the gratuity, employee become eligible only after 5 years in a single organisation. If you are serving in the same organisation for 5 continuous years, then only the employee is eligible to receive this gratuity.

And PF does not apply to any company which are having less than 20 employees. Whereas in this case, it is applicable even for organisation which has more than 10 or more; it is

applicable to all those organisations. And PF is transferable to new company. As we say, when you have a UAN, Universal Account Number where you will be able to transfer your deposit to the next organisation.

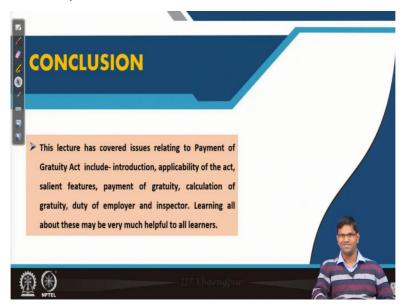
Whereas gratuity is not transferable, meaning that if you are serving 3 years, you cannot carry forward your 3 years of service to the next organisation; means, if you have worked for 5 years and you will be getting gratuity and this gratuity cannot be taken forward to the next company where you are going to be get employed.

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So, these are the references.

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And this Gratuity Act is one of the social security legislations which is kind of a gratuity where an employer is providing a gift to his employees for this the long services he had in this particular organisation. So, it is a compulsory legislation which makes all the employer to make the gratuity payment to any employee who served for continuous years of 5 years of service in an organisation.

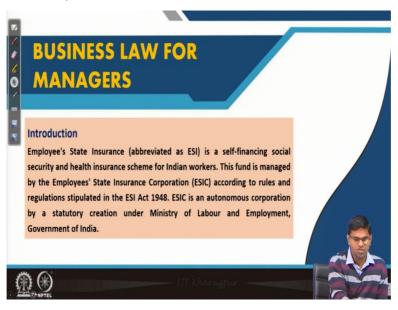
As I said, in mining, the 1 completed year is 190 days in a year and for any other industry or any other organisation which is 240 days in a calendar year that will be considered as a 1 completed year. If a person worked for 5 years, then he or she will be receiving the gratuity. So, then the next lecture, we will be discussing about Employees' State Insurance Act. With that, we will be completing the legislation on wages and then module 7. Thank you.

Business Law for Managers Prof. S. Srinivasan Vinod Gupta School of Management Indian Institute of Technology, Kharagpur

Module - 7: Social Securities Lecture - 35 Employee State Insurance (ESI)

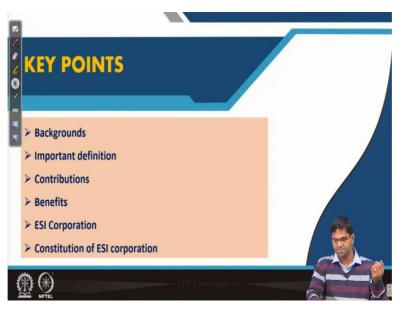
Welcome to lecture 35. This is the last lecture in module 7. We are discussing on social security legislations, wherein this lecture, we are going to discuss about Employees' State Insurance Act. This is one of the social security legislations which are focusing on providing health access and securing in terms of sickness and permanent disablement or a partial disablement of an employee due to workplace accidents. So, what is this Employees' State Insurance? Which is a self-financing social security and health insurance scheme provided to Indian workers.

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This fund is managed by the Employees' State Insurance Corporation which are created under the rules and regulations of the Employees' State Insurance Act of 1948. Employees' State Insurance Corporation which is ESIC, who is an autonomous corporation by a statutory creation under the Ministry of Labour and Employment of the Government of India. So, this ESIC which is a corporation which are governing the, looking after the rules and regulations of the Employees' State Insurance Act.

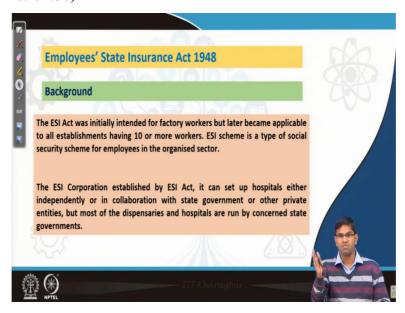
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Now, we are going to discuss about key aspects of this Employees' State Insurance, which is, we will discuss very briefly on background of this ESI and important definition under this legislation. And also, we will see the contribution what is the; it is also contributory law, so, where both the employer and employee contributes for this insurance scheme. So, we will also see what is the portion of the payment from the employee, what is the contribution from the employer on this particular insurance scheme, and we will also see what are the benefits are provided under this health insurance scheme, state insurance scheme.

And we will also discuss about the roles and responsibilities of Employees' State Insurance Corporation, which is ESIC. And we will also see how this ESIC is been constituted under this act.

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Now, so, ESI Act was initially, was opened for only for factory workers, meaning that which

is primarily wanted to restricted only to the factory workers. Later, it has been applicable to

all establishments as like the Gratuity Act which has become applicable to all establishments

if they are having 10 or more workers. So, ESI is typically a social security scheme for

employees in an organised sector.

We are coming back again on organised sector, because which is a contributory law. There is

a definite relationship between employer and employee and employer contributes, because

employer has to register this employee through their organisation, so, it is for an organised

sector. So, ESIC which is ESI Corporation established by ESIC can set up hospitals; they can

set up hospitals or either in collaboration with their State Government or the private entities,

but most of the dispensaries and hospitals are run by the concerned state departments.

Maybe we can also see ESIC has, there are hospitals, even medical colleges run by this ESIC,

where which provides primarily to these members and the dependent family members to

access and have a better health care service. So, a member of an ESIC; who is a member of

an ESIC, Employees' State Insurance Corporation? Any employee who are working in an

organisation which are having more than 10 employees, who are registered body for this

ESIC, they will be contributing, then they become a member.

And the moment they become a member, the employee is a member of the ESIC, he or she

along with their dependent, parents and children and spouse, they are also eligible to have a

health care services at the designated ESI hospital or a dispensaries or and with the approval

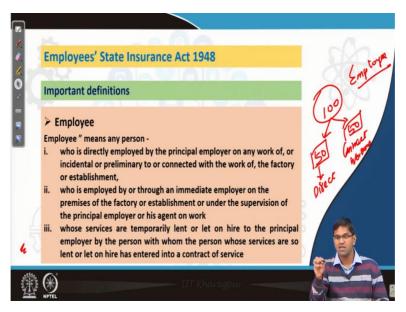
from ESI corporation, they will be able to avail health services in the other hospital also

without a payment where the ESIC will be making the payment; or at a rate which the ESIC

which will be pay and other amount can be borne by the member itself.

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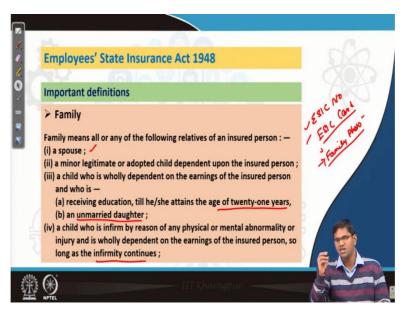


Now, let us also spend, understand the important definitions of this ESIC. So, here employee; what is the definition of the employee? So, employee is the one who is directly employed by the principle employer on any work which is incidental or primarily connected with the work of the factory or an establishment. Anybody who has been working or employed by the occupier of the establishment, then he or she is an employee.

And also, maybe you are employed through a contract agency also is an employer. And you may be serving a temporarily or let hire for a principal employer by the person who, the person whose services or so lent or let hire, entered into a contract of services, even the contract employee is also called as an employee as per this legislation. Let me give an example. So, let us say organisation which has X number of employees.

So, this X number of employees working in an organisation where they find, out of 100 employees, they have 50 employees as, out of 100, 50 are direct company workers and 50 are contract workers. Now, as per the definition of this act, all 100 are employees, whether you are a direct employee which are a factory's or company's direct employee or if you are a contract worker also, then you are also qualified as become an employee under this definition.

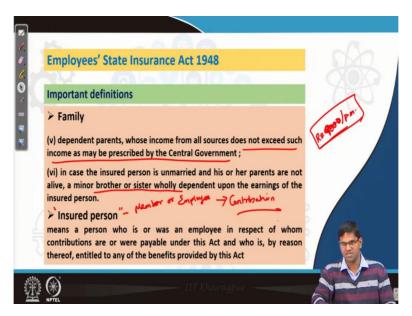
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Now comes another definition of a family, because why these been defined? Because the dependent and family members also included. When an employee become a member of ESIC, they will be getting an ESIC number and they will also get a ESIC card. And for, when I get the ESIC card, so, the organisation has to take a photograph of the family photo; they will ask you to take a family photo and attach with that, so that all family members can also avail all the services and benefits of the ESIC.

That is why the definition of family is important. So, who are been considered as a family as per this legislation? Spouse; minor, legitimate or adopted children dependent on the insured person; and child who is dependent on the earnings of the insured person till the time he or she attains the age of 21 years or an unmarried daughter; all become a part of a family. And any family who has a child who are having some abnormality, mental abnormality or injury, till the time the person infirmity continues, he or she, that baby will be a part of the family.

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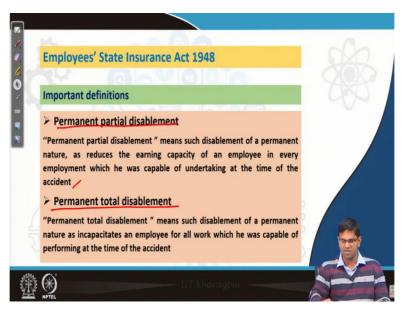


And also, dependent parents whose income of all sources does not exceeds any income which are prescribed by the Central Government. As from the recent input, which is salary of less than 9000 rupees per month, so, they are allowed to be added as a dependent. In case, even if your parents, their other sources of income are less than 9000 rupees per month, then they can also be included a part of a dependent to avail services.

In case of insured person is unmarried, his or her parents are not alive, the minor brother or a sister, they are dependent on his or her earnings, then they can also be considered as a family. So, then comes an insured person. Who is an insured person? Insured person is nothing but a person who is an employee with respect of the contribution they are making under these ESI Corporations.

So, any employee who is making a contribution for the ESI are called an insured person. So, insured person is nothing but a member or an employee. They are called an insured person, because they are making contribution. So, because they are making contribution, they are called an insured person.

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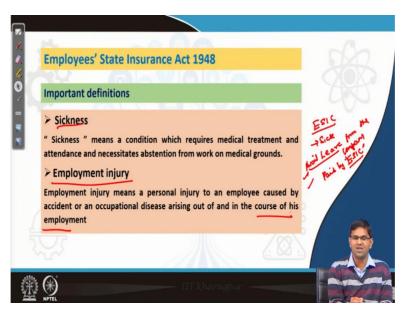


Now comes another some important definition which are permanent partial disablement, which means there is a disablement of a permanent nature. So, because, due to some workplace accident or any other accident, that person has become permanently disabled, partially disabled, meaning that he or she cannot perform all activities, the earning capacity of the member is capable of undertaking at the time of the accident.

So, it actually reduces the earning capacity. When say really, he was some limbs have been impacted and all that, then they become a permanent partial disablement, there is no going back to the previous situations or the health condition, then it has become a permanent partial disablement. There is also instances where we called a permanent total disablement, where such disablement of a permanent nature which incapacitates an employee for all working.

Here, he cannot do any other work, then it becomes a permanent total disablement. If the partial disablement reduces the earning capacity, maybe you cannot do maximum other activities, maybe you will be only restricting to do only this activity or you cannot do the previously what you are doing; so, that become a partial. And the permanent disablement where you cannot do any other work which is before he or she was able to perform the activity; so, it is called permanent total disablement. Why we are learning this definition? Because there are associated benefit with respect to the partial disablement and also with respect to total disablement from the ESI Corporation.

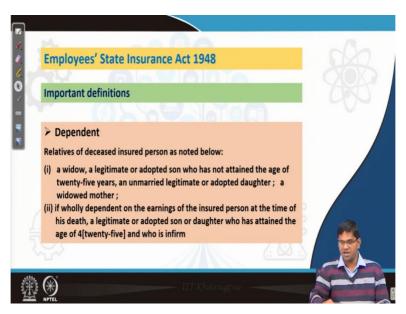
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Now, sickness: Sickness means the condition which requires medical attention and necessitates absent from the work. So, why we are again learning the sickness benefits? Because through this ESIC, when you are sick, you can avail leave from the company and it has to be intimated through a proper channel; that leave will be paid by the ESIC, ESI Corporation will be paying this period which you are sick, because of your ailments, physical bodily ailments that you cannot go for a job or a work; and that period will be paid by the ESI Corporation.

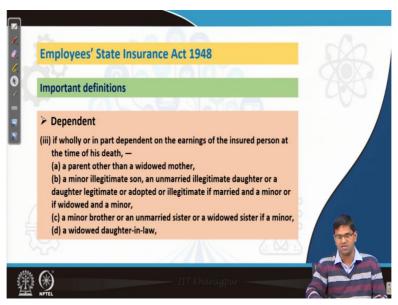
That has to be intimated through a proper channel from your organisation. That is why we are learning the term called sickness. Then employment injury: What is this employment injury? Employment injury is a personal injury to an employee caused by accident or occupational diseases arising out of his or in course of his employment. So, when it is happening during the employment, in course of the employment, that is called an employment injury.

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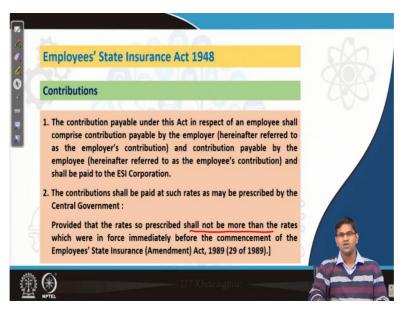
Now, another important is a dependent. Who is a dependent of you? It can be a widow, a legitimate, adopted son and;

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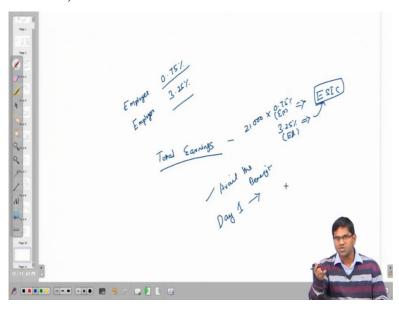
family, parents, children or minor brother or a widowed daughter-in-law. As I said know, the legitimate child till the time they attain the age of 21 years; all of them are the dependent for the member of an ESIC. So, why the dependents also have certain benefits at the time of the total disablement or the time of a death of the insured person? So, that is why these definitions are important, unless otherwise they are not listed down, they cannot get the benefit from the ESI Corporation.

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Now, so, what is the contributions? So, as I said, it is a contributory law; it is a compulsory contributory law where both employee and employer contributes towards the ESI Corporation. Now, see, the contribution made by the employer which is called employer contribution and contribution made by the employee is called employee contribution. Now, we will say what is the contribution amount?

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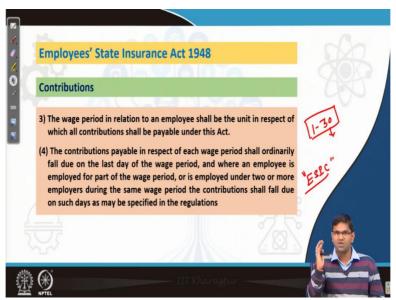


The contribution is, employee make 0.75% and employer make 3.25%. What is this percent? The percentage of total earnings. It is not on basic and DA alone, it is on total earnings. Let us say somebody is earning 21,000. On this, 0.75% will be contributed towards ESIC; similarly, on this, 3.25% by the employer. This is employer, I will put El; and this is Ep which is employee, contributes towards this ESIC.

This is the contribution amount which are to be paid to avail and enjoy those benefits; to avail the benefit meaning that it is a; anyway, it is compulsory from day 1. When this contribution begins? From day 1 they will calculate. Let us say you have joined this particular month. So, even if you work for a few months, few days also, that deduction has to be made from your salary and then it has to be contributed towards the ESI Corporation; because, during the time, if you happen to have any workplace accidents, you will be covered and your family also be insured under this legislation. That is why the contribution starts from the day 1.

So, as I said know, the rate is; already I discussed the rate, which is 0.75 from the employee and 0.325 from the employer. Why which is time to time it varies? Previously it was the contribution from the employer was little higher, which is 1.75; now it has been brought down to 0.75% which the employee contributes. So, these are the contributions which are made from the employee towards this Employees' State Insurance Corporations.

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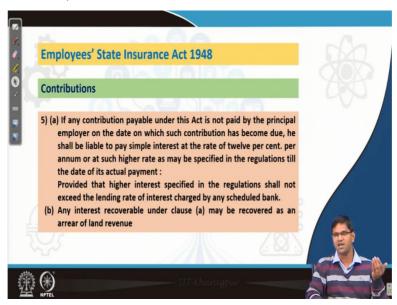
So, the contribution, the wage period relation to employee shall be the unit in respect of the all contribution shall be payable under this act. So, when they should make? Generally, they should make on the last day of the wage period. Let us say, if it is 1 to 30 days is the wage period calculation, on the thirtieth day they should make the wage period has to be deducted and then paid. Generally, what will happen in the working places?

So, once the wage period calculation is over, at time of the salary disbursement, this deduction is made on the employee salary; and along with an employer contribution, it will be deposited on each employee's ESI account. Each employee will have a specific account

associated with the Employees' State Insurance Corporation. They will generate a challan. The employer, means the organisation will generate a challan and they will make the payment to the ESIC, Employees' State Insurance Corporation.

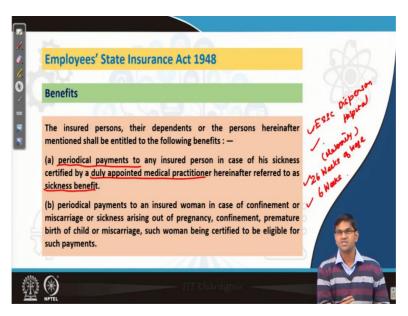
All the contribution will be deposited to each individual ESI account number, because, if there is a lapse and if during the period, if there is no payment is happening, then the member will become an aggrieved or the insured person will become aggrieved person, because you are not being paying for the particular period. So, this is a responsibility of an employer that you deduct the money from employee and you add your contribution on the pool and then deposit on the account for each employee in the ESIC Corporation.

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Now, which I have already discussed, if there is a delay, then 12% interest has to be paid, the simple interest rate that employer has to contribute along when they make a delayed payment.

