New Labour Codes of India
Professor K D Raju
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology, Kharagpur
Lecture 13
Concept of "Workman", Contract of Service, Contract for Service

Dear students in this class, we are going to discuss about the concept of the workman and that is to be elaborated on because only a workman can raise an industrial dispute. So, in the last class itself, we saw the definition. So, the workman is defined under the Industrial