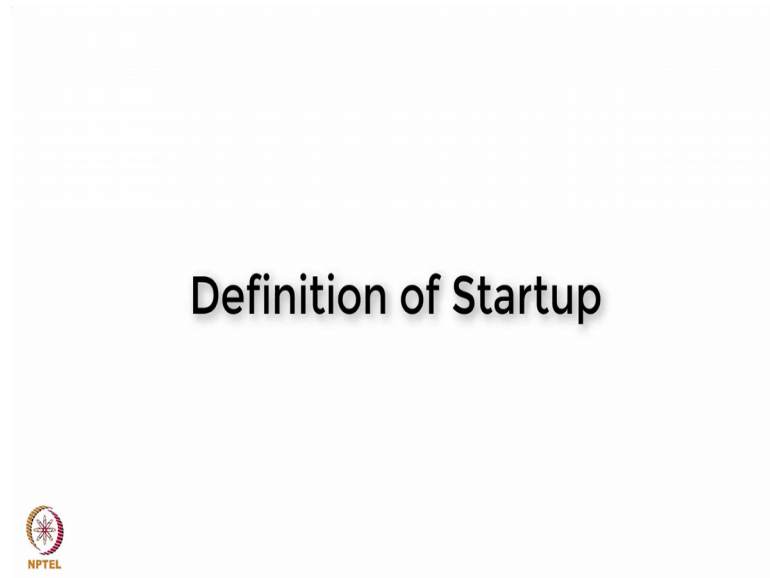


**Intellectual Property**  
**Prof. Feroz Ali**  
**Intellectual Property Rights**  
**Indian Institute of Technology, Madras**

**Lecture - 19**  
**Definition of Startup**

(Refer Slide Time: 00:11)



Rule 2 f b. Definition of a Startup.

(Refer Slide Time: 00:16)



There is a new definition of startup under the Patents Amendment Rules, 2017. Before the rules 2017 came into force, there was an existing definition of startup. So, we will just see how the existing definition which was there before the 2017 rules came into force has now evolved into a new definition.

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- (ii) after clause (fa), the following clause shall be inserted, namely:-  
'(fb) "Startup" means an entity, where-
- (i) more than five years have not lapsed from the date of its incorporation or registration;
  - (ii) the turnover for any of the financial years, out of the aforementioned five years, did not exceed rupees twenty-five crores; and
  - (iii) it is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.
- Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered as a startup.
- Provided further that the mere act of developing-
- a. products or services or processes which do not have potential for commercialisation, or
  - b. undifferentiated products or services or processes, or
  - c. products or services or processes with no or limited incremental value for customers or workflow,
- would not be covered under this definition.
- Explanation 1.-** An entity shall cease to be a startup on completion of five years from the date of its incorporation/ or registration or if its turnover for any previous year exceeds rupees twenty-five crores.
- Explanation 2.-** Entity means a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm registered under section 59 of the Partnership Act, 1932 or a limited liability partnership under the Limited Liability Partnership Act, 2002.
- Explanation 3.-** The term "Turnover" shall have the same meaning as defined in the Companies Act, 2013 (18 of 2013).
- Explanation 4.-** An entity is considered to be working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialise a new product or service or process, or a significantly improved existing product or service or process that will create or add value for customers or workflow.
- Explanation 5.-** The reference rates of foreign currency of the Reserve Bank of India shall prevail.



Earlier, startup was defined through three criteria. The first one was the date of incorporation or registration. Now, this had to be 5 years from the date of incorporation. So, any entity which is 5 years from the date of incorporation or registration qualified as a startup. Secondly, it was defined in terms of its turnover.

Now, if the turnover in the said 5 years did not exceed 25 crores again, that was yet another criterion for deciding whether an entity is a startup. The third criteria, was with regard to the working of the startup. If the working of the startup, pertain to things like innovation, development, deployment or commercialization of new products or services processes included and that should have been driven by technology or by intellectual property.

Now, you will find that this third definition had couple of things. One, it talked about the working and the working had to be with regard to these things, it had to be with regard to innovation, development, deployment or commercialization and it had to pertain to these three things either, it could be a product, a process or a service. And it should have been driven by technology or by intellectual property itself.