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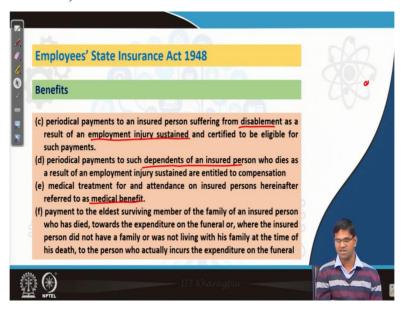
So, now we are going to be discussing about the various benefits, which is a very important section in this lecture. So, what are the benefits which are available for an insured person, for their dependents or person hereinafter mentioned shall be entitled to the following benefits. What are the benefits? See, there is a periodical payment will be paid in case of sickness is certified duly appointed by the medical practitioner.

What will generally happen is, if you are falling sick then you have to visit ESIC dispensary or the hospital, get that sickness treated and that certificate has to be produced, and then your employer will be able to benefit and say, yes, these many days he or she is not appeared or not in job owing to his sickness. So, when that note, that person, the employee will be able to receive the periodical payments for the days they were absent for due to their sicknesses and has been certified by the appointed medical practitioner, then they will be able to get the sickness benefit.

Then, periodical payments is also made to women in case of the confinement meaning the miscarriage or for the pregnancy, post-maternity benefit or miscarriage; so, they will be paid a salary. Now, how many days of salary which are paid for the Maternity Benefit? If a woman for a Maternity Benefit, it is 26 weeks; 26 weeks of wage will be paid for a maternity period.

In case of a miscarriage, 6 weeks; so, this is post or even just before the maternity, that they can take these 6 weeks of; this is for a miscarriage and 26 weeks for a maternity, salary will be paid to a woman. This is also a benefit from this ESIC.

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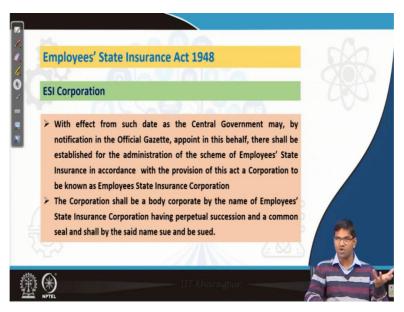


Now, next is, there is also periodical payment will be paid to an insured person if the person is suffering from disablement. When we talked about disablement, we said a partial or full disablement, total disablement. So, based on the employment injury, if a person has result of an employment injury, so, that has to be certified to be in eligible to such payments. Similarly, the periodical payments to the dependent of an insured person who dies as a result of the employment injury, so, then that they are entitled to the compensation.

So, the dependent, as we defined who are all the dependents, they can be able to get these periodical payments, because, if the person dies because of the employment injury. And medical treatment for attendance of insured person hereinafter referred to the medical benefit. They also get the medical treatment, as I said, yes, you can get treated from the private hospital as well and then ESIC will be able to pay the benefit and then you will be able to get the medical benefit.

And there is also payment to the eldest surviving member of the family. In case of an insured person who has died and also, they will also pay towards the funeral expenditure also, they will be paying the certain expenses towards the funeral expenses. These are the benefits, and also other benefits as I said, being a member, then your family members also able to treat at the designated ESI dispensary and also hospitals.

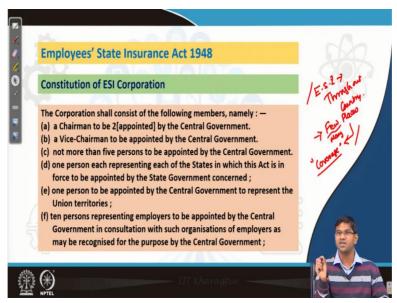
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Now, we are going to talk about the ESI Corporation which is Employees' State Insurance Corporations. With the effect from such day, the government may by notification in official gazette, appoint an established administration where the, administration of this ESI Corporations. Then the corporation shall be a body of a corporate by name of the Employees' State Insurance Corporations.

They will be instituted and they will be governing and regulating all this contribution; they will set up the hospital; they will tie up with the private hospital or the State Governments to set up the dispensary, hospitals and also facilitate all other activities which are required.

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Now, how do they constitute these corporations? The constitution shall consist of the following members: They will have a chairman and to be appointed by the Central

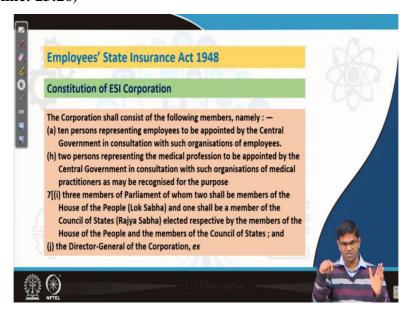
Government; and they will have a vice-chairman to be appointed, again by the Central Government; and that not more than 5% to be appointed by the Central Government. One person representing each state in which this act is enforced; if, I think in the; now, now it is almost in all state which this act is there.

And there are within a state, few places, there are remote places where you do not have ESI coverage, which I think it is important that I should inform. See, the ESI is available throughout the country. There are, but despite, there are few places, still there are many places; I would say not even few, there are many places due to the geographically situations or maybe other things; there are no coverage, ESI hospital is not covered.

So, those places, ESI, it is not a mandatory for an employer where ESI coverage is not available to deduct the contribution from the employee; rather they should have an alternative employment where through Workmen's Compensation Insurance or maybe group insurance to be availed from those employers. Now, coming back to these ESI Corporation which is very important that I thought it should be discussed.

Then, one person should represent each of the states; ESI is there in almost all states, so, at least 1 member from each of the state. And 1 person to be appointed by the Central Government to represent the union territories, because there are union territories in the country. And then, person representing employer to be appointed by the Central Government; yes, you have to have a person who is a representative of the employer.

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And also, a 10 person representing employees to be appointed. Again, as we have an employer representative, similarly, the employee representative should be also part of the corporations. In consultation with the organisation of the employees; you cannot just simply appoint an employee, because the Central Government has to consult the where these employees are employed. So, in consultation with them, they will be able to appoint the 10 persons on this Employees' State Insurance Corporations.

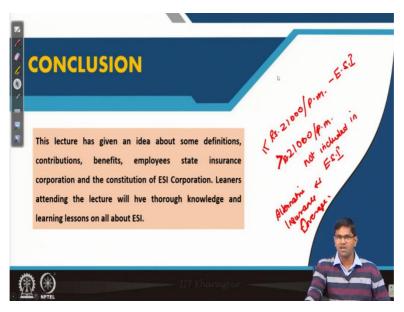
And 2 persons represent the medical professions, again appointed by the Central Government in consultation with the whichever the recognised medical practitioner they have been. And 3 members of the parliament whom 2 shall be the members of House of Lok Sabha, and 1 from the Rajya Sabha will also be a member of this ESI Corporation. And there will be a director general of the Corporation. So, these are the ESI Corporations.

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And these are the references.

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And if you look at this ESI Act, which is one of the important legislations which are giving access to health care service and also securing their hardships. In case an employee happened to have permanent partial disablement owing to employment injuries or permanent disablement owing to employment injuries or in case a person dies owing to employment injuries, those families and dependents will get the benefit from ESI Corporation.

Similarly, it also provides maternity benefit, sickness benefit, medical benefit. The benefit which is very large and it is a mandatory act for all the places wherever the coverage is available, where the contribution will come from both employee and employer, which is one of the significant and important social security legislation which are available to the organised sector, wherein all employees working in any establishment having 10 or more employees are covered under this legislation.

There is a ceiling limit. The ceiling limit of these wage is rupees 21,000 per month. Anyone who is earning more than this 21,000 per month is not covered under, not included in ESI, which is another important aspect. So, anyone who is less than or equal to 21,000 are included in ESI. And anyone who is earning is more than 21,000, they are not included in ESI, they will have to be covered under alternative insurance facilities or a coverage.

So, with this, we are concluding the module 7 wherein we discussed about all available social security legislations, primarily all these social security legislations are consolidated now and it is going to be implemented under the code on social securities which is going to be very comprehensive; of course, will have the same essence and essentials of all the social security

legislations we discussed in this particular module. Thank you. We will see in the next module. Thank you.

Business Law for Managers Prof. S. Srinivasan

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Lecture - 36

Concept and Salient Features of Industries

Welcome to lecture 36. This is the module 8 and this is the last module of this

particular course. And the previous modules we discussed on various labor welfare

legislation. We discussed about payment of wages, we discussed about other aspects

and today is the last module, which are we are going to specifically focus on industry

relations, which is one of the important topic that anybody work in any industries,

which is very relevant topic.

Because we are being seen several disputes which are happening between the

employees and the employer. This actually impacts a larger economic system, at

national level also the economic system of the individual as well as the organizations.

So this is one of the important model, which is going to discuss about what are the

provisions which are provided as per the Industrial Dispute Act in terms of managing

the harmony in the industrial setups.

And in the first lecture, we are going to discuss about the understanding the concept

of industry and some of the salient features of industry relations because that will

provide as a foundation to understand in a larger sense, okay. Now having understood

what is this industry relations, who are the party which are going to be involved in

managing the industrial relations.

Then going forward, we will discuss okay what are the machineries, what are the

things have been available to handle any dispute which is arising in the industries. Let

us get into the lecture.

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What we are going to discuss today? We are going to discuss about concept and definition of industry. And we will also learn what are the objectives of the industrial relations and we will try to understand what are the various types of industries are available.

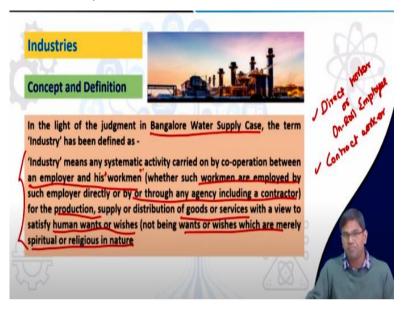
Because you know it is very important to understand, we are not going to limit this industry with respect to manufacturing activities as such, we are going to you know related to a broader sense because this Industrial Dispute Act which are essentially going to be come under the code on industrial relations, which is covering all types of industries, whether it is manufacturing, whether it be service industry, allied industries.

All industries are going to be you know come under the purview of industries and industry relations perspective. And we will also understand the importance of industry in a development of a society. This will provide a basis of under which why as a country, we are coming up with the legislation in order to regulate the industrial practices, because this has a lot of implication for the livelihood of the people and also economic stability of the country as such.

That is why it is important that yes, there should be a mechanism and there should be measures which are available to handle any industrial unrest or any dispute which are arising out between either of the party, either it is from an employee or from the management or from the trade unions. Whatever the perspectives this industrial

relations are one of the important concept that has to be understood and those provisions has to be practiced in order to maintain harmony at the workplace, okay.

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So now let us try to understand the definition of industry. So this industry is being defined through one of the famous case which was you know Bangalore water supply case. From there they defined the term industry. What does an industry mean? This is the same definition which are being you know taken by the Industrial Dispute Act, also code on wages, they will define industry with refer to this particular definition.

So industry means, any systematic activity carried out on by cooperation between employer and his workmen. We are referring to workmen we are referring to employee in a larger context. So you know carrying out a systematic activity by cooperation between an employer and employee.

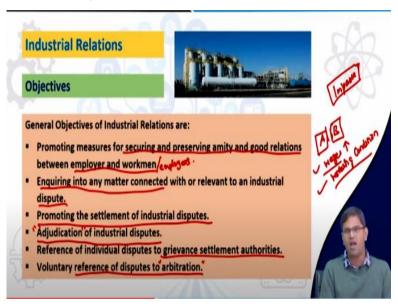
Now if you are referring to workman or an employee, here the workman or employee refers to either they are directly employed by the employer meaning that you know we have been discussed in the previous modules direct worker or unrolled employee which are directly employed by them or anyone who are employed in this particular industrial setup, either through a contract agency or in any other means, those are also covered as a workman we are referring to.

So this is a broader sense. So it is trying to include all employed either directly by the factory or a company or through a direct or by a contract agency for the production,

supply, distribution of goods or services. You will understand that yes, it is covering the broader spectrum of all types of commercial activities we are talking about. It is not only about you know producing goods, it is also talking about the services industry with a view to satisfy human wants and wishes.

But it is not related to merely spiritual or a religious in nature, okay. This is the definition of industry, because this industry definition is very important, so that it covers large set of activities which are carried out in a business sphere.

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So having understood the definition of industry now let us try to understand what are the common objectives of industry relations. The prime objectives of industrial relations are promoting measures for securing and preserving amity and good relations. This is one of the primary you know objective of industrial relations, which are trying to secure and preserve harmony and good relations between key parties, which are the employer and workmen.

The workmen can also be otherwise called as employees, between employer and employees. So that is a very prime objective of any industrial relation is to try to maintain amity and good relations between both the party who are into the you know business activity every time, right? Then also enquiring into any matter connected with or relevant to industrial dispute.

So trying to solve any industrial dispute. The industrial dispute maybe between employee and employee, maybe between trade unions, between employer and employer, between trade union and the management. There can be multiple you know dispute can arise. So this idea of industrial relation is trying to enquire into the matter, which are related to industrial disputes.

So then, it also subsequently trying to promote the settlement of industrial dispute. As we are started to realize that yes industrial dispute, in a large sense it is having a longer impact on the larger sociopolitical system, economic system of the country and also in a micro level where it is also impacts the economic sustainability of an individual employees under the family of a dependent.

So this has larger cost. So every time we are interested in settling the industrial disputes. So industrial relations play a critical role in promoting settlement of the industrial disputes so that the harmony comes back and then the activity continues in the business industry or any industrial establishment.

And also adjudication of industrial dispute. So adjudication we are referring here, this adjudication is of a settlement of any disputes through the court of law. That is what the adjudication. So industrial relations also promote, in case you know it is not successful within the organization setup wherein both the party discuss, negotiate or having a third party, either as a conciliator or as an arbitration going for an arbitration.

Third party negotiation is also not successful, then you refer this dispute to the adjudication process. The adjudication, we are referring to the settlement through the court of law. So how do we settle this industry dispute through the court of law. And it also references of individual disputes to grievance settlement authority.

It also talks about you know lot of grievance settlement process, grievance management system within the organization so that the issues or a conflict or any disagreements or the welfare services which are expected by the employees is not being provided, there should be mechanism which are set up at the organization itself.

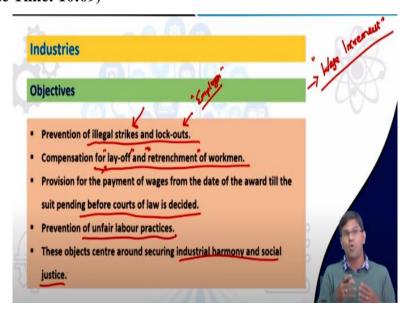
Is a redressal system through which or a grievance redressal system through which you are as a management and also from an employee that can be settled rather than escalating that issues to become a revolving into a bigger industrial dispute. Then voluntary reference of dispute to arbitration. For example, let us say there is a dispute between A and B. A I am referring to an employee and B referring to an employer.

So both parties are having any dispute, either maybe with respect to wage increment or working condition. They are saying, okay, whatever we are having it is not that suitable for us to work. Then let us say this conditions they are having a dispute. There is no conclusive decision arrived and there is an impasse. No conclusive decision been made.

Both the party do not agree to each other's offer, then they may reach an impasse where there is no solution coming out of it, and it is going to impact the industry and their regular business activity. So they might voluntarily refer or agree to go for an arbitration.

So arbitration is again you know out of the court settlement, wherein they both the party will agree to have a you know independent third party person who will act as an arbitrator to you know negotiate the terms between the both parties and suggest a possible settlement and also have an authority to provide an award so that this settlement can be handled well, okay.

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Now so other things why this industry relations, it also interested in prevention of illegal strikes and lockouts. So as I was saying the industrial disputes either resulting in what can be strike, let us say, you know as we said, again going back to the same example, wage increment. This is most common, you know industrial dispute, we been hearing across various industries.

You know various, whether it is a manufacturing or service industry, we often find that yes, this is being most heard dispute in the industrial segments. So now let us talk about the wage increment dispute as being you know between the employer and employee, this will eventually be leading to strikes. So now the strikes are also classified into legal and illegal strike.

So the industrial relations' objective is to prevent any illegal strikes. So illegal strikes why because without any due notice if a worker get into an or employ a group of employees getting into a strike which is going to impact the normal routines of the business, which will impact you know other the economic system or the chain as well. So the idea of industrialization is to prevent any illegal strikes.

Now if you look at lockouts. So what is this lockout? We are going to learn in the subsequent lectures in detail, but I will just touch upon the lockout. See as the worker will sort out for a strike, similarly employer can have sought for lockout where it is to protect their, the facilities which are in the industry or protect the interest of the employer, they will go for a lockout.

That means they shut down the factory that is a lockout. So again, it is also not a you know, not going to create any congenial environment. It is better that you prevent these illegal strikes and lockouts.

Of course yes, industrial relations aiming to prevent any of the illegal strikes or lockout or not only about illegal strikes, it also aims to prevent or sort out issues at the you know initial level so that does not dwell into a bigger conflict or a dispute than resulting in a strike or a lockout, which is going to impact every party involved in the particular strike or a lockout.

Then this industrialization also talks about promoting and facilitating in providing compensation in terms of during the layoff, and also retrenchment of the workers. When the employees due to many reasons companies go for layoff, laying of their employees, the industrial relations playing a critical role in facilitating to pay compensation for the employees who have been laid off, and there are provisions listed down by the Industrial Dispute Act.

We will be learning that in the subsequent lectures and also ensuring compensation in terms of retrenchment. What is a retrenchment? It is a termination from the particular service. And lay off is referring to a temporary termination, it may also become permanent based on the industry or a business situation whether they will resume the activity with a full fledge then they might even call back the employees who went on layoff.

So this layoff is a temporary termination and the retrenchment is a you know permanent termination from the service. During this industrial relation aims to facilitate between the employee and management to ensure that there is a compensation provided to employees. Then provision for the payment of wages from the date of the award till the suit is pending before the court of law.

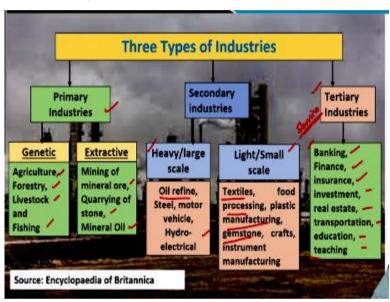
So it is important, let us say there is a dispute. You know somebody is suspended on various grounds. This worker, the management said yes, you cannot enter and work in the facility till the time the dispute is resolved or maybe it is referred in a court of law and this case is pending in the court.

During the pendency of this such dispute in a court, the industrial relation also facilities to provide payment of wages to all the workers during the period when the case is at the court. They will be provided a salary during the time that is in the court. So that is also taken care by the industry relations. And prevention of unfair labor practices.

Of course, yes, industry relations also try to see that know employees are provided with a fair working conditions and labor practices, in terms of wages in terms of working condition, in terms of health and safety in a holistic perspective, to ensure that yes, the workers do not get into these unfair labor practices, ensure that yes they have been treated with a due respect and also with a proper working conditions and sufficient provisions are provided to the employees.

And these all this set of activities we are talking about for industrial relations, what is it actually aiming towards? It is trying to create industrial harmony and social justice. That is the major crux of these industrial relations. So we have understood what are the objectives under which these industrial relations will operate on.

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And now we will now try to understand types of industries which are existing in larger firm, okay. So there are three types of industries which are classifications. So there are primary industries. You know primary industries, again it has been classified into two type of categories, one is genetic and then you know extractive industry. If you look at agriculture, forestry, livestock, fishing all that is coming under this.

And if you look at extractive industry, where more of you know mining activity takes about. You know mining of mineral ore, quarrying of stone, mineral oil, all these are coming in the extractive industry, which are all primary industries. Then comes the secondary industries. What are those secondary industries? So they are heavy or again it has been classified into two categories.

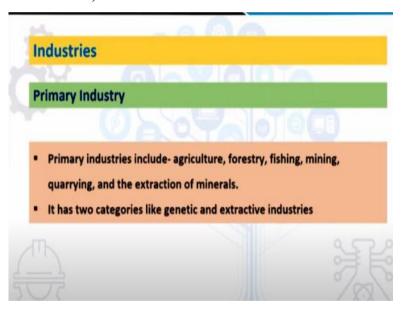
One is heavy or large scale industries which are referring to you know oil refinery, steel, automobile industry, hydro-electrical power and all that are classified into heavy

industries. Then light or a small scale industry, wherein textile, food processing or plastic manufacturing, gemstone, craft, instrument manufacturing, all that has been considered into a light or small scale industries.

Now come see the tertiary industry. So tertiary industry if you look at know where we are only, largely all these tertiary industries are referring to services, okay. So banking, finance, insurance investment, real estate, transportation, education, teaching, all that you look at it in a broader sense, you will be able to understand that yes, these are all into a service industry.

And rather you will look at a primary and secondary industries are largely can be classified into the manufacturing activities. That of course, in each of the primary and second industry, there are some further categorization based on you know type of an activity they do.

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So let us also understand okay, the primary industries are including agricultural as I was already discussing forestry, fishing, mining, quarrying, and extraction of minerals, all that are coming into a primary industry.

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Industries Secondary Industry This industries categorically divided into heavy or large scale and light or small scale. Heavy industries include the oil refining, steel and iron manufacturing, motor vehicle/automobile, cement production, hydroelectrical power generation Light or small scale industries include textile and clothing manufacturing, food processing, plastic manufacturing, electronic and computer hardware manufacturing, gemstone cutting, craft work.

And secondary industries are again being classified into heavy and light industries, heavy industries are we are talking about oil refining, steel, iron manufacturing, automobile industries, cement production, hydroelectrically power generation, all that are coming into heavy industries, right? Now we would have even heard about yes, we are being classified, some company will say know, we are into heavy industries.

So that is how they are classified into heavy industries. And light industries are some of the you know activities which are known garment industry, textile, clothing, manufacturing, food processing, plastic manufacturing, electronic, computer hardware manufacturing, all that all comes under light industries.

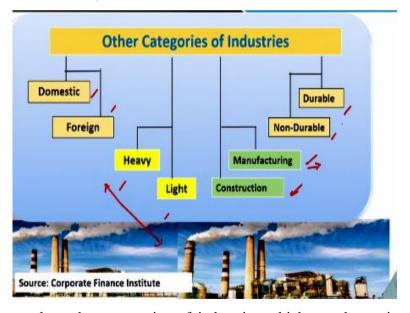
So now if you look at know in India, we are actually one of the major exporter on both this, you know heavy industries and light industries. And we are one of the you know important exporter for various countries, either in a European countries or you know North America and South American countries, we do lot of exporting.

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And look at the tertiary industry. Tertiary industry as I was already saying that, it is largely coming as a service industry, where we are talking about banking, finance, insurance, investment, real estate, wholesale, retail, resale trade, consultancy, restaurants, entertainment, repair and maintenance services, police, defense everything comes under the tertiary industries, which are primarily service industries, okay, yeah.

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Now there are also other categories of industries which are domestic and foreign industry. Again in a broader sense, we are trying to classify. Of course, heavy and light industry we have already seen. Yes, it is very similar as we already discussed, yes heavy industry and light industries. And also we are looking at other type, manufacturing and construction.

Manufacturing, if you look at know all heavy or primary and tertiary has related to the manufacturing. Of course, the construction industry is coming up with lot of infrastructure activities happening in the country, where there is large section which are into the construction activity. And then durable and non-durable. There is different type of classification.

This classification comes from the Corporate Finance Institute. They classified the categories of industries based on the nature and also type of activities they carry out. So that is a primary reason that how they classify. It is based on the nature and the type of activities they carry out. They are being classified into various industries, okay.

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Industries Significance of Industry The industrial sector occupies a fundamental place in the economy and development of any country. Utilization of natural resources: India has plenty of natural resources utilized by large industries. Addressing unemployment: Development of new industries always create need of human resources and employment. Increases saving capacity of people: Industries contribute in a good portion with the total national income of any country, but also in the level of income and saving capacity of people in general.

Now why are we concerned about it? What is the significance of the industry because we are talking about industrial relations, we are talking about legislation that is going to regulate the, you know industrial relations? Why are we talking about it? What is the concern we are talking about? Because if you look at you know all this you know industries which occupies a fundamental place in economy and development of any country.

And you know you look at you know various aspect because yes, we have lot of natural resources. Utilization of natural resources being the large industries, when we are having business activity essentially to provide employment and cater to the development of the nation, supports our economy in a larger sense. So it is important

that yes, these industries are critical addressing.

As I was saying yes addressing unemployment, which is very important. Only through

industrial activities, we will be able to generate employment opportunity for the larger

citizen. So now it is important, yes, we have to have an industry activity.

Now you see governments are coming up with lot of efforts in terms of attracting

foreign investment and you know facilitating and encouraging people to start

industries, come up with you know many industrial activities so that you will be able

to cater to the larger needs of the society in terms of providing employment

opportunities for them. And increasing the saving capacity, the meaning that as you

have more industries, you are able to provide employment.

Through employment, you are going to economically support the people. And then

people will have a disposable income at home at the same time, they will also get into

savings and an income for the future. So that is why the industrial activities are

important.

Though we are all talking about the environmental impact, we are talking about other

aspects of you know having a business, what are the negative impact it can have, but

it can be always regulated, but we cannot stop doing it. Because it is an important

exercise that every country will be promoting so that they are able to have better

economy and it also going to support the development of the people in the country.

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Industries

Significance of Industry

- Promotes other sectors: The industrial sector also helps with the development of other economic sectors when industries collect different raw materials to transform them.
- Core sector for development: Industrialization helps with the development of many strategic sectors like energy, transport, building, chemical, defense, etc., which play crucial role for development.
- Self dependency: Production of several key goods helps for implementation of import substitution measures that at the same time, helps to minimize dependency on foreign imports also saving a great amount of foreign exchange.

Then it also promotes other sectors. Industrial sector also helps with the development of other economic sectors, when the industries collect different raw materials to transform them because when we talk about the manufacturing activity, they buy lot of raw materials from different sources, that they also provide business to them. So it is in a larger sense, yes, it is going to promote more activities and is going to help in a larger sense.

And core sector development is industrializations helps with the development of many strategic sectors like energy, transport, building, chemical, defense etc., which play crucial role for the development of a nation. And also we look at self-dependence.

Yes, production of several key goods helps for implementation of import substitution measures at the same time and help to minimize dependency on foreign imports, where we are now recently talking about Make in India. Country is promoting about Make in India. You produce your own goods, self-sustaining country, meaning that yes, you produce whatever you want for your own people.

So unless otherwise, you do not have industries, which are going to cater to meet the objective of, Make in India our self-reliant country. So unless otherwise, we do not run the industries and if the industry is impacted by the industrial dispute or you know the continuously various other conflict is arising in the industry that will never be favorable activity or it does not attract people to start the business.

That is why the ease of doing business also related to how you are going to as a country going to regulate the industrial peace. So that is why you know it is important.

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And you also see industries help in modernizing the agriculture. Industries reduce the heavy dependence of people on agriculture and by providing them jobs. Establishing industry in tribal and backward areas of course, it will also improve their accessibility to better resources. And you know India's prosperity lies in increasing and diversifying the manufacturing activity.

So the significance of industry is large. That is why we are concerned about promoting a better harmony in the industries. As we are saying that yes, it has larger impact in order to promoting the economy of the country and also supporting the people. So that is why these industries are critical. When the industry is critical, and ensuring harmony and reducing unrest in the industry is also important.

How do we do it? We have to regulate it through legal framework. The legal framework, we are referring to as a country, you have to come up with the legislations which will regulate the various activities, which are also not only about settling the dispute, it also to prevent any occurrence of industrial disputes.

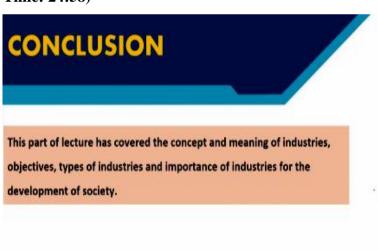
So the legislation should provide a system in a way that it generates or develops certain machineries in the existing system of a company so that any issues are already discussed. And we will handle in earlier stage and also it can be prevented rather than you know making into a bigger conflict, okay.

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So these are the references.

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In today's lecture we discussed about why industry and what are the objectives of industrial relations, which is giving a basis for our subsequent lectures about. We are going to learn about industrial relations and industrial dispute act legislations, how we are going to manage the peace at the industries so that you know the larger economic sustainability is maintained. So thank you.

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Lecture - 37 Industrial Relation

Welcome to lecture 37. This is the second lecture of the last module which is module 8. And in the previous lecture, we introduced the concept of industry, various type of industries and why industrial relations, what is the significance of industrial relations, why everybody has to be concerned about maintaining peace and harmony in industry.

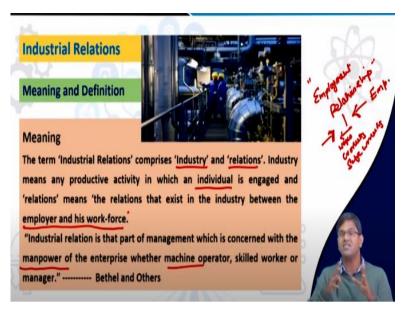
In this lecture, we are going to understand more on industrial relations because that is a precursor to understand how do we manage the harmony and rest at the industrial workplaces.

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So today's lecture we are going to discuss about meaning and definition of industrial relations. What is industrial relations and the scope, objectives, salient features of industrial relations, importance of industrial relations and we also talk about different people or parties involved in the industrial dispute and some of the prerequisite for a good industrial relation, what does it require to maintain a good industrial relation.

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Okay, now let us start with understanding the, you know concept of industrial relations. So what is industrial relations? We are going to look at various definitions so that we will have a larger understanding about industrial relations. The term industrial relations comprise two important words. One is industry and another is relations.

So industry here it refers to a productive activity, which we refer to the previous lecture, we have talked about a systematic activity for the production of a goods or a service. Similarly, here also industry means any productive activity in which an individual is engaged, right? So in which individual we are referring to employee or a workman.

And relation means, the relation that exists in an industry between employer and his workforce. So the industrial relation talking about, yes industry is where certain systematic activities is being carried out either to produce goods or a service and relations we are referring to the relation that exists between an employer and his workman. There is an employment relationship, okay.

So this is an employment relation. What is this employment relationship? Yes, I am, I need a, I need your engagement in the producing a product or a service and you are requested to produce, give your inputs. In return I as an employer, I will be offering you certain services in terms of wages and I will be providing better working condition, safe working condition, health and safety are secured.

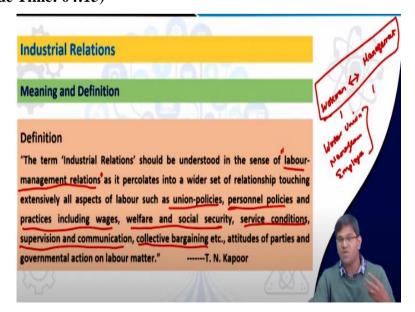
So that is what you know the employment relations comes into picture. So both the party gets into an agreement that yes I put in my effort in producing good or service that you are wanting to have and in return, I expect you to provide me wage, safe working condition, whatever other requirements that I expect, when I am being employed in a particular relationship, relationship between an employer and employee.

Now let us look at the another definition. So industrial relation is a part of a management which is concerned with you know manpower of the enterprise, which were essentially management of the manpower. Meaning that management of employees.

So either this manpower we are referring to either a machine operator, skilled worker, manager, whoever it is, here the industrial relations, primarily this definition says that yes it is a management, the part of a management which are concerned about their employees. So how do you manage your employees?

Manage you are referring to the same example of referring to all the conditions we are talking about; wages, salary, benefits, health benefits, other services you provide to your employees, that you manage the employee in a better health and a better condition.

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Then let us also look at the another definition which is a very broad in this you know Mr. T. N. Kapoor has given his definitions, where the term industrial relations should be understood in a sense of labor management relations. So as we said industry and relations, industry refers to activity and relation refers to the relationship exists between an employer and employee.

Here, it should be understood in the sense of labor management relations. So employee or workman and management, it is reciprocity or it is a bidirectional relationship, it is not one way, it is always a two-way relationship. So and in all aspects it is you know in a wider set of relationship in touching upon all aspects of labor such as union policies.

When a factory or a company has a union, what are the policies which are going to be governing the set of union activities in terms of selection of the members, how do you communicate to the management, what are your needs are, how the any disputes or conflicts arising can be settled down. Then similarly personal policies.

Personal policies we are talking about hiring policy or performance appraisal policy, increment policy, bonus policy, all has to be listed down. Then practices including wages. What type of wages, how are you fixing the wages? What is the division of wages? How the increment will happen? What is the proportion of increment to different sections of the employees in an organization?

It will also govern about welfare and Social Security benefits. We are talking about labor welfare or Social Security we are talking about, providing health insurances, provident fund or in a long term also we are talking about other social security benefits in terms of payment of gratuity, bonuses, all that comes into Social Security.

And other service conditions, what are the conditions which I have been hired in terms of leave policy, earn leave policy, vacations, leave travel concession, other benefits you provide to the childcare leave or you know family, governing certain policy with respect to family of the employees. Supervision and communications, okay.

So how do you ensure the communication happens within the organization setup. We

always see that you know many of the industrial conflict or a dispute are resultant of

the communication happens between the employee and management. Sometimes

there is, there should be, a system should be developed that healthy, that promote the

healthy communication between the employee and the management.

Unless there is no communication system developed for the employee to

communicate their needs or their expectations to the management which will

eventually result in the generation of a conflict or a dispute. And also you should also

provide a collective bargaining wherein, bi-party or a tri-party; when I say bi-party, it

is between employee and management. If I say tri-party, wherein worker, union,

management and employee.

So all can also enter into an agreement, collective bargaining. They collectively

decide upon certain things which may be with respect to wages, maybe with respect to

working conditions, maybe with respect to service condition, all that can happen. That

actually you know results in attitude of parties in government action on labor matter.

So industrial relations, if you want to understand which is a very broader term to

understand it is focusing on various aspects about personal policies, union policies,

practices, and other service conditions, Social Security benefits, collective bargaining,

all that come into, comprehensively come into the concept of Industrial Relations,

okay.

So now we have learned the definition of Industrial Relations, understood what are

the key elements in Industrial Relations.

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Now let us understand the scope. The primary scope of this industrial relation is to ensuring harmonious relationship among employees. It is not only about between employer and employee, among employees, between employees and between their, between employees and the managers or supervisors. It also so it is three types. It is among employees, between employees.

And different group of employees, different sections of employees, we see that people who work in one in shop floor may not have a cordial relation with the other people in a different industry or a different unit. So it is also trying to promote yes, there is a harmonious relationship exists among between employees and also between employer and the supervisor.

So managing the relationship between the employer and supervisor is also very critical factor in employee industrial relations. And also managing collective relationship between trade unions and management. Yes, when trade union become a representative to discuss about the employee needs to the management, it has to manage the collective relationship between the trade unions and the management.

It is also called union management relationship. Say to ensure that yes union and management are in good terms so that the needs of the workers are communicated. Similarly, union also hear the difficulties and challenges of the management so that the industry runs in a harmonious situation. Then promoting collective relations among trade unions.

You happen to see one particular industry may have several trade unions within the company. For example, now you see you know there are political party associated trade unions. For example, CITU, AICTE like there are many trade unions are available. Sometimes within the industry, you will see several trade unions. For example, to take an example you say railways. Railways have several trade unions.

Among the trade unions, they will conduct the election and which union wins, they will become a, you know authorized trade union to discuss with the management. So it is also important that you do not have contract between the trade unions you have to ensure that, yes promoting a collective relationship among the trade unions, employer association and the government.

So government we are referring to either a state government or maybe central government or in terms of you know Labor Department inspectors also in place to ensure that yes, there is a you know proper relationship and no disturbance happens in the day-to-day activities of any business or an industry firms. That is the major scope of industrial relations.

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(i) To safeguard the interest of labour and management by securing high level of mutual understanding and goodwill between all sections in the industry which are associated with the process of production. (ii) To raise productivity to a higher level by arresting the tendency of higher labour turnover and frequent absenteeism. (iii) To avoid industrial conflicts and develop harmonious relations between labour and management for the industrial progress in a country. (iv) To establish and maintain Industrial Democracy, based on labour partnership, not only by sharing the gains of the organisation, but also by associating the labour in the process of decision making so that individual personality is fully recognized and developed into a civilized citizen of the country.

And what are the objectives of industrial relations? The primary objective safeguards the interest of labor and management. It is not directed toward or you know favoring only employee. No, the industrial relation scope is to safeguard interest of both the

parties, wherein we are talking about both employees and management. It cannot be

always at the cost of management.

So it should be also, not always at the cost of the employee. So the employee

industrial relations aim to protect the interest of both the parties. Not that you know,

one of you are exploiting other parties. So here it tries to see okay both the parties'

interests and rights are protected and safeguarded by you know securing high level of

mutual understanding, goodwill between all section of industries, so that it helps in

the process of production.

And to also raise productivity to higher level by arresting tendency of high labor

turnover or absenteeism or any other issues which are coming in the industry, it also

tried to promote better productivity, better efficiency in the workplace, you know. For

example, any turnover attributed towards because of the poor working conditions or

wages, wage practices or similarly absenteeism because of the, you know unfair labor

practices or you know untoward incidents happening in an industry.