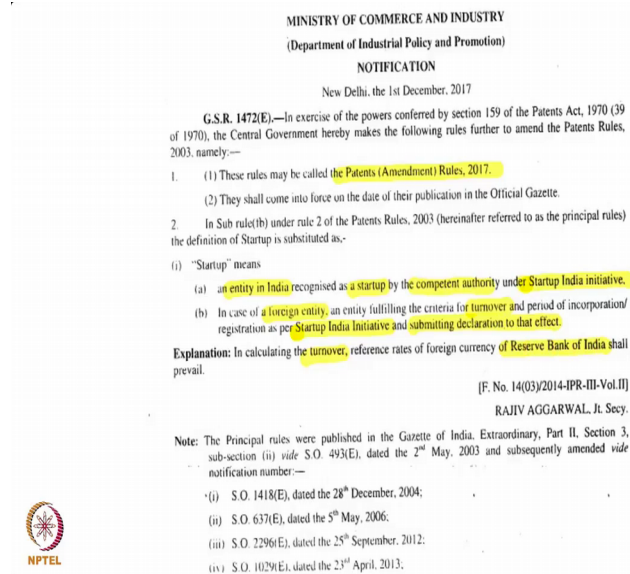
Now, this has undergone a change, but there in mind that this was how a startup was defined. These were the positive conditions for a startup; 5 years it had to be new, it had to be registered within 5 years, you can claim a startup status, or the turnover was less than within 5 years it did not exceed 25 crores, again it is a financial restraint. If you went beyond 25 crores, then you lose the status of a startup and you had to be working in a particular field.

Now, the earlier definition also said that you cannot create a startup by splitting or by reconstruction. So, you have an existing business, you just cannot turn around split it, demerge it or and make a startup, it had to be a fresh start. And also the fact that you are involved in the mere act of developing products and services which do not have a potential for commercialization or undifferentiated products, and services or products or services or processes with no or limited incremental value for customers or workflow. Now, these are the negative conditions, if these conditions are there, then it may not qualify for a startup.

And there were a couple of explanations. The first explanation said that the entity shall cease to be a startup, if it exceeds 25 crores ok. So, it crosses the threshold of 25 crores in 5 years, it ceases to be a startup. Then the entity had to be what an entity is, entity had to be either a private limited company registered under the companies act, so it has to be an entity in corporate and under the company act or a partnership under the partnership act or LLP - limited liability partnership under the limited liability partnership act 2002. Again these are three enactments under which some form of registration can be done with regard to startups. So, if you are not under the purview of these three acts, then you cannot be called an entity, so that gives a legal framework of who can qualify as a startup.

Then turnover takes the meaning of the word same word in the companies act. And you will find that again, you had what the working of the startup should be, it should aim towards developing and commercializing new products and or significantly improve existing product or process, and services, or create or add value, now to customers or workflow. And finally, the explanation number 5 tells us that the reference rate of foreign currency shall prevail. Now, this is with regard to a turnover of startups which has activity or income in foreign currency. So, the RBI guidelines shall prevail there. Now, this underwent a cease change in 2017.

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In 2017, we have this notification come up which amended the rules the Patent Amendment Rules. Now, we have a much simpler definition. Now, it just says a startup means an entity in India recognized as a startup by the competent authority under the Startup India Initiative. So, it makes room for quite a lot of startups to come in, because there is no straight line definition. And, if you look at the corresponding definition given under the startup initiative, you will find that that is something which can change over a period of time. There is no need to amend the rule anymore to incorporate the nitty-gritty's often startup or evolving starters. So, all that you will find in the startup initiative. So, this definition now refers back the definition of a startup to the startup initiative.

And again in the case of a foreign entity, the entity fulfilling the criteria for turnover and period of incorporation registration as per the startup initiative and submitting the declaration to that effect. Turn over again is calculated as by the RBI regulations. This is a notification that changed the Patents Amendment Rules in 2017. Now, this essentially refers you back to another guideline. To understand the definition of startup, we need to go and see the definition of startup given by the DIPP.

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MINISTRY OF COMMERCE AND INDUSTRY  
(Department of Industrial Policy and Promotion)  
NOTIFICATION

New Delhi, the 11th April, 2018

G.S.R. 364(E).—This notification is being issued in supersession of Gazette Notification No. G.S.R. 501(E) dated May 23, 2017.