So this industrial relation promotes to have a better productivity. And also the

industrial relations aim to avoid industrial conflicts and develop harmonious

relationship between labor and management for the industrial progress that is the

intention. So avoid conflicts, manage or settle the conflicts between the labor and

management for the industrial progress.

Then to establish and maintain industrial democracy. Democracy meaning that yes,

parties should be given a chance to be heard. That is what the democracy promotes.

Either it can be an employee or it can be a management. So industrial relations

promote that yes, everyone on the dispute are given a fair chance to be heard about

their perspective.

And based on labor partnership, not only by sharing the gains of the organization but

also associating the labor in the process of decision making so that you know both the

parties are being heard and then the collective decision can be arrived at, which will

of course, definitely be going to promote better industrial progress.

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Industrial Relations

Objectives

- (v) To enable government control over such units which are running at losses or where production has to be regulated in the public interest.
- (vi) To bring down strikes, lockouts, gheraos and other pressure tactics by providing better wages and improved working conditions and fringe benefits to the workers.
- (vii) To bring the gap, by the state, between the imbalanced, disordered and maladjusted social order (which has been the result of industrial development) and the need for reshaping the complex social relationships adaptable to the technological advances by controlling and disciplining its members, and adjusting their conflicting interests.

And also this industrial relation trying to enable government control over such units which are running at loss or where the production has to be regulated for the public interest. Where we see you know continuously there are disputes which are happening.

Then sometimes there is a requirement for state government to intervene and take care of those industry so that that activities are happening for the greater good of the society in a larger sense. And to bring down strikes, lockouts, gheraos. So if we look at now the major purpose also yes, do not want, any industry has to run smoothly and do not want to have any of these strikes or lockout to ensure that yes, employees do not get into strike or employer do not sought out for a lockout.

Similarly, gherao is you know kind of, you know it is kind of a strike, type of a strike or a form of a strike wherein they will, the workers will you know forcibly encroach the or withhold the managers or the supervisors in an organization. So to reduce or to bring down any of such activities is also one of the interest of the industrial relations.

And also prohibit any power tactics used by the labor unions to you know the threatening the management to protect the management also. And to bring the gap by the state between the imbalance or disorder or maladjusted social order so reshaping the complex social relationship.

It is also aims to bring that yes, there is a fair opportunity provided to all parties in the industrial setup to promote better you know industrial progression and activities are happening without any hindrances from any of the parties, okay.

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Now we will also see different types of industrial relations. First is labor relations. What is this labor relations? Which are essentially talking about relationship between union and management. It is also otherwise called labor management relations, okay. This is one type of an industrial relations we are talking about. Wherein, it is trying to talk about managing a relationship between a union and management.

We are seeing that yes union or you can also refer to worker representative or employee representatives, okay. So it can be you know union or a worker representative in institutions or organizations. The managing the relationship between union and management is very important, because they will be discussing about key aspects of the wages or other practices, whether it can be welfare practices or maybe working conditions situations.

Managing this relationship is very important because otherwise unions are the one who used to drive the strikes or other activities which are happening or maybe resulting in an industrial dispute. Then group relations. So it is a relationship between various groups of workmen. That is, you know workman, supervisors, technical persons.

So in an organization setup, we always see different group of workers exist in an organization setup. It can be managers, supervisors and you know shop floor or assembly workers. So this classification is always existing in any industry you take. You know executives or senior executives, middle management, all there are different levels of employees or different sections of workers are working in an organization setup.

So the group relations are trying to promote a better relationship existing between these different sections of the workforces, we are talking about workman, supervisor or manager. Then, the next one is about employer-employee relationship. This is a relationship between management and employee. It denotes all management-employee relationship except the union management.

This is not covering on union management. It is covering about all employee-employer relationship. In a general term you are in a contract with your employee and as an employee of the particular organizations you have a relationship with your management. That is being talked about here. It is not talking about union-management relationship. Then the last one is about community or public relations.

So it is a relationship between industry and society. We see that you know the public relations officer are part of a larger organization. Why, because you see that any industry activities which are happening, which has larger impact on society. Give an example is that, let us say cement manufacturing, okay. Just to give an example, okay. So when they have a cement production industry, so they are acquired a land, right.

They would have taken the land of a people; that is one. Then they are operating in a community. So if you look at they are using the natural resources or other resources in and around. They are going to have a larger impact on the community. Now it is becoming the responsibility of the, you know industries or factories to ensure that yes, I also reciprocate in terms of providing you other support and services for the locality where I operate.

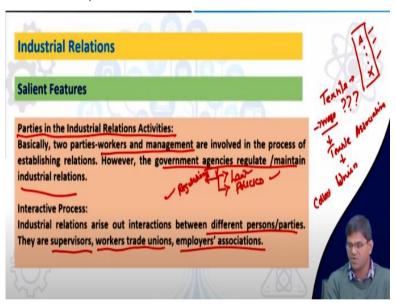
And also send out that yes, how are you operating through your corporate social responsibility activities or welfare measures to the community. Maybe we have seen

cement manufacturing companies used to have a hospital services for the people in and around the locality. So this is also important to you maintain a better public relation.

You are interacting with the society because society and community also one of the, you know important stakeholder for running a business. So sometimes the community if they are impacted, maybe environmentally or pollution all that can also impact your day-to-day operation of the business.

So it is also important, company also manages a better relationship with the external stakeholder which are community and society at large, they are also critical part of the business operations, okay.

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Now what are the salient features of industrial relations? So it is actually talking about parties in industrial relations activity. So the industrial relation always talk about who are the parties who are engaged in this industrial relations. Primarily, if you look at two parties, one is about workers and management, they are essentially involved in the process of establishing relationship.

Because yes, primarily those are the two parties which are into the, you know formal relationship as an employer, employee. So government agencies will regulate and maintain industrial relations. So if we look at what is this government agency we are

referring to, either through law or through policies or through certain other regulations, time to time you know instructions are coming up.

So through these activities they will try and show that yes the relationship between an employee employer has been managed well, okay. Then it is also an interactive process. Industry relations is an interactive process. Why it is an interactive process? Because it arises out of an interaction between different persons or parties.

Let us say some section of the workers or some section of the industrial establishments are unhappy about certain services, maybe a wage, maybe working condition. Now how does it happen? How does it get settled down? So the parties who are unhappy about certain services will escalate or communicate to the management whoever is responsible in delivering this.

Now there is an interaction process, yes both the party discuss, debate and why you are not happy about the services provided. Then they will also say you know why we are providing the services. Then they mutually discuss about the possible way of settling out. Can they extend better services and will they be happy about the services? That is how it is an interactive process. Industrial relation is an interactive process.

The interactive process will happen between different parties. Here can be between supervisors and workers, trade union, employer association. When we talk about employer association, let us say as an example, textile manufacturer will have a text association. Say toy manufacturing may have a toy manufacturing associations or heavy industries will also have associations.

Sometimes there are you know key issues which are prevalent for all industries. For example, let us say talk about textile, okay. So let us say wage is an issue, which is a bigger issue coming up. Now this is applicable to, under textile industry you may have A to Z type of industry are operating. This is common for all industry.

The wage may be a problem for across you know type of companies, factories operating under the textile industry. So the textile association may get into an

interaction or try to interact with the unions, collective unions, unions from various groups. So they will discuss and interact and try to settle on the wage aspect. So that is how it is an interactive process, okay.

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Then it is also promoting a two-way communication process. It is not as I already said yes employee and employer. It is a two-way communication process okay; it is not one way. So here one party gives a stimuli other party responds. So the transaction occurs through such mechanisms either complimentary or cross. So you know as I said you know okay, the employee will say, we are unhappy about salary being paid, we are being underpaid or we are paying very low.

Then the employer will respond and reciprocate. Say no, we have been paying you fairly as per the regulations, as per the government instructions. We are not paying you low. So it is an interactive you know two-way communication. Then they will express their disagreement or unhappiness, where they do not like dislikes all that been discussed, then they are trying to arrive at a solution which will be favorable for both the parties, okay.

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Industrial Relations

Salient Features

Approaches to IRs:

Various approaches contribute to shape IRs pattern in industrial organizations. These approaches include sociological, psychological, socio-ethical, human relations, Gandhian, system approaches etc.

6. State Intervention:

State plays a vital role to influence industrial relations situations through its activities as facilitator, guide, counsellor for both the parties in the industry.

7. Role of Trade Union:

Behavioural manifestations of workers are mostly governed by the trade unions to which they belong. Hence, trade union's perception, attitudes towards management influence workers to form their mind set that regulates/promotes interaction with the management.

Now other salient features of the industrial relations. So there are various approaches that shapes the industrial relations pattern in organizations. So those approaches include sociological approach, maybe you know psychological approach, socioethical human relations, Gandhian philosophy or system approaches. These are all approaches. But look at the other important aspect in industrial relations are state intervention.

State, I am here referring to appropriate government. Either it can be a central government or a state government or a district administration. They play a very vital role to influence the industrial relations situations through its activities as a facilitator, guide, counselor for both the parties in the industries. Maybe we would have observed this incidence.

For example, let us say one of the industry in a particular industrial zone or those workers are going on a strike. So that strike may be you know the nearby industry's workers may also or nearby company factory workers also may be joining the strike. Then that become a bigger problem and that is halting all industrial activity. So here the role of a government becomes very critical.

Government will play a role in and act as a facilitator. They voluntarily wanted to settle the dispute between an employee and worker. They will facilitate, they will set up the negotiator, they try to resolve. Can they intervene through policies? Can they

intervene, they provide necessary support to protect the interest of the both the parties. It can be a worker or it can also be a management, okay.

Now also the next important aspect is the role of a trade union. So trade union we are talking about worker union. So the worker union is an important existence in any industry because they are becoming a representative for the workers and they also play a role of connecting the management and the workers. Let us say you are seeing a factory which has 10,000 or 20,000 workers and you have a union.

Now the union representative on behalf of the workers, they will discuss the management and they will also pass the information from the management to the large section of the workers. So they also you know ensure that yes, they are trying to be a representation for the workers and they will also promote a better and regulate the certain activities in such a way that it promotes better peace at the workplaces.

That is why the role of a trade union also very important in terms of industrial relations is concerned.

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Industrial Relations

Salient Features

Organizational Climate:

If congenial and conducive organizational climate prevails, workers feel homely, interact spontaneously, communicate boss about their problems, difficulties directly and come close to him to exchange/share the views each other in respect of work, change of job design, introduction of any operative system, process etc.

Dispute Settlement Process:

If the management personnel believe on the philosophy of settling workers' grievances/ disputes through bi-lateral negotiation process, they give much more emphasis on mutual talk, sharing responsibility, collaboration, partnership dealing and mutual trust.

So other aspects, if you look at organizational culture or a climate. If the organization climate is congenial and conducive organizational climate prevails, what will happen if there is see you know very calm and congenial environment workers feel homely. They do not have any hesitance. They will be able to you know interact spontaneously, communicate to the boss about their problems, difficulties directly.

And come close to him, they exchange or share their views, so that you know there is

a better relationship and better transactions happens between the employee and

employer. Imagine a situation where the climate is not so conducive, wherein you do

not see the worker is not freely communicating their difficulties and problems. What

will happen? It will result in a, you know disassociation between two groups where

the management and industry.

Ideally there should be a very congenial environment, there should be collaborative

interactions happening between both parties. In case if the climate is not so

conducive, what will happen? They never communicate their problem and it will

escalate and it will go into a situation where they will have sought for a strike. Other

way is also possible.

The management will also become so defensive, apprehensive about supporting any

worker demands. Then they will also have sought to going for a lockout, okay. And

another important salient feature of this industrial relations is a dispute settlement

process. So if the management person believes on the philosophy of settling workers'

grievances through bilateral negotiation process.

The bilateral negotiation process we are talking about both the parties negotiate. They

give much emphasis on mutual talk, sharing responsibility, collaboration, partnership

and mutual trust. So that you know any dispute, any conflict can be always settled

down. If there is no bilateral negotiation happens and agreement is not coming into

place, then that will be eventually will result in a, you know strike or lockout which is

going to impact both the parties, okay.

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Industrial Relations

Importance

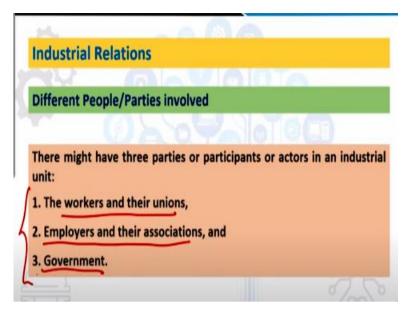
- The labourers today are more educated and they are aware of their responsibilities and rights. Management has to deal with them not merely as factors of production, but as individuals having human dignity and self-respect.
- Joint consultation between employees and management paves the way for industrial democracy and they contribute to the growth of the organisation.
- Conducive industrial relations motivate the workers to give increased output. Problems are solved through mutual discussions, workers' participation, suggestion schemes, joint meeting, etc.

Then again you know, we are also talking about the importance of this industrial relations. See, the laborers today are not like the earlier years where they are not educated. Now the laborers are more educated, they are aware about their responsibility and the rights, what are their rights, what is the minimum wages, what is the minimum working conditions to be provided.

So management has to deal them not as a factor of production, but as an individual having human dignity and respect. So industrial relations, talking about it, how do you treat fairly your employees. And also these industrial relations, providing or talking about joint consultation between employees and management that paves better industrial democracy and contribute towards the growth of the organizations.

And it also talking about a conducive industrial relation, motivate the workers to give increased output. When there is you know better industry relations exist, when employee feels that yes, my employer will listen to me as and when I require, when I go through some difficulties, they will address my problems. Then it will actually motivate and increase the morale of the employees. And of course, it is going to be seen in terms of a better efficiency and then productivity, okay.

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So what are the different type of parties involved in the industrial relations or in any disputes? We always know workers and trade unions and employer and their associations and of course government. These are the three important people will get into the, you know industrial relations or a dispute whenever arises in an organizational setup.

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And as we already discussed, yes worker and trade unions.

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Manager and their association. Manager I refer to employer and also their association as example, as I said you know textile industry, they might have their own associations. So all of them are an important player in terms of you know industrial relations or settling any conflicts arising in the industries.

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Similarly, government plays an important role as a custodian of you know the nation that they try to facilitate better industrial relations and they also ensure that yes there is harmony between employer and employee, okay.

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Industrial Relations

Pre-requisite for Good Industrial Relations

MUCAEDATA

At a given point of time, the system of industrial relations is shaped by varieties of factors which include-

> Top Management Support

> Developing Sound HRM and IR Policies

Development of Effective HRM and IR Practices

Provision of Adequate Supervisory Training

> Follow-Up of Results >

Now what are the prerequisites for a better industrial relation? So there should be a support from top management. Unless otherwise managements do not support, then there is highly unlikely to have a better industrial relation to exist between an employee and employer.

And developing a sound human resource practice and industrial relations policies that is a one of the precursors for having a better industrial relations and developing an effective HRM and IR practices. So that is very important and provision of adequate supervisory training and follow-up of the results.

Any dispute which are happening you have to ensure that yes, you are going to follow up on the results and also providing training on these you know industrial relations maintaining or what are the provisions are available wherein worker can escalate their demands and the management can also talk about okay, these are the ways we can settle out any disputes or conflicts or any of your demands in an amicable and most democratic way, okay.

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CONCLUSION

This lecture session has covered various aspects of industrial relations including the meaning and definition, scope, objectives, salient features, importance, different people/partis involved and pre-requisite for good industrial relations. These are very important to all learners of this course.

So this provides the basis for you to understand you know why industries are important. What is the significance of industrial relations, and we will be learning in the subsequent lectures on the various machineries and measures provided in the Industrial Dispute Act? Thank you.

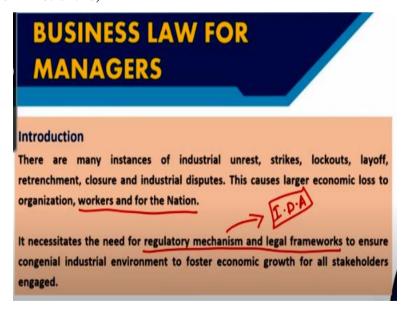
Business Law for Managers Prof. S. Srinivasan Vinod Gupta School of Management Indian Institute of Technology-Kharagpur

Lecture - 38 Industrial Dispute Act

Welcome to lecture 38, third lecture of module 8. And in today's lecture, we are going to discuss about the Industrial Dispute Act and various provisions provided under the Industrial Dispute Act. Primarily, we will be learning about the key aspects of the act. We will discuss on strike, lockout, layoff, what are the compensation and when do you call industrial dispute.

What are the strikes which are classified as an illegal strike, illegal lockouts, legal strikes and legal lockouts which is very important to learn and understand, because we are seeing that this type of strikes are very frequently occurring in many parts of the country, which is very important to understand what is my Industrial Dispute Act is talking about, how a government is trying to regulate these kinds of industrial unrest in the industries?

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So now to understand why this Industrial Dispute Acts have come into place first. See we are seeing that there are many instances of industrial unrest, trades, lockout, layoff, retrenchment, meaning that a termination of large number of employees being terminated from a job, closure of the industries due to various reasons can maybe because of the economic downturn or maybe for various other reasons, companies are

shutting down their operations.

In the last two years, we have seen post COVID many small scale industries have shut

down the industry. So there are closures, what is the requirement from the employer

that you have to pay your employees and we are also seeing lot of industrial disputes

happening. So if you look at these are becoming a very common or recurrent

phenomenon in many parts of the country.

Now why it is becoming important to regulate these kind of an industrial unrest,

because it causes larger economic loss, not only to the organization, it also you know

impacts the workers and you know the nation at large. So that is why it is important to

have a regulatory mechanism under a legal framework. So this is where it gives a

ground to come up with the industrial dispute act IDA.

So Industrial Dispute Act to ensure congenial industrial environment to foster better

economic growth for all stakeholders engaged in this activities. So it is very important

there should be a regulatory mechanism and also a legal framework. Unless otherwise

there is no, in absence of a legal framework, it is very difficult for you to mandate

certain things or demand certain things from the parties engaged in these activities.

It can be either a worker, it can also be a management. That is why Industrial Dispute

Act is very important in this conjuncture to you know regulate any of these industrial

activities to ensure yes, there is a harmony in the industrial activities.