**Definitions**

1. In this notification,—

(a) An entity shall be considered as a Startup:

- i. Upto a period of seven years from the date of incorporation/registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India. In the case of Startups in the biotechnology sector, the period shall be upto ten years from the date of its incorporation/ registration.
- ii. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs. 25 crore
- iii. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.



**Explanation-**

An entity shall cease to be a Startup on completion of seven years from the date of its incorporation/ registration or if its turnover for any previous year exceeds Rupees 25 crore. In respect of Startups in the biotechnology sector, an entity shall cease to be a Startup on completion of ten years from the date of its incorporation/ registration or if its turnover for any

The department of industrial policy and promotion gives this definition by this notification, which came out in on 11th April 2018. We have a very elaborate definition.

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New Delhi, the 11th April, 2018

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- iii. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

**Explanation-**

An entity shall cease to be a Startup on completion of seven years from the date of its incorporation/ registration or if its turnover for any previous year exceeds Rupees 25 crore. In respect of Startups in the biotechnology sector, an entity shall cease to be a Startup on completion of ten years from the date of its incorporation/ registration or if its turnover for any previous year exceeds Rs. 25 crore.



(b) "Act" means the Income-tax Act, 1961;

Here the advantage of having a definition in a notification is that every time you notify, you come up with a new notification, there is no need to amend the pattern rules. Here you will find that an entity again, they stick to the word entity. An entity shall be considered a startup, if the time for it being considered a startup since incorporation is up to a period of 7 years. Now, it used to be 5 years in the earlier definition. Now, it is up to

a period of 7 years. And again the three acts remain private limited company under the companies act, partnership firm under the partnership act or LLB, a Limited Liability Partnership under the LLB act.

And it also adds a new sector it says that in the case of startups in the biotechnology sector the period shall be 10 years. So, what this did was, now we have an extended period for being recognized as a startup. Now, you have 7 years which was not there; earlier it was 5. And they created a new exception for the biotechnology sector there it is now 10 years. Now, you find that you have two terms. Now, if you are in the biotechnology sector, then up to 10 years you will be considered as a startup; if you are in any other field other than biotech, then you could be considered as startup, up to 7 years.


The turnover part of the definition remains the same not exceed 25 crores within the 7 year period or the 10 year period. Then the working of the entity which we also saw in the earlier definition remains innovation, development or improvement of products and services though, you would see that they have removed technology and intellectual property. If you compare with the definition, you will find that they will take a quick look to see how this has changed. You had seen here that there was a focus on technology and intellectual property that has now been removed or if it has a scalable business model, so one requirement is it the startup needs to have a scalable business model with high potential of employment generation or wealth creation.

Now, these are two new things which you did not find in the earlier definition. So, what is required here is that the model has to be scalable. And there should be potential for employment generation or wealth creation. And there is a proviso saying that again this was reformed this in the earlier definition as well splitting up and reconstruction of existing businesses will not entitle, you to get the startup status. Now, this is the definition. There is an explanation to the definition.

The explanation tells us the point at which a startup shall cease to be a startup. Now, you will find that the 25 crore limit is still there. And again in the case of a startup in the biotechnology sector the entity shall cease to be a startup. If the turn over turns exceeds 25 crores, but the difference here is that in the case of a normal startup, it is 7 years; and

in the case of a biotech startup it is 10 years. So, the notification introduces two timelines for the status of a startup and the point at which startup shall cease to be a startup.

(Refer Slide Time: 10:27)



- (i) Additional Secretary, Department of Industrial Policy and Promotion, Convener
- (ii) Representative of Ministry of Corporate Affairs, Member
- (iii) Representative of Ministry of Electronics and Information Technology, Member
- (iv) Representative of Department of Biotechnology, Member
- (v) Representative of Department of Science & Technology, Member
- (vi) Representative of Central Board of Direct Taxes, Member
- (vii) Representative of Reserve Bank of India, Member
- (viii) Representative of Securities and Exchange Board of India, Member

(d) "limited liability partnership" shall have the meaning as assigned to it in clause (n) of sub-section(1) of Section 2 of the Limited Liability Partnership Act, 2008;

(e) "merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(f) "partnership firm" means a firm registered under section 59 of the Partnership Act, 1932;

(g) "private limited company" shall have the meaning as assigned to it in clause (68) Section 2 of the Companies Act, 2013;

(i) "turnover" shall have the meaning as assigned to it in clause (91) Section 2 of the Companies Act, 2013;

(j) All references to "Forms" in this notification shall be construed as references to the forms set out in Appendix-I hereto.


**Recognition**

2. The process of recognition of an eligible entity as startup shall be as under: —

- (i) A Startup shall make an online application over the mobile app or portal set up by the Department of Industrial Policy and Promotion.
- (ii) The application shall be accompanied by—

Act is referred to as the Income Tax Act. There is a board which refers to the Inter Ministerial Board of Certification, which means the Inter Ministerial Board of Certification. And the members, who comprise the board are listed here limited liability partnership is defined; merchant banker is also defined. Partnership firm there are other definitions.

(Refer Slide Time: 10:50)



- (d) "limited liability partnership" shall have the meaning as assigned to it in clause (n) of sub-section(1) of Section 2 of the Limited Liability Partnership Act, 2008;
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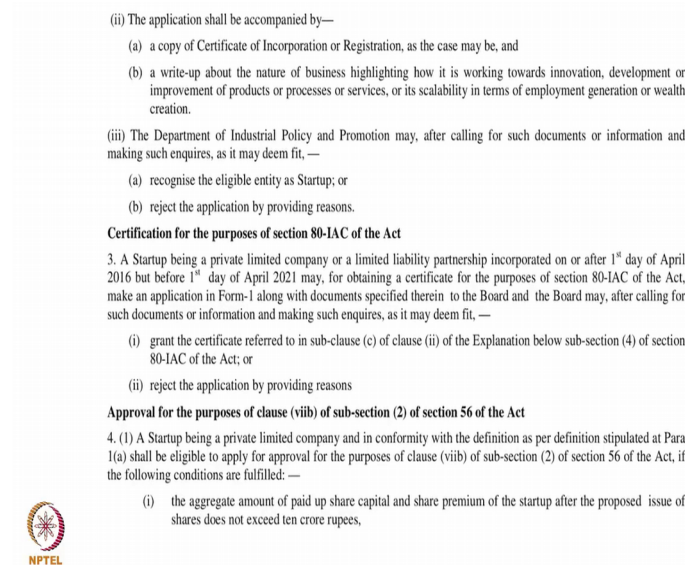
- (i) A Startup shall make an online application over the mobile app or portal set up by the Department of Industrial Policy and Promotion.
- (ii) The application shall be accompanied by—
  - (a) a copy of Certificate of Incorporation or Registration, as the case may be, and
  - (b) a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.
- (iii) The Department of Industrial Policy and Promotion may, after calling for such documents or information and making such enquires, as it may deem fit,—
  - (a) recognise the eligible entity as Startup; or
  - (b) reject the application by providing reasons.

**Certification for the purposes of section 80-IAC of the Act**

3. A Startup being a private limited company or a limited liability partnership incorporated on or after 1<sup>st</sup> day of April

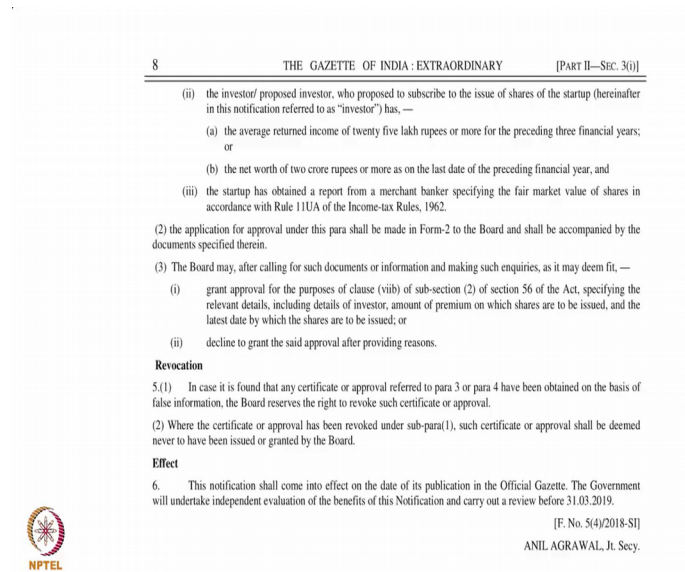
Recognition of startups, now, there is a process for getting recognized as a startup that is also defined here.