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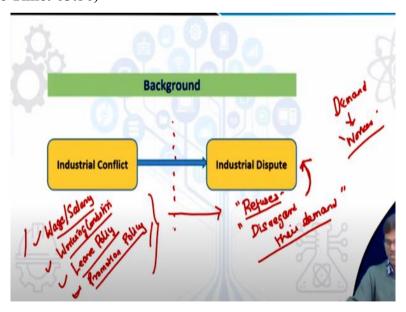
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Now what are we going to discuss in this lecture? We are going to understand the background of the concept of industrial conflict and dispute and we will also see the objectives of this Industrial Dispute Act and what is the industrial dispute. We will learn about the various forms of strikes and we will also learn about the concept of lockout, illegal lockout.

We will also see the causes, what are the important causes for industrial dispute and we also discuss about salient features and principles of this Industrial Dispute Act.

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Now to understand the difference between industrial conflict and industrial dispute, when does a conflict turns out to be an industrial dispute? Not that you know any demands. So there is you know a general assumption from larger section of the

society is that any demand from the worker, any demand from the workers, they

assume it is a dispute. It is not a dispute.

Let us say there is you know a discontent or a disagreement or unhappiness on with

respect to let us say wage or a salary. I am giving an example. Let us say employees

are unhappy, or there is a discontent or a disagreement on the salary payment, or the

working condition. Let us say leave policy or talk about you know promotion policy,

okay. Now see there is a disagreement, discontent.

And you know they are not happy with what has been happening and they are

escalating this. The management is also aware that yes there you know my employee,

certain section of the employees is not happy about the salary, working condition,

leave policy, promotion policy all that. This is actually conflict, that does not become

an industrial dispute, okay.

There is yes between management and employees there is a disagreement, there is an

unhappiness. But does not qualify as an industrial dispute. When does it become an

industrial dispute? When one party, the parties in this particular negotiation they

discuss and other party refuses or disregard their demand okay, then it becomes an

industrial dispute.

Mere existence of dissatisfaction, disagreement, unhappiness is not an industrial

dispute. That is why I am discussing here very clearly what do we call as an industrial

conflict and when do we call an industrial dispute. So the conflict will become a

dispute when other party which refuses or disregard their demands, then it becomes an

industrial dispute, unless otherwise till the time it exists as an industrial conflict.

This is a difference which makes between an industrial conflict and an industrial

dispute, okay. Now having understood yes, there is you know refusal from one party

on the demands or they disregarded their opinions or demands, then that become an

industrial dispute.

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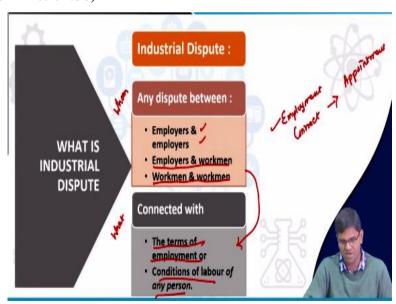
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Now we will understand what are the objective of this particular legislation. There are two primary objectives. One is about to prevent and resolve any industrial dispute. So one first attempt is to prevent any industrial dispute to occur. So it is always better to prevent the industrial dispute rather than settling. In case if the dispute is unavoidable in many industries, yes if the dispute comes, how do we resolve this industrial dispute?

So this act intends to focus on this prevention and also to resolve in this industrial disputes. And it also aims to secure amity and good relations between workers and management for a common good of all the stakeholders of a particular industry. So these are the major objectives of this legislation.

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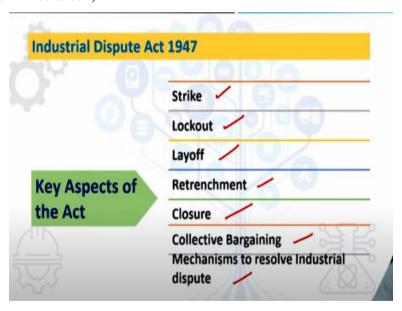


Now what is industrial dispute? So industrial dispute has two important components, okay. First is about the parties in the dispute. Second is about the term or under for what, for what and whom okay, whom and what. These are the two important components which are defining the dispute. So the dispute can be between employers and employers, maybe between two factories.

Or can be between employer and workman, between employees. And it can also be between employees also. Within a factory there can be a possibility the dispute between two set of employees also possible. So dispute which are between employer and employer, employer and employee, employee-employee. So three possibilities are possible.

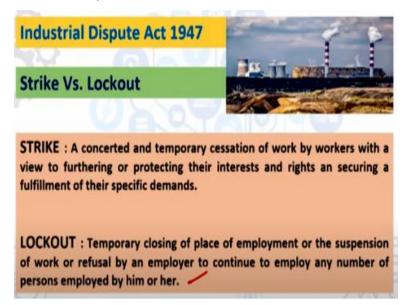
And for not all the conflict between these parties will become an industry dispute. It has to be connected with definitely on terms of employment okay, which may be with respect to employment contract, with respect to whatever been there listed down in the appointment letter. On this there is a disposition or disregard or conditions of labor. It can be based on the working conditions and anything, then it becomes an industrial dispute, okay.

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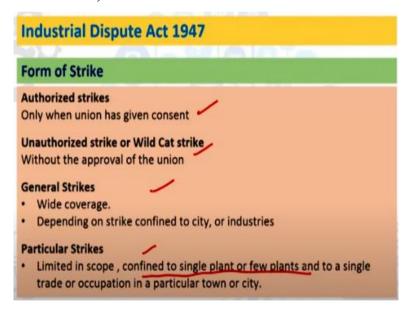
Then, what are the important aspects of this particular legislations? We are going to discuss about this act, specifically talks about strike, lockouts, it talks about layoff, retrenchment, closure, collective bargaining and also talks about various mechanisms to resolve industrial dispute, okay.

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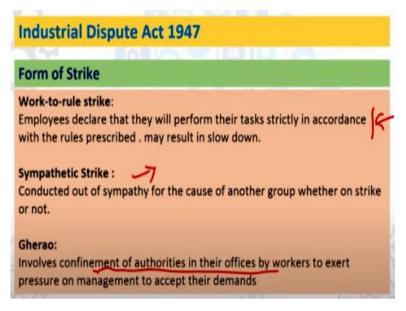
So what is strike? A strike is a concerted effort to the or temporary cessation of the work. So generally strike is nothing but employee stops doing the work. That is called a strike. What is lockout? Lockout is a temporary closure of the place or a factory or institute; that becomes a lockout.

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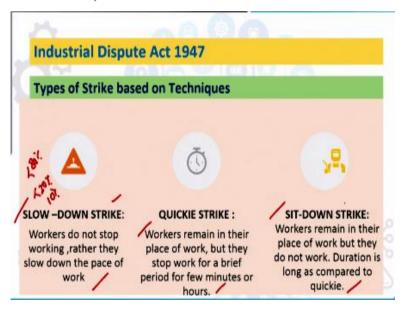
Now what are the different forms of strike available? They are authorized strike. When in union consents to conduct the strike, it is an authorized strike. Unauthorized strike is nothing but do not give a consent, okay. Then general strike, which is carrying wide coverage across regions. Particular strikes are limited to one plant or a few plants.

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Then work to rule. They will not, they will only follow the certain rules. Even if a company demands they will not help to extend their work and go. Sympathetic strikes on the ground of sympathy they do. Gherao is confinement of authorities okay, on the pressure to management.

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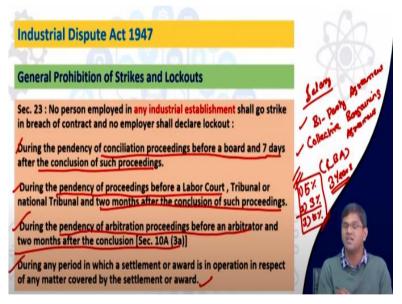
So there are other types of strike based on some techniques. So as we have discussed about gherao, gherao is about confining, you know management representative by the union or workers. Now there are three types of strikes based on the techniques. One is about a slow-down strike. What is the slow-down strikes? So here worker not, essentially they do not stop doing the work.

Rather they will slow down the pace of work. Now they will do not produce much. Their efficiency will be less than the expected. Let us say if the efficiency should be 80%, their efficiency may be 20% or 10%. It is a slow-down work. Rather it means they are not leaving. So they are also entitled to be paid, but their efficiency will be low. And quick strike. Now worker remain in the place but they stop working for a very brief time.

So let us say 15 minutes or 30 minutes, nobody will do anything. And sit-down strikes, worker will not leave the place. They will stay in their worksite and they do not do anything. So this duration may be long compared to the quick. Here there is a difference between a slowdown where their efficiency is low. Whereas in this sit-down strike, they will sit and they work. They never do anything.

So some of us would have seen these type of strikes been existing. So workers may have sought out to different forms of strike.

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Now let us try to understand the prohibition of strike and lockout. What are the condition in which the strike is prohibited? When a worker cannot go on a strike, when an employee cannot go on a lockout?

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STRIKE LOCK OUT

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Rish to

Anna Employer

The Employer

So when we said you know strike and lockout, one important thing to learn about the strike and lockout is strike, lockout. If you look at both you know strike is a right given to worker. It is a right to the employer. You will be surprised to look at you know how come a right to be provided? Yes. Legally, workers are provided a right to go on a strike to bring to the notice of the employer of their demands.

A strike is one effort to yes, they wanted to show on what demands they are going on a strike. It is a legally provide a right to worker to go for a strike. Similarly, lockout is a right enshrined to the employer that employer can sought to go for lockout. Meaning that they are shutting down their place of work to know show there, to protect the interest of the employer.

Sometimes you know they might see that the worker may damage the properties. For that reason, the employer can go on a lockout. And also an employer can also go on a lockout in saying that yes whatever your demands are not legally acceptable or to protect my interest employer can go for a lockout. That is why the, you know the strikes and lockouts becomes an important aspect.

Now yes strike and lockout is a legally allowed strike. Now on what condition the strike and lockout can be prohibited. See now the any industrial establishment shall cannot, they cannot go on a strike in breach of the, you know contact or no employer can declare lockout when during the pendency of the conciliation proceeding before a board. Let us say there is a dispute between an employer and employee.

And that is pending before a conciliation board, that time they cannot, both the party, you know employee cannot go for a strike and employer cannot go for a lockout, and or after seven days of the conclusion of such proceedings. So after this, they cannot go on a strike. If they go on a strike in violation of this, it becomes an illegal strike and illegal lockout. During the legal strike they are certain provisions and conditions are protected for worker.

In this illegal strike and illegal lockout there is no protection provided to either of the employee or for the employer. And next is during the pendency of proceeding before a Labor Court. Let us say similar to the conciliation proceeding there may be a, you know dispute between an employer and employee or a group of employee that is pending before a Labor Court or a Tribunal or a National Tribunal and two months after the conclusion of such proceedings.

When that you know Labor Court proceedings are over after the two months, this employee or an employer cannot go for a strike or a lockout. Similarly, when the dispute is pending before the arbitration, before an arbitrator and are two months after the conclusion of such arbitration. In that case also employee cannot go for a strike, same case employer cannot have sought for a lockout.

And also during period in which the settlement or award is in operation in respect to the matter. That time also you cannot go for a strike or a lockout. What is this during the period in an operation or the settlement award is an operation? Let us say salary hike, okay. Now there is a bi-party agreement or collective bargaining agreement. This is bargaining.

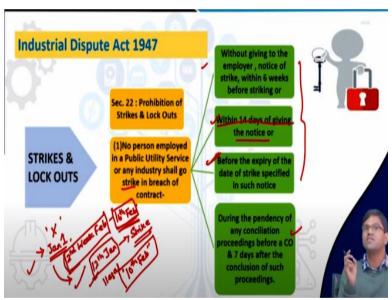
As per this act we can, you know they can have a called CBA collective bargaining agreement or a bi-party agreement. So collective bargaining agreement, both the party or trade union and an employer have discussed that yes, the salary what is the, you know salary increment. And there is an agreement which says okay, the first year we are going to give 5% increment, second year we will give 3% increment and third year we will give another 5% increment.

So they say this, both the party agree to this arrangement of 5% first year, 3% second year and 5% third year and this will be operation for next three years. Now all of them are agreed. During this period, let us say in the second year, the worker's union wanted to go on a strike for increasing or giving salary increment more than 3%.

Then in this case, this strike is illegal. Because there is already a settlement or award or agreement in operations and certain condition, same aspect they are already discussed. Yes, you are all agreed that 3%. Now if you are going for a strike when it is in operation, then it is become an illegal strike. Similar is the case when an employer says you know I do not pay your 3%, there will be 0% increment for you.

Then if they lockout for that particular reason, then it became illegal lockout. Any prohibition is being violated that becomes an illegal strike or an illegal lockout, okay.

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Now we will also learn and understand when this strike or a lockout is also illegal in other aspects, okay. No person or an employer in any public utility service or any industry shall go on strike in breach of a contract. What are those? See, the strike will become illegal strike, in what condition? Without giving an employer notice of strike within six weeks before striking.

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So the first condition is notice to be given within six weeks, okay that we are going to go for a strike. Next aspect if we look at, this strike should not occur within 14 days of such notice. And it should not also occur before the expiry of the date of a strike specified in the particular notice. Now let me explain this clearly, okay. Let us say you are working in a, let us say one employee union working in the particular company called x.

They are giving let us say in the month of January, I assume January 1st, six weeks is let us say you know by February second week they are giving you notice that they are going to go strike after second week of February. Let us even give a date, 16th February. They are saying on January 1st on this conditions we are going to go on strike from 16th of February.

So they are giving a notice. So in case they are not violating they can go on a strike on 16th. Now what will happen? Let us say they have given a notice. If they do not give a notice if they go for a strike it is an illegal strike. Let us say they are given a notice saying that 16th February, they are going to go on a strike.

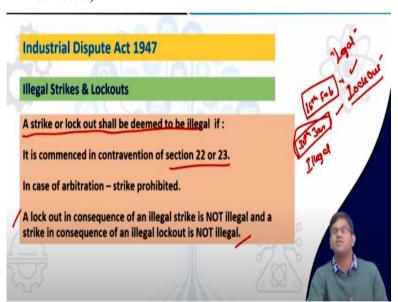
Now after stating this notice to an employer then they are saying they are going on from 12th January they are going on strike. In this case, this activity become an illegal strike because you cannot go on strike within the 14 days of giving such notice. Let us say you have given you know that say from second week of February you are going to go on a strike, okay.

So you said you will be going on strike in second week of February but you are started your strike on 12th of January which is you know not even 14 days from the notice you have given, which is only 12 days. So if some you have given six weeks' notice, but you are engaging in a strike or going for a strike within the 14 days, then it is an illegal strike.

Then also let us say before the expiry of the date, which is specified, let us say you have mentioned that you know 16th of February only you are going to go on a strike, but now you are going on strike on 12th. Or even, let us say even on 10th of February if you are going on strike again it is an illegal saying because you have specified on a notice that you will be going on strike from 16th of February.

So in this case, if any violation happened this has become an illegal strike. And also similarly the same which we have discussed in the previous slide yes you know if it is pending before a conciliation board or Labor Court or before the Arbitration Committee, and then if you are getting into a strike then it will become an illegal strike. Similar thing is also applicable for a lockout also, okay.

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So now when does a strike is become and lockout becomes illegal? When any strike or a lockout will become illegal, if it contravenes the say whatever the points we discussed earlier that you know without giving a notice or before the expiry of the particular date specified or within 14 days of the notice or when there is a dispute

which is pending before a court or pending before a conciliation or an arbitration

process, it is an illegal strike or an illegal lockout.

Now very important point comes here, okay. Lockout in during an illegal strike. Let

us say somebody said 16th of February, but they went on strike by 30th of January. In

account of this factory declares a lockout, they are not giving any notice. In this case

this become a legal activity, it is a legal lockout, it is not an illegal lockout. Because it

is they have entered into an illegal strike.

During this illegal strike factory can declare a lockout. Then it becomes a legal

lockout. It is not an illegal lockout. Similarly, in case factory management says 16th

February onwards they are going on a lockout, but they are going for a lockout on

30th January itself, then during that time worker can declare a strike, it is become a

not an illegal strike, it is a legal strike, okay.

So when an illegal strike, lockout is called for during an illegal strike, it is not illegal.

Similar is the case if you are calling for a strike or sorting for a strike during an illegal

lockout is not illegal. So this is very important to understand, because we see that

many a times the strikes being called as an illegal strike by the employer. You should

understand why are they saying illegal strike.

So illegal strike means when they violate these conditions without a notice or before

the expiry of the period or within the 14 days of notice, these are all qualifying the

strike to become illegal strikes. During the illegal strike they can get the support of the

Labor Court, get the support of the state government to sort out this issue and they

will provide protection to the employer if there is an illegal strike. Similar is the case

for an illegal lockout.

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Industrial Dispute Act 1947

Lay Off

2 (kkk): Failure, refusal or inability of an employer on

account of :

Shortage of coal, power or raw material

Accumulation of stock

Breakdown of machinery

Natural calamity

Or any other connected reason to give employment to a workman whose name is borne on the muster rolls of industrial

establishment and who has not been retrenched.

Lay off results in temporary unemployment

Now we are going to learn about some important concept of layoff. What is layoff? If

you remember in the first lecture when I was talking about layoff is a failure or refusal

or inability from an organization to provide employment on account of various

reasons.

Maybe shortage of raw materials or maybe you know the materials are already

accumulated or the you know the produced goods or more in number it is not selling

or it is staying in the warehouse or breakdown of machinery, natural calamity or any

other reason they are giving a layoff which is a temporary unemployment. They are

not going to provide employment for a temporary time.

As I say this is the definition of the layoff. So but the layoff can also become

permanent, maybe you know after a few days, if they continue to suffer the same

thing they can actually terminate the employee from the job also. But layoff is

essentially talking about a temporary unemployment and it is a temporary termination

from the job owing to various reasons.

It can be shortage of raw materials, it may be natural calamities or maybe economic

slowdown, all this can be attributed to go for a layoff. So we are seeing that you know

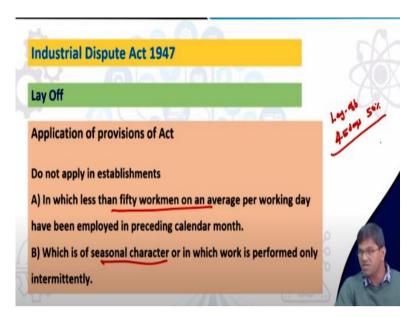
many companies have laid off their employees during the COVID lockdown, we seen

because they suffered lot of huge loss. So they cannot not able to manage these losses.

So they went on a lockout, sorry layoff okay.

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Then what is the application, where does this act is applies? It does not apply to any establishment where, in which they employ less than 50 employees on an average you know per any working day in a preceding calendar month. In case if they employ less than 50 employees on an average in the previous calendar year then this Act does not apply to them, this rule does not apply to them.