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Then the tax provisions under the income tax act is also mentioned in the notification. And finally, you have provisions on how a startup can be revoked or when it would cease to be a startup.

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So, you will find more details about the startup definition in the website of Startup India.



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8 THE GAZETTE OF INDIA : EXTRAORDINARY

(ii) the investor/ proposed investor, who proposed to subscribe to the issue of in this notification referred to as "investor") has, —

(a) the average returned income of twenty five lakh rupees or more for the or

(b) the net worth of two crore rupees or more as on the last date of the pres

(iii) the startup has obtained a report from a merchant banker specifying the accordance with Rule 11UA of the Income-tax Rules, 1962.

(2) the application for approval under this para shall be made in Form-2 to the Board : documents specified therein.

(3) The Board may, after calling for such documents or information and making such er

(i) grant approval for the purposes of clause (vii) of sub-section (2) of secti relevant details, including details of investor, amount of premium on which latest date by which the shares are to be issued; or

(ii) decline to grant the said approval after providing reasons.

**Revocation**

5.(1) In case it is found that any certificate or approval referred to para 3 or para 4 h false information, the Board reserves the right to revoke such certificate or approval.

(2) Where the certificate or approval has been revoked under sub-para(1), such certific never to have been issued or granted by the Board.

**Effect**

6. This notification shall come into effect on the date of its publication in the O will undertake independent evaluation of the benefits of this Notification and carry out a

STARTUP RECOGNITION  
STARTUP INDIA HUB  
the winners of Indo-Israel Innovation Bri  
**Startup Definition** (As defined by DIPP)  
**Startup means an entity, incorporated or registered in India :**

- Upto a period of seven years from the date of incorporation/registration or upto ten years in case of Startups in Biotechnology sector
- As a private limited company or registered as a partnership firm or a limited liability partnership
- With an annual turnover not exceeding Rs. 25 crore for any of the financial years since incorporation/registration
- Working towards innovation, development or improvement of products or processes or services, or

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Now, you will find that the same definition is given here. You can see that the 7 year period, the types of entities, turnover and what they should be working towards, when the startup shall cease to be a startup.

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Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

**An entity shall cease to be a Startup:**

- On completion of seven years from the date of its incorporation/registration, ten years in case of Startups in Biotechnology sector, or
- If its turnover for any previous year exceeds Rs. 25 crore

**Discover the Journey of Startup India**

StartupIndia Journey

NPTEL

And you will also find that there are some numbers around statistics around startups.

(Refer Slide Time: 11:38)

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**Registration**

Learning and Development Module

182,129

Startup India Hub

18,449

Latest Tweets

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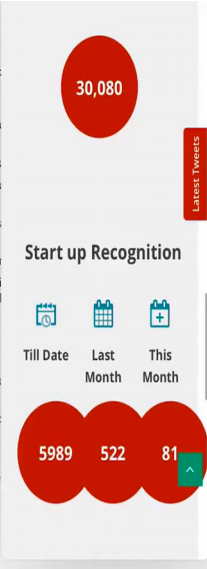

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**Start up Recognition**

30,080

Till Date Last This  
Month Month Month

5989 522 81

Latest Tweets

The fact that how many startups have been recognized to date funding and support.

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The mobile app overlay on the right includes:

- Header: Funding Support
- Section: Startups Funded
- Count: 98
- Section: Featured Startups
- Text: Advertise not available.
- Logo: my GOV
- Text: 90 करोड़
- Vertical text on the right: Latest Tweets

NPTEL logo is visible in the bottom left corner of the document page.

And, and this got a lot of details.

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The mobile app overlay on the right includes:

- Header: #startupindia
- Toll Free Number: 1800115565
- Download Mobile App button
- Menu list:
  - STARTUP INDIA SERVICES
  - ACTION PLAN
  - INFORMATION
  - EVENTS & NEWS
  - STATES RANKING
  - STARTUP INDIA HUB
  - LEARNING & DEVELOPMENT
- Vertical text on the right: Latest Tweets

NPTEL logo is visible in the bottom left corner of the document page.

You could also come up and find that the site gives you various information with regard to Startup India hub, events and news and state ranking, action, plan and other things.