And which is of a seasonal nature, the job is a seasonal nature, then they are also excluded. Why? This also, this layoff also asks for a compensation. You have to provide, you know salary for your employees, okay at you know for 45 days you have to provide salary at 50% and if it is continuing then you do not need to pay compensation till the time you recall the employees.

Unless otherwise you have to provide salary for you know for your employees during the layoff period, at least 50% of the salary to be paid during the layoff period, you may be called back. Otherwise, if you are permanently terminating them, then you need to pay them a compensation, at least one month's salary to be provided as a compensation or maybe three month's salary as per your employment contract states with the particular employees, okay.

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Industrial Dispute Act 1947

Important causes of industrial dispute

- Workers' demand for higher wages and allowances.
- Workers' demand for payment of bonus and determination of its rate thereof.
- Workers' demand for higher social security benefits.
- Workers' demand for good and safer working conditions, including length of a working day, the interval and frequency of leisure and physical work environment.
- Demand for improved labour welfare and other benefits. For example, adequate canteen, rest, recreation and accommodation facility, arrangements for travel to and from distant places, etc.

So now we are coming into the important aspect of what are the important causes of this industrial disputes. One is worker's demand for higher wages and allowances. We most often we see this being a major reason for industrial dispute, which always accounts around the salary, wage component.

Maybe on payment of bonus and determination of the rate, so the payment of bonus has not been done or the payment, the bonus percentage, they are not happy with the bonus percentage been fixed. On this ground they may go for an industry dispute. Or workers demand for higher social security benefits. You provide more social security benefits, you provide me additional insurance facilities, or health insurances, additional health insurance and family insurances.

On this ground, they may go for an industry dispute. And workers made demand for a better and safer working conditions. Let us say there are some industries which has more risk, health risk or accidental risk for employees. They might ask or sought for a better safe working condition. This can be a reason for their demand. And demand for an improved labor welfare and other benefits.

For example, provide an adequate canteen facility, restrooms, accommodation facilities, arrangements for travel from the facility. For example, your facility is very far from the city, they cannot afford to travel that long. Maybe you know on that ground they might go for, that will become an industrial dispute.

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Important causes of industrial dispute Psychological causes likeo denial of opportunity to the worker for satisfying his/ her basic urge for self-expression, o personal achievement and o Better performance may also result in labour problems. Administrative causes like- poor personnel management; conflicting legislative measure or government policies

What are the other reasons? So there can be a psychological cause like you know denial of opportunity to the worker for satisfying his basic urges. So let us say somebody is, the management is not listening to the worker that can also be a cause for a dispute or poor performance appraisal processes or you know procedural injustice or you know informational injustice.

You are not you know fairly paying, fairly treating their employees. That can also be you know reason for the dispute. Or administrative causes like you know poor personal management, conflicting legislative measures or government policies. That can also serve as a major cause for an industrial dispute to occur.

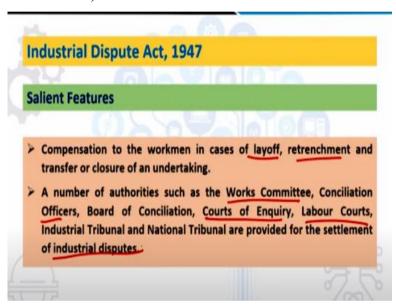
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Industrial Dispute Act, 1947 Salient Features Any industrial dispute may be referred to an industrial tribunal by an agreement of parties to the dispute or by the Appropriate Government if it deems it expedient to do so An award declared the arbitrator shall be binding on both the parties to the dispute for the specified period not exceeding one year. It shall be normally enforced by the government. Prohibition of illegal strikes and lockouts.

And now let us look at the salient features of this act. So the Industrial Dispute Act has a lot of machinery you know or to settle this industrial dispute through national tribunal or industrial tribunal or through you know appointing an arbitrator means third party arbitrator, out of the court settlement and also talking about conciliation process to settle the dispute between the parties.

And it also talks about prohibition of strike, illegal strikes and lockout as we are already discussed, all this aspect of you know the act provides. Specific provisions to prohibit the illegal strikes to occur in the factory premises.

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Similarly, it also talks about a compensation to be paid in case of a layoff, retrenchment or a closure of the facility. In case if a factory is trying to you know terminate large number of employees at one go, what is the compensation they have to be provided, what is the procedure to be followed, all these been listed down in this legislation. Similar is the case in case if a company wants to shut down the factory and what should be done, what is the procedure to be followed.

And they also talk about other you know machineries or you know systems to handle the conflict, such as they talk about Works Committee, Conciliation Officer, Board of Conciliation, Court of Enquiry. Court of Enquiry is nothing but you know arbitrations and Labor Courts, Industrial Tribunal, National Tribunal to settle the industrial disputes. It is talking about various machineries and systems to settle the industrial disputes, okay.

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So these are the references.

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CONCLUSION

Attempt has been made to give all learners an idea about the act including- backgrounds of the act, what is Industrial Dispute, important terms, important causes of industrial dispute, objectives and applicability, salient features and principles

And today's lecture we introduced to the, you know Industrial Dispute Act. We discussed about various provisions with respect to strike and lockout, various forms of strike. And we also discussed about, you know what are the salient features of this act. And you know going forward we are going to discuss about the legal machinery system which are available to settle the disputes between the worker and the management. Thank you.

Business Law for Managers Prof. S. Srinivasan

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Lecture - 39 Various Authorities under Industrial Dispute Act, 1947

Welcome to lecture number 39. And today we are going to discuss about various authorities and machineries under the Industrial Dispute Act to resolve the dispute which arise between an employee and employer. In the previous lecture, we discussed about strike and lockout where we also classified on what kind of strike which will be qualified as an illegal strike. Similar is the case you know illegal lockout.

We also discussed about what are the provision and compensation available for you know people who have been laid off. And we also discussed about what is the importance of having a machinery to resolve the dispute. And we also discussed about okay what is the difference between industrial conflict and industrial dispute. When the industrial conflict will essentially become an industrial dispute.

Today, we are going to discuss about what are the various machineries with intervention of government or in general without an intervention of government what are the machineries or statutory requirements which are available to settle the industrial disputes. Let us get into the lecture.

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BUSINESS LAW FOR MANAGERS

Introduction

The machineries for industrial dispute settlement have vital role to play for settling industrial disputes as it could not be prevented on voluntary basis.

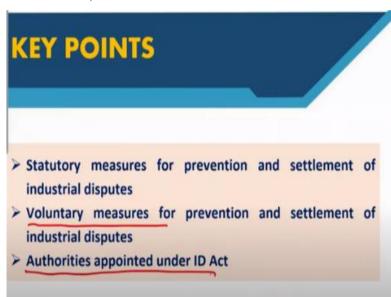
In normal business scenario, disputes between employer and employee are very common and most frequently disputes arises due to difference in wages, policy of employer, working conditions, etc. which are addressed by the appropriate authorities under the Industrial Dispute Act, 1947.

Okay. Why this machinery or the bodies which are required to you know resolve the industry dispute. Because industrial dispute, as we have already said, it has larger implication on the overall economic situations of the country and the organization or also foreign workers. So these machineries play critical role to settle the industrial disputes. Otherwise, it cannot be prevented on a voluntary basis.

Generally, this comes into picture, this machinery comes into picture when the both the parties are not able to amicably settle down a dispute which are arise in the course of the employment. In a normal business scenario, if you look at you know majority of the dispute between an employee employer are very common, which are revolves around wages and you know policy of the employer, or working conditions.

These are the major reasons which are resulting into an industrial dispute. So we are going to discuss about what are the mechanisms and the body which are available to settle the industrial dispute.

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So what are the important things we are going to discuss in this lecture? We are going to discuss about what are the statutory measures meaning that you know legal provision which are available to settle the dispute, and also we are going to discuss about what are the voluntary measures. It is not always you know legal measures, which going to sought to settle the dispute.

There are also voluntary measures from both the parties to amicably try to settle down the dispute between the group of workers and also from the employer. And we are also going want to discuss about the authorities appointed under this Industrial Dispute Act, okay.

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So now we are going to discuss about the statutory machineries which are available with intervention of government. So as per this legislation, which demands a compulsory establishment of Bipartite Committee. What is this Bipartite Committee? Example of this Bipartite Committee is Works Committee, okay. Now Bipartite Committee is two parties.

If you remember, we were discussing in the previous lecture, the parties to the dispute are essentially the employees and employer. So here workers and management, these two parties essentially engage in an establishment of a Bipartite Committees. In this committee, what will happen there will be an equal representation of n number of representation from worker and m number of representation from the management.

They will constitute this particular committee and the committee will be time to time review address any issues any conference in matters related to wages, matter related to working condition, health and safety in all perspectives, try to settle down the conflict within the organization itself. And we are going to talk about the establishment of compulsory collective bargaining.

As I was also discussing this collective bargaining in the one of previous lectures, where this collective bargaining agreement is again between the representative of the workers either through the Works Committee or through a trade union between the management. They will have a collective bargaining agreement on various aspects which are obviously will lead to a conflict or a dispute to arise in the factory or in company.

So generally this collective bargaining agreement, we call it CBA collective bargaining agreement, which will be made majorly focusing on salary, then employee policies, bonus. Majorly on this grounds, they will make collective bargaining agreement and both the parties will agree to this aspect.

Now in terms of increment of the salary, promotion perspective, the percent of the bonus to be paid and then employee policies with respect to harassment or probation period confirmation period or a training period all that will be on this collective bargaining agreement.

Where both the parties will agree to certain conditions under which the employer and also employee will agree okay, we are going to follow this that this much of percentage is going to be paid as a bonus, this will be the percentage of increment we will have. For instance, in a bonus act, when we are learning we found that you know 8.33 is the minimum and it can go up to maximum 20%.

So the collective bargaining agreement will also discuss about what will be the bonus amount, what is the process or a procedure to be followed in fixing the bonus for the particular period. So this will also try to you know settle down many disputes which are arising between the parties, between the employer and a management. Then comes conciliation and mediation.

This conciliation and mediation if essentially look at there are a third party who is going to be involved. Now so far we were discussing about bi-party means two parties, parties to the dispute, either between an employee and an employer. Now comes another machinery wherein we are talking about involvement of a third party

to resolve the dispute between the parties, either through conciliation or mediation, so wherein there is a third party involved.

It can be either a voluntary or compulsory. The compulsory means the appropriate government may refer or appoint a conciliation officer. Generally, conciliation officer is a labor officer from the state government. Or sometime if it is a voluntarily going for a conciliation mediation, you both the party will agree and accept to the mediator.

Okay, so let us say from management perspective, one person will become a representative. Then from an employee perspective, there will be one person as representative. The idea of this conciliation or a mediation process is that break the ice. What most often in the industrial situations, the dispute between the parties, what essentially happens is both the party do not get into a constructive conversation or a constructive negotiation.

And this results in an impasse situation or they reach a situation where there is no progress happening on settling the dispute. So it is essentially required to have a third party who will facilitate both the parties to come out of this situations and come and discuss about the terms and conditions what do they want to offer, what do they agree.

So this conciliation or a mediation process, essentially an effort to try to settle down the dispute between the parties. Here the conciliation officer will be appointed by the state government, then appropriate government, as a labor officer, and if you look at the mediation, it can be voluntarily both the parties can agree to have a mediator who can try to resolve the dispute.

Essentially, if you look at in the conciliation and mediation process, they will not refer to the solution, rather they will facilitate the parties to amicably arrive at a solution so that the dispute can be resolved. Then compulsory investigation. The appropriate government may also refer to a court of enquiry where they will make an investigation.

They will appoint a person, two or more members appointed to investigate the dispute. What are the reasons, what is the background of the dispute, what is the offer

or what is the demand from the worker, what is the offer from the management, what

management is feeling about this particular dispute, is there anything possible that

management can accommodate?

Similar is the case with the employee can be accommodated, and the investigation

will be done, what is the source of this dispute, why this dispute, and all that can be

done and then they will try to amicably settle down the dispute between the parties.

Then the next one is about compulsory arbitration or adjudication. Let us say

conciliation is the initial step beyond this bipartite.

The third party, the conciliation officer attempts to facilitate the conversation and try

to settle the dispute. If it is unsuccessful, they will go for board of conciliation. And

even that is failed they can have sought for legal remedy through a court. The

adjudication refers to through the court of law. Settlement or settling the dispute at the

court of law that is called adjudications. It can happen in three levels.

One is at the Labor Court or at the Tribunal, Industrial Tribunal or a National

Tribunal. So we are going to discuss about all this. What is this Labor Court? What

kind of issues will be discussed? What type of a dispute can be discussed in the

Industrial Tribunal? What type of dispute can be discussed in the National Tribunal?

This is one method, which is adjudication is always a settlement in the court of law.

Where the when you are talking about compulsory arbitration is again, it is an out of

the court settlement. It is not the at the court of law where is again it is kind of an

arbitration, compulsory arbitration. There will be an arbitrator, who will be facilitating

both the parties to discuss and then they might also suggest an award or a settlement

for the particular dispute. So these are the, with intervention of a government.

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We are going to look at what are the possible machineries or a system which are proposed under this legislation to settle the dispute without the intervention of government. One is about collective bargaining. As I said, proactively it can be both the ways. It can be proactive and it can also be reactive.

What I refer to a proactive is that you will have a collective bargaining agreement between the employee and employer on various aspect, as I was already said, salary, bonus, policies. And you will list down okay, this is what we are going to see the increment policy, percentage of bonus. This will be in effect for next three years, let us say two to three years. This what it essentially tries to do?

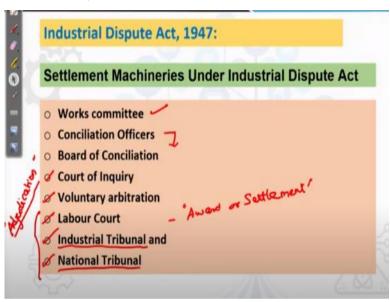
This tries to fix a period under which this is going to be governing the both the party future, management and employee. So it is try to avoid these disputes, which are likely to arise between the employee and employer on the aspect of salary or bonus or policies. Now let us come back to the reactive bargaining.

What is a reactive bargaining? Let us say, some dispute which is coming around the salary component. Both the parties can arrive at a collective bargaining agreement and agreeing to the fact that okay, we agree with certain x amount of percentage of increment is fine with us. And this can stay for next one or two years, or maybe three years or maybe a period of four years. This is a reactive approach.

Now comes a voluntary arbitration. When both the parties feel that yes, we are having a dispute. And we feel that it is not likely to be settled between the parties, because both the parties do not agree to the demands from the parties.

So you can also through an appropriate government, you can or appropriate authority, you can refer to the voluntary arbitration, which is again you will have a third party who will intervene between the both the parties and try to settle the dispute, which is a settlement without the intervention of the government.

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Now we also see other settlement machineries under this Industrial Dispute Act. Works Committee, I already discussed about the Works Committee where we have the equal representation from the employee and employer. And for the conciliation officer, as I said the labor officer will be appointed as a conciliation officer who is trying to facilitate between the parties and trying to amicably settle the dispute.

And board of conciliation. When the conciliation officer fails to settle the dispute they may refer to board of conciliation wherein more than one member will be appointed, the board will be appointed to try to resolve the dispute in the particular industry. Then comes the court of inquiry as we are already discussed.

The Court of inquiry is a compulsory you know legal remedy which allows setting up of a court of inquiry that they will investigate the dispute and try to come up with the possible solutions or a settlement. Then just now we discussed about the voluntary

arbitration.

This is also one method of settling the dispute and the appropriate authority will also

appoint a Labor Court with respect to a specific dispute, maybe on a wages, maybe a

bonus, maybe on the appointment or a termination or a closure or the retrenchment

related things based on the issues, based on the extent of the impact which is going to

have on the worker.

So they will appoint a Labor Court where the Labor Court will investigate here both

the parties and try to declare, provide an award. Award is nothing but a judgment that

is called we refer to an award here in this dispute, award or a settlement. This is kind

of a final judgment; we call it award or settlement which is nothing but a judgment in

this Labor Court situation.

Then there are cases which can be referred to the next higher level of the these three

are adjudication, okay. So adjudication means it is a court of law. So Industrial

Tribunal. So Industrial Tribunal is the next level of Labor Court wherein the dispute

which are in a larger in nature, which has larger wider coverages, that will be refers to

Industrial Tribunal.

Then the next the highest adjudication process under this particular Industrial Dispute

Act is National tribunal. So any dispute, which are in a national importance, in a huge

volume, that it is going to be covering up and impacting the larger section of the

country, then that kind of a dispute will be referred to the National Tribunal.

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Industrial Dispute Act, 1947: Statutory Machinery Works Committee What is the statutory requirement for constituting WC? • Every Industrial establishment in which: 100 or more workmen are employed or have been employed on any day in the preceding 12 months. Whom does it consist of? • Bipartite – representatives of both Representatives of workmen equal to that of employer, Term of representatives shall be 2 years Which type of issues handled? • Matters arising out of the day to day working of the organisation (e.g health, safety, welfare of employees, productivity, quality, cost consciousness) • Consultative body

Now let us spend time on understanding each of these aspects of Works Committee. See, what is this Works Committee? What is the statutory requirement for constituting a Works Committee, which means formation of a Works Committee? And every establishment in which you know we have 100 or more workmen are employed you need to form a Works Committee and if they have at least 100 workers in a previous preceding year then they should form a Works Committee in your industry.

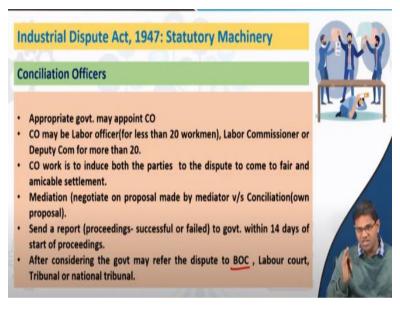
Now question comes, if a factory or an establishment or a company and organization has less than 100, is there a requirement of form a Works Committee? It is not mandatory, but you will be, it is always appreciated to have a works representative committee who can represent the workers' interest to the management. Whom does it consist of?

It as a bipartite, meaning that the representative of the both the worker and also a management in equal number. If it is 10 members, 5 from workmen and 5 from the manager means management. And this term of their representation shall be for two years. And you know you can also choose the works representative, workers' representative based on a ballot method and all that case also possible.

Then which type of issues are handled? The matter arising out of the day-to-day working in the working of the organization with respect to health and safety, welfare of employees, with respect to productivity, efficiency, slowdown, quality, cost concern all that can happen.

And it is also consultative body, meaning that you know they can actually meet time to time and hear is there any difficulties or challenges that workers are facing, any improvement is required or any demands are coming up? This kind of a consultative body where both parties can you know have a regular meeting that also tries to prevent any dispute to arise in the industrial setup, okay.

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Now comes about the conciliation officer. What is this conciliation officer? Conciliation officer as I said, when the Works Committee could not solve the dispute. Now the appropriate government, the appropriate government here we refer to for example, private organizations or you know factories which are registered in factories act, the state government will be the appropriate government.

And also state run public sector companies is also state government is the appropriate government. Now comes let us say central government run organization. For example, railways, or public sector limited BHEL, Bharat Heavy Electricals Limited or Bharat Electronics Limited. All those centrally run public sector limited are where the central government is the appropriate government, okay.

So the appropriate government will appoint a conciliation officer. Who is the conciliation officer? Conciliation officer is a labor officer if the facility has less than 20 workmen. And otherwise, it is a labor commissioner or deputy commissioner for

more than 20 workmen where the larger factories where the conciliation officer

obviously, labor commissioner or a deputy labor commissioner.

So conciliation officer is actually facilitating both the parties to come to a fair and

amicable settlement. He or she will not suggest a solution. Rather, they will you know

act as a catalyst between the parties to discuss the dispute and come up with a possible

settlement. And they will also they can also act as a mediator that the mediation can

happen.

When you refer the mediation versus conciliation, so mediation, the negotiation or

proposal made by the mediator. So the mediator will propose okay, this is what we

can do. Rather in conciliation process it is always an own proposal from the parties.

And once they amicably settle, or if in case not also they will send a report.

Either way, if it is successfully settled or even if the efforts are failed, they will

communicate this to appropriate government within 14 days of the start of the

proceedings. After considering, the government may refer. In case if it is successful,

yes the settlement is done, both the parties will sign and it will be implemented. Now

it is a failed. So the appropriate government may refer it to the Board of Conciliation.

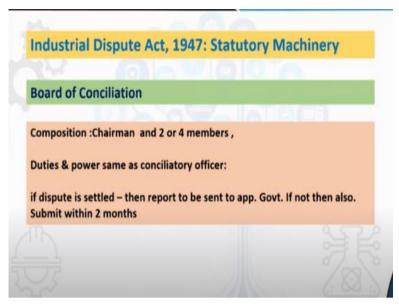
BOS refers to Board of Conciliations or the other machineries like Labor Court,

Tribunal or a National Tribunal where it is based on a case to case basis, see the

extent of the dispute and they will refer accordingly, okay.

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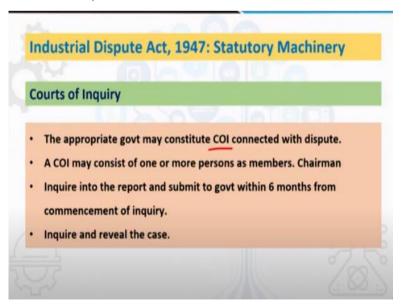
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Now comes Board of Conciliation. As I said, when the conciliation officer makes an effort, if they fail, the next step to resolve the dispute is Board of Conciliation. The board consists of the chairman and 2 or 4 members, where they will have the representation from both the parties so that there is a representation for the management and also for the employer and they will try to settle the dispute.

If the dispute is settled, they will send the report to the appropriate government. Otherwise also they will send the report and they will submit within the two months from the start of the Board of Conciliation. Because if that dispute is still not settled, then it has to be settled in the other methods, alternative way of settling it.

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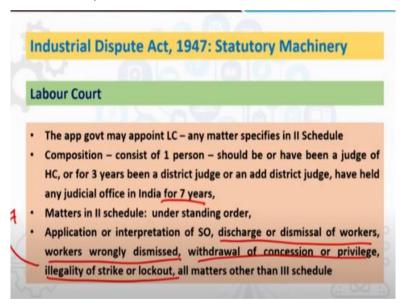


So then comes the Court of Inquiry, which you will see conciliation officer, then board of conciliators, then we are coming to the Court of Inquiry. The appropriate government, the appropriate government as I said here you will always refer to in case state government run institution or a private organization it is state government, if it is central government run institutions or the central government organization, it will be central government.

They will constitute a Court of Inquiry connected with the dispute, okay. The Court of Inquiry may consist of one or more persons as members and a chairman. They will inquire into the report and submit to the government within six months from the commencement of the inquiry.

They will inquire the dispute and try to understand what has actually happened in the dispute, what is the demand from both parties, why there is no possibility of settlement and they will inquire and reveal the case to the appropriate government.

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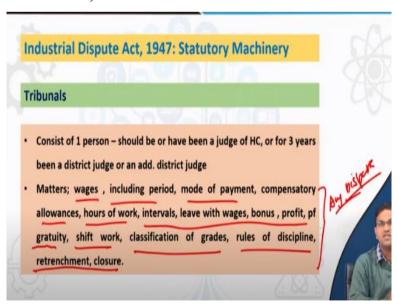
Now comes, okay so what will be the next step of settling the dispute? Now comes the Labor Court. Labor Court is all an adjudication process where there is a legal, they will try to settle at the court of law. The appropriate government will appoint a labor court. Any matters specified in the schedule II, schedule II is generally talking about you know with respect to wages, and you know terminations and closure and all that.

The composition, it will consist of one person. It should have been a judge of high court or for three years, been a district judge at least or an additional district judge, who have held a judicial office in India for seven years. At least seven years as, you know judge in either in the three years at the district judge or an additional district judge, or at least a high court judge, that person will be appointed as a judge to settle this dispute and hear this matter.

And you know whatever this been mentioned on the schedule II, for that matter only they will appoint a Labor Court. So the application and interpretation of this service discharge or dismissal of workers. So that is what we are referring, discharge or dismissal of workers. Let us say somebody has been terminated or somebody been suspended for any other reasons and withdrawal of concession or privileges, illegal strikes or lockouts all matter which other than schedule III will be handled at Labor court.

These are the matters which will be dealt at the Labor Court, okay. Now at the Labor Court what generally happen, it is like a general court proceeding where the both parties will have to be heard and all their you know evidence has to be produced and the judge will be hearing both the parties, investigate the matter and then they will come up with the award or a settlement.

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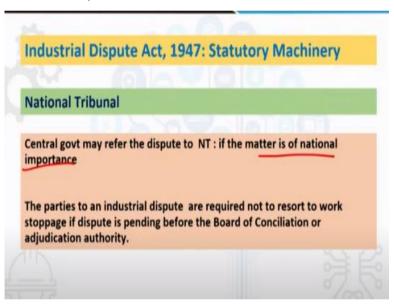
Now comes a tribunal. What is this tribunal? It is an Industrial Tribunal, first is an Industrial Tribunal. It consists of one person. He should have been a judge of High

Court or at least three years have been a judge or a district judge or additional judge. And then what are the matters will be discussed in Industrial Tribunal. You see that there is a jurisdiction difference, okay.

Here this here, which will include wages, including period, mode of payment, compensatory allowance, hours of work, any matters related to those intervals, leave with wages, bonus, profit, Provident Fund, gratuity, and then shift work, classification of grades, in you know workplaces you classify the grades, and rules of discipline. Retrenchment means termination and closure.

These matters will be the jurisdiction for the industrial tribunal. They will any dispute covering on this okay, will be dealt by the Industrial Tribunal.

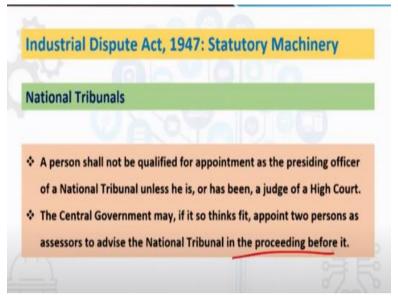
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Next come the National Tribunal. As I already said the National Tribunal the matters which are related to the, you know the larger extend were of national importance will be dealt at the National Tribunal. So National Tribunal, so as I said you know it will be the matter of national importance will be referred to the National Tribunal.

The parties to an industrial dispute are required not to resort to work stoppage, if the dispute is pending before a Board of Conciliation or adjudication authority. So you should not resort to stoppage of work. You should continue to do the work parallel this dispute is being addressed or being attempted to be resolved in the machineries, through machineries available.

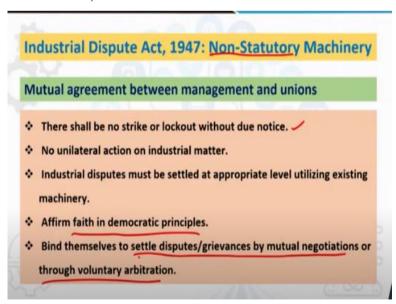
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So who will be handling this case? So a person shall not be qualified for appointment as a proceeding officer unless otherwise, he has been a judge of a High Court. Whereas if you have seen, maybe a judge of High Court, otherwise you know district court judge and then additional judge were allowed in the previous cases. For a National Tribunal, the person will be a presiding officer will at least should be in the rank of High Court judge.

And central government may base on the point may also appoint two persons as an assessor to advise the National Tribunal in the proceedings before the it starts, okay.

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Now comes, we will look at a non-statutory machinery. So non-statutory machinery

we are talking about, it is not from the, you know legal framework, but there are also

machineries, how you can settle the dispute. The mutual agreement between the

management and union. This is one way of, though the agreement will bind as a legal

document, but it is not a statutory.

Meaning that there is no legal framework which guides you to come up with this

machinery. And generally the mutual agreement between the parties who generally

have the dispute is always better. You know they can come up with the agreement

there shall be no strike or lockout without any notice, because without notice becomes

an illegal strike.

They can get into an agreement okay, both parties will not start either a strike or a

lockout without giving due notice to the parties. And no unilateral actions. No party

will take unilaterally some decision on the matters, industrial matters. And industrial

dispute must be settled at the appropriate level replacing the existing machinery. Try

to, at the maximum try to settle out of the court.

We know the time it takes to settle the dispute in a court of law. It takes a longer time.

It is going to take the resources of the both the parties. So it is always better if you can

try to settle the dispute through the appropriate machinery. But you know out of the

court of even between the parties through conciliation officer for the greater good of

the society and also for employer and management as well.

So affirm faith on democratic principles. So meaning that yes, both the parties will be

given a fair chance to be heard about their positions. And bind themselves to the settle

disputes and grievances by mutual negotiation through voluntary arbitration. It is

mostly encouraged so that you know both the parties can mutually negotiate or opt for

a voluntary arbitration to settle their dispute.

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Industrial Dispute Act, 1947: Non-Statutory Machinery

Mutual agreement between management and unions

- Neither party take the line of coercion, intimation or "go-slow tactics".
- Avoid litigation, "sit-down" and "stay-in" strikes or lockouts.
- Promote constructive cooperation.
- Agree to establish mutually accepted procedure for settling grievances and do not resort to arbitrary actions.
- Educate management personnel and workers in regards to their duties, responsibilities and obligations.

Then comes neither party will take a line of coercion or intimidation. Intimidation meaning the both the parties you know do not get into a force on the parties to accept to the settlement or do not sought for a go slow tactics because it is going to impact the management. Avoid litigation, sit-down, stay-in, strikes or lockouts and promote a constructive cooperation between the parties.

And agree to you know establish mutually accepted procedure for settling grievance. Now both the party can come up with a procedure okay, this is how we are going to settle any dispute arises in future or with a current dispute also. So educate both the management personnel as well as workers in the duties and responsibilities and obligation to settle the dispute.

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Industrial Dispute Act, 1947: Statutory Machinery

Agreement on the part of management

- Do not increase workload unilaterally.
- Discourage unfair labour practice like discrimination, coercion, victimization etc.
- Take prompt actions for redressal of grievances and implementation of settlements and awards.
- Publicize Code of Discipline in local language and display the same promptly.
- Follow laid down sequential steps in disciplinary action taking like warning, suspension, etc.
- Take disciplinary actions against officers/management staff who are found guilty of precipitating indiscipline among workers.

So now what are the agreements that can be made from the management is that management can agree to a fact that do not increase the workload unilaterally. Only with the consultation with the workers I will be increasing the workload you know with the consultation and maybe with increase in salary or whatever the terms, unilaterally do not do anything. And discourage unfair labor practices like discrimination, using force on the workers.

And take prompt action to redress any grievances and implementation of the settlements or award whichever been already decided in some certain cases or certain disputes. They should be prompt in settling those awards and decisions made. And publicize code of discipline in local language, display the same promptly so that you know worker who do not have an access to the other languages can also understand if they can read.

And you know bring down with the sequential steps in a disciplinary action what will be the process to be followed in case of any worker has been dismissed or charged under the disciplinary actions, what are the steps to be followed? So that they also know okay, what are the sequence of steps it is going to go through to prove that they are innocent or maybe true that the person has committed any disciplinary actions, okay.

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Industrial Dispute Act, 1947: Statutory Machinery Agreement on the part of the trade union Do not encourage physical duress. Do not permit rowdyism and violent demonstrations. Do not allow members to engage in any union activity during working hours. Discourage unfair labour practices such as "go-slow" damage, carelessness etc. Take prompt action to implement awards and settlement. Display at a prominent place the "code of discipline" for the knowledge of workers. Take actions against office bearers of unions who are found violating Code of Discipline.

So then do not encourage any trade union as a management also. Similarly, trade union also should agree on certain part. They do not encourage any physical duress

meaning that they do not go for gherao or any forceful act on the management. Do not promote or encourage any violence act within the factory or on the factory management. Do not allow members to engage in union activity during work hours.

During work hours no activity related, union activities. Discourage unfair labor practices like go-slow because this is also going to impact the management. And display prominent place of code of discipline so that they can also read. And take action against office bearers who found violating code of discipline, okay.

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Industrial Dispute Act, 1947: Methods

Methods for Settlement and Prevention of Industrial Dispute

Collective Bargaining: Steps

Presentation in collective manner(demands and grievances)

Discussions, bargaining and negotiations on mutual grounds

Signing of formal agreement or informal understanding

In even of failure likely resort to strikes or lock outs

Bargaining with the help of third party is called Conciliation or mediation

So what are the steps which you can follow in the collective bargaining which presentation in collective manner, demands and grievances. What is your problem, what is your demands and discuss about it and bargain with the management and both the party signing a formal agreement?

Once you arrive at some solutions signing it formally and between the parties and you know even your failures likely to resort strikes or lockouts, you follow the general procedure which are laid down, give a due notice, then you go for strike or lockout. And try to also bargain with the help of the third party either through conciliation or a mediation that will always try to resolve the dispute between the parties.

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So these are the references.

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CONCLUSION

The lecture session has covered various issues relating to authorities and their role which include -works committee, mediation and conciliation, investigations, conciliation officers, board of conciliation, voluntary arbitration, adjudication: Labour court, Industrial tribunal and national tribunal. These are very important for the learners so that discussion is made specifically.

Today, we discussed about various machineries either through the intervention of the government or without the interventions or non-statutory measures to settle the dispute in detail. This will be helping you to understand what are the legal and also non-statutory machineries available to handle any dispute in the industries. We will see the other aspects of the Industrial Dispute Act in the last lecture. Thank you.

Business Law for Managers Prof. S. Srinivasan Vinod Gupta School of Management Indian Institute of Technology-Kharagpur

Lecture - 40 Procedure, Power and Duties of Authorities

Welcome to lecture number 40. This is the final lecture of this particular module. And the previous lecture we discussed about various machineries, which are available to settle the dispute between the parties. In today's lecture we are going to talk about certain procedure which related to retrenchment practices or a closure of the factory or an establishment what one has to do, what type of compensation to be provided.

And we will also discuss about the power and duties of various authorities. Various authorities we will be talking about conciliation officer, Board of Conciliators and we will also discuss about Labor Court Industrial Tribunal and National Tribunal, what are their powers and duties with respect to handling the industrial dispute.

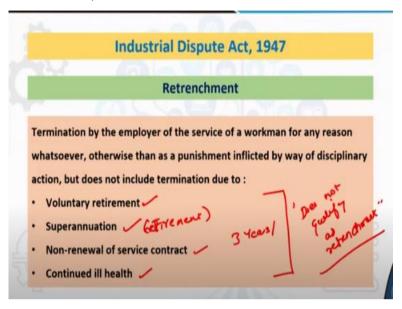
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So what we are essentially going to see? We are going to discuss about retrenchment and the, what are the procedure to be followed if a factory sought to go for retrenching their group of employees and also we are going to discuss about the procedures and the power of conciliation officer, board, court and tribunals.

And we will also talk about the duties of conciliation officer, board, courts and national and you know Industrial Tribunal and National Tribunal.

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Let us get into the lecture in detail. Now, first we are going to talk about retrenchment. What is this retrenchment being been defined as previous legislations? This is, a retrenchment is referring to a termination. Meaning that you know terminating an employee from the organization. The termination by the employer of a service of an employee for any reason, not what was ever not including the disciplinary actions.

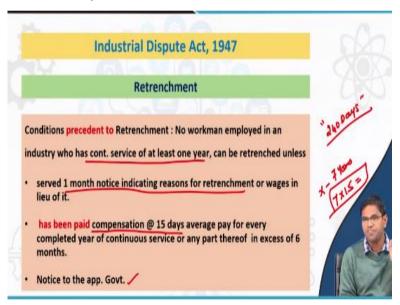
And also that do not include the termination due to voluntary retirement. It does not include, the termination is we are referring to is termination of the employee, not due to the disciplinary reason and also does not include any termination due to voluntary retirement. Somebody is voluntarily retiring, that does not include voluntary retirement. It does not include superannuation.

Superannuation is nothing but retirement, okay. Superannuation is retirement, okay. So retirement, volunteer retirement does not include this. And non-renewal of service contract. Maybe you would have hired them on a defined contract. Let us say hired for three years, then you have not renewed it. That will not be considered as retrenchment.

And if in case an employee has a continued ill health and you are terminating the service, this cannot be treated as retrenchment. It does not qualify as retrenchment. Why we are talking about you know does not qualify as retrenchment? Because there are associated compensation to be provided if you are retrenching the employees not including all these you know voluntary retirement or retirement from a service, non-renewal of the contract or employees being in a continuous ill health.

And if somebody has been resigned due to the disciplinary actions, then that will not be qualified as a retrenchment. Otherwise, in case for your you know you do not have a proper business happening due to economic meltdown for various reasons, then if you are retrenching the employees, terminating the employees then you have to pay them the compensation.

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Now let us look at what is the requirement if you are retrenching employees. See when you are retrenching employees no workmen employed in an industry in any organization who at least had one year of continuous service, if a person worked for at least one year of continuous service, he or she cannot be retrenched. So one year of continuous service we are referring to 240 days a year.

If you remember, for the gratuity we are referring to continuous year referring to at least 240 days and if it is in a mine or under the earth then 190 days. Now okay, coming back here. So if a person worked for at least one continues year he or she

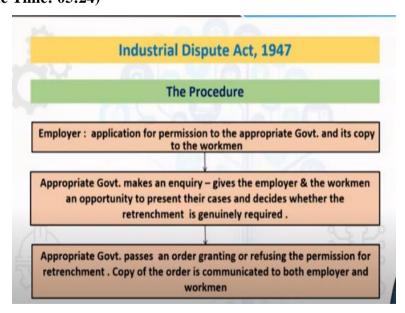
cannot be retrenched unless otherwise you serve one-month notice indicating the reason stating that this is the reason that we are going to terminate you.

Or at least in lieu of one month's salary, providing one month's salary in advance and state the reason that why you are terminating. And also you have to pay the compensation of 15 days' average pay for every completed years' of service. For example, then one employee x worked for 7 years, okay. So 7 into 15 days of average pay to be provided as a compensation when you are retrenching from the organization.

And there should be a notice to the appropriate government should be provided from the management about this retrenchment. Who are those employees who is going to be retrenched from the organization meaning that who are going to be terminated from the organizations.

If the those set of employees work for at least one year you need to give them onemonth notice or otherwise one month's salary and also on top of it, you have to provide for every completed year 15 days of average pay to be provided as a compensation because of the termination from the service.

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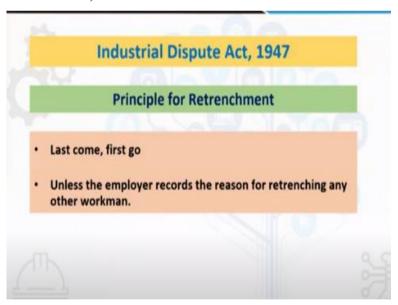
Now what is the procedure to be followed? You have to provide the application for permission to the appropriate government, as we already discussed who is the

appropriate government and provide this copy to the employees or at least display who are those employees who are going to be retrenched.

The application made to the, you know appropriate government should be displayed or provided to the workman who is going to be retrenched from the service. The appropriate government will assess the application and make an inquiry and they give the employer and workman an opportunity to present their cases, hear from those workmen and the management why do they go for retrenching the employees or terminating the employees.

Once they satisfy the, from the management and hearing from both parties, then they will pass an order granting or refusing these retrenchment practices. In case if you are granting the permission then yes of course, the factory or a management or any other organization has to provide the compensation as described in the previous slide that yes, at least one-month notice and then 15 days for every completed year of service to be provided as a compensation.

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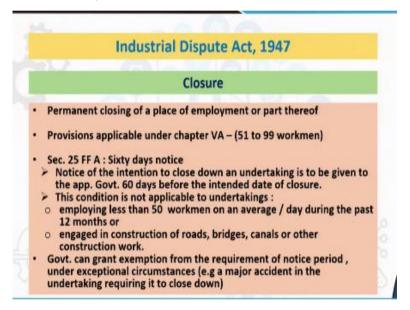


Now comes what is the principle of retrenchment? This is always like this, last come first go. If a company decides to retrench a group of workers, then they always retrench the last come will be the first go. So people who have been working for several years they will be the last one to be retrenched from the factory for whatever the reason so.

In case if they decide to go against this principle, unless otherwise employee has to, the organization has to clearly state the reasons for why they are retrenching some section of the workers, not the last come employees to be retrenched. Or maybe one particular process may be closed.

Or maybe one particular product, maybe service or maybe closed that there is no more operation no more business on the particular thing, then maybe if employees who are working earlier also or the senior employee may also be retrenched. In that case the factory management or an organization has to clearly state the reason why they are going to retrench this section of the employees, okay.

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Now comes to the next aspect is closure. When we talked about the retrenchment, termination, now we are coming to the closure. So what is closure? It is a permanent closing of a place of an employment. Meaning that I am going to completely shut my business activity. That is called a closure. So what are the provisions being available?

So factory or an organization has to provide 60 day notice you know the intention to close down the undertaking should be provided to the appropriate government before 60 days that why I am going to close down my company. So they say yes I am intended to close down my, shutdown my factory or my organization, then they have to give a notice to the appropriate government.

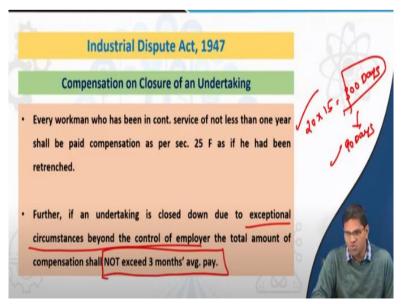
And what is the condition? Who has to provide this? If an organization which employs at least 50 workmen on an average during the last 12 months, then those organizations when they decide to shut down, they have to intimate the appropriate government through the application saying that intending to close your factory or your facilities or your organization.

Now this may be amended coming up with a new Labor Court coming up, they are trying to increase to instead of 50 they are trying to increase to 300 workers. Even the factories or facilities or any organization which employs you know around 300 employees also are exempted not to give these notice to the appropriate government, which is an effort towards ease of doing business, supporting more you know business to come up as the legal binding is lowered.

And then there is more opportunity for people to come up and start the business. That is what government is looking at it. So but of course, government can grant exemptions from the requirement of notice period under certain you know exceptional conditions. You know, for example major accident, so that is leading to a close down. That, government can make an exemption.

It is not always automatically exempted, they have to make unless otherwise government is with this special exemption if they give you do not give a notice then they are allowed, okay.

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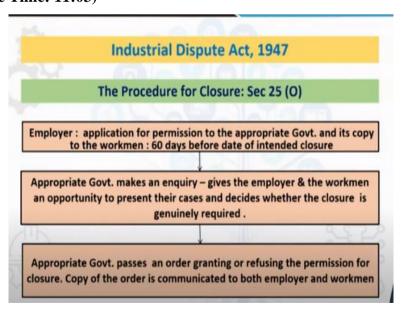


Now what is the compensation if a factory is closing or a company is closing down the operations? It is same as the case in terms of a termination. You have to provide at least 15 days of you know average pay for every completed years of service. And also you should note down that in case due to an exceptional circumstance if an organization is closing down their operations, they can pay compensation not exceeding three months' average pay.

For example, there you see employee work for 20 years. Now every 15 days, there are 300 days of salary to be paid, right? So in this case, if you are closing down for exceptional circumstances beyond the control of the employer, then the compensation is just to favoring the management that yes, you are already suffered. So not exceeding three months' average pay.

Meaning that the 300 you are allowed to only pay 90 days. Otherwise, you have to pay 15 days of average pay for every completed years of service if you are closing down your operation. Unless otherwise, if an appropriate government accepts or agrees that yes, you are closing down due to exceptional circumstances, then they will exempt you that you will be asked to pay the average, three months' average as a compensation to all your employees when you are shutting down your business.

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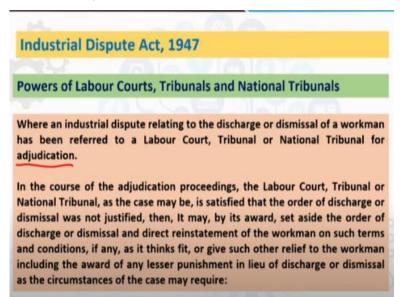


What is the procedure? So as similar to the retrenchment, you have to make an application 60 days before intending your intention to close. Again an appropriate government will make an enquiry and hear from both the employer and the workman

what is the case, whether there is a genuinely in this particular application or is maybe a malicious nature that there are vested interest from the management.

They wanted to just shut down the operation and maybe restart in a different name so that you no appropriate government will enquire from all the sources and if they feel deems fit, and then they will allow, grant the permission to closure of the facility or maybe they even refuse to close down the facility. This copy of the order will be communicated to both the employer and workman.

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Now we are going to discuss about the powers of Labor Courts. What are the powers of Labor Courts, Tribunals and Industrial Tribunal when there is an industrial dispute relating to the discharge or dismissal of an employee, okay? So that will be referred to Labor Court or Industrial Tribunal or to a National Tribunal for adjudication. Adjudication as I said you know; it is a legal process.

Now generally, this is a case when they you know somebody is dismissed, a group of workers have been dismissed or terminated for you know for a different reason, then they can approach the labor court or a Tribunal for this settlement.

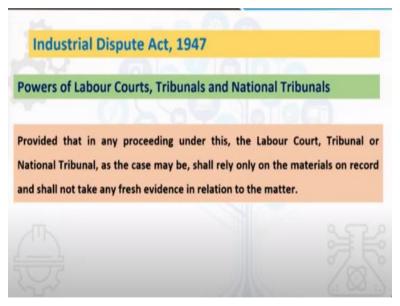
So in this course of the adjudication proceedings, in case of a Labor Court or a Tribunal or a National Tribunal, if they satisfied that yes, the factory will who dismissed the employee, it is not satisfying, they are not able to find a very logical reasons or within evidences to prove that yes, they what they have done from the management's side is right. Unless otherwise, what do they do?

They will set aside the order means dismissal or the termination of the employee, and they say the back wages they will demand the factory management to reinstate the service of the employee and ask them to provide the back wages and provide all the seniority whatever the person lost during the period of this court proceedings. So this is the power of the Labor Court, Industrial Tribunal and National Tribunal.

There were many precedence and also many case laws which have stating that yes, many people who fought in the Labor Court and Labor Court set aside the dismissal of the management, even after 15, 20 years and then reinstated the service and then asked them to, you know match whatever the service they lost and the salaries and the increments to be reinstated considering all the last 20 years of service.

So this is the power of a Labor Court, Industrial Tribunal and National Tribunal in this case.

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Now also provided that in any proceeding under this Labor Court, Tribunal or National Tribunal, if they rely they should rely only on materials on record. Shall not take any fresh evidence in relation to the matter.

You know, it is always possible that management may come up with a new set of records, they always take to the materials record, which are already provided, they try to investigate and find out on the looking at the evidences to see whether the fact which are under the dispute is true or not and whose it is going to favor.

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Industrial Dispute Act, 1947

Duties of Conciliation Officers

a) Where any industrial dispute exists or is apprehended, and a notice has been given, the conciliation officer shall hold conciliation proceedings in the prescribed manner where the dispute relates to a public utility service b) The conciliation officer shall, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

c) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

Now comes duties of the Conciliation Officer. What is the duty of the Conciliation Officer? If an industrial dispute is existing are apparent, I mean, they are anticipating that yes, it is there and they shall be you no notice shall be given to the Conciliation Officer to hold conciliation proceedings.

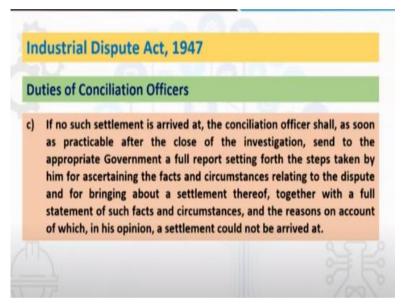
So the Conciliation Officer, as I said the Labor Officer or a Labor Commissioner or Deputy Labor Commissioner as a Conciliation Officer, and then he or she will be asked to initiate the conciliation proceedings. The Conciliation Officer without any delay, investigate the dispute in all matters relating to the merits and rights of the settlement thereof.

And when they think fit so for purpose of inducing the parties to you know discuss on the dispute and try to resolve the dispute or come up for a settlement. If the settlement of the dispute or any matters is arrived at the course of conciliation proceedings, they will send the report to the appropriate government with the memorandum of settlement signed by parties.

So the Conciliation Officer will also facilitate that, yes, both the parties please discuss and let us resolve the dispute. In case if they were successful during the conciliation process, they will send the report along with the both the parties signing the settlement agreement.

So let us say salary, on the salary both the parties will sign along with the memorandum these conciliation officer will send to the appropriate government yes, this is what the settlement arrived at and that will go to the appropriate government.

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In case if there is no settlement arrived, in that case also Conciliation Officer will send the report to the appropriate government and stating that whatsoever the reason that why the settlement was not able to be arrived, so that the future due course of action will be initiated by the appropriate government.

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Industrial Dispute Act, 1947

Duties of Conciliation Officers

- e) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.
- f) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

Now comes the other duties of the Conciliation Officer. If on the consideration of the report referred under this appropriate government if they satisfied, there is a case for reference to the board and it may make such reference. Let us say you know the settlement is not made, and there is a potential reason that it can be referred to a board of conciliations and then they will make so and then they will appoint a board of conciliations.

So a report on this section shall be submitted within 14 days of the commencement of the conciliations proceeding so that they do not want to drag it along and there is no settlement arriving. So within the 14 days the report has to be given so that the subsequent settlement measures can be initiated. We are concerned about sooner the settlement to be dissolved, so that best for the industry, okay.

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Industrial Dispute Act, 1947

Duties of the Board



- i. Where a dispute has been referred to a Board it shall be the duty of the Board to, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.
- ii. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the Board shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

Now comes the duties of the board. When the settlement is not arrived through the Conciliation Officer then it will be referred to the Board of Conciliators. So the board, when a dispute has been referred to the board, it shall be the duty of the board to investigate the dispute, whatever the merits and demerits and then also look at the possible settlements and they will also facilitate between the parties for a fair and amicable settlement of dispute.

And both the parties will say okay, discuss about a demand why is your demand here, the other parties can you think of coming up with an amicable solution that wherein both parties can get benefited by settling the dispute. If the settlement of the dispute on any matter is arrived at the course of the conciliation proceeding of a board, they will send a report along with the same as I mentioned in the Conciliation Officer they will send along with the settlement signed by both parties to the appropriate government.

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Industrial Dispute Act, 1947

Duties of the Board

- iii. If no such settlement is arrived at, the Board shall, after the close of the investigation, give report to government, for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, its findings thereon, the reasons on account of which, in its opinion, a settlement could not be arrived at and its recommendations for the determination of the dispute.
- iv. If, on the receipt of a report in respect of a dispute relating to a public utility service, the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal, it shall record and communicate to the parties concerned its reasons therefor.

Now in case you know no settlement will be arrived that also they will send a detailed report to the appropriate government so that after reading this report of the board, then the appropriate government will take a decision to see how this dispute can be resolved. They will refer the dispute either to the Labor Court or a Tribunal, Industrial Tribunal or a National tribunal, so that this can be settled.

And that same decision will also be communicated to the parties concerned with the reason why it has been referred because they will state that yes the dispute, there is no the settlement is not able to be released or no award has been made during the course of the conciliation with the effort from the board of the conciliations. Then they will refer the matter to the Labor Court or an Industrial Tribunal or a National Tribunal.

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Industrial Dispute Act, 1947

Duties of the Board

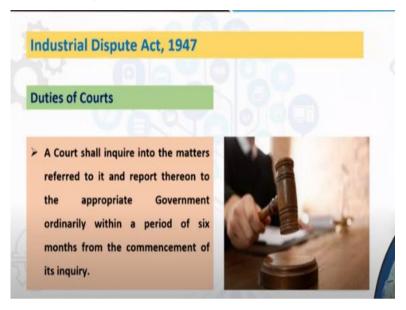
v. The Board shall submit its report under this section within two months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government:

Provided that the appropriate Government may from time to time extend the time for the submission of the report by such further periods not exceeding two months in the aggregate:

Provided further that the time for the submission of the report may be extended by such period as may be agreed on in writing by all the parties to the dispute.

Now, so this already been discussed.

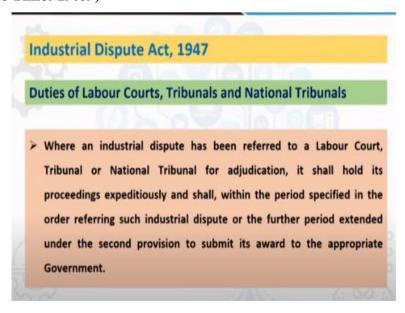
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Now let us discuss about the duties of the court. What are the labor court will do? Now there is an adjudication process. So adjudication process I mean here referring to the, at the court of law. So the court shall inquire into the matters referred to it and the report provided by the Conciliation Officer, Board of Conciliator and the appropriate government and they will also provide within the period of six months from the commencement of its inquiry.

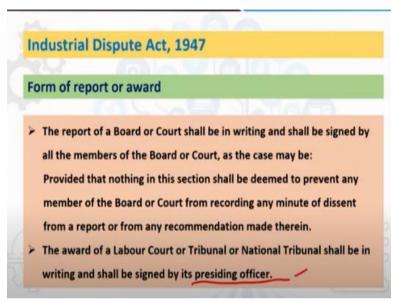
So they will also conduct the inquiry and then send the report to the appropriate government.

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Now let us look at the industrial tribunal or a Labor Court, what do they do? So it shall hold proceedings expeditiously and within this period specified in the order such dispute will be exempted under the provision to submit its award to the appropriate government. They will also make an effort to try to settle the dispute at the stipulated period so that these disputes can be settled at the earliest, okay.

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And they will also, the form of report or an award. The report of a board or a court shall be made in writing and shall be signed by all the members of a board of conciliators or the court as the case may be. They provide nothing in this section shall be deemed to prevent any member of the court recording any minute of dissent from a report from any recommendation made therein.

So for example, there were previous report from the Board of Conciliation that has been referred to the court and there are there can be a dissent, the disagreement on certain aspects from the report they will also record it here. So they will send a writing report on the settlement or a dispute. So the award of a Labor Court Tribunal shall be in writing. It will be signed by the Presiding Officer.

The Presiding Officer we refer to either a high court judge or a person with three years of experience as a district judge or an additional district judge. In case of a National Tribunal, it is only with the position of a high court judge will only be a Presiding Officer. The Presiding Officer will be signing the award either for a Labor

Court or a National Tribunal or an Industrial Tribunal with a settlement and award, okay.

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So these are the references.

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CONCLUSION

This part of lecture has been given to with am aim to build up understanding of the learners on the Procedure and power of conciliation officer, board, courts and tribunals, duties of conciliation officer, duties of board, duties of courts, duties of labour court, tribunal and national tribunal under Industrial Dispute Act.

And this lecture we were able to understand the process of retrenchment. What will happen in case of employment organization or the industrial establishment terminating a group of employees? What is the compensation to be provided to the workers? What is the procedure to be followed? Similarly, we also learnt about the closure.

In case a company decides to close down a company, what is the procedure to be followed, what is the compensation to be followed? And we also discussed about what are the duties of the machineries which we were talking about, conciliation officers, Board of Conciliator and we also discussed about powers and duties of a Labor Court, Tribunal and Industrial Tribunal.

As we have said the adjudication process which is a court of law can investigate the dismissal of the workman and then they can also ask the employer to reinstate the worker in case they find that you know the action or a dismissal is found to be deemed not to be fit. So with this we are concluding this particular module.

We learned about various machineries available to how to amicably settle the industrial dispute between the employee and employer. Thank you.

Business Laws BBA(N)-405





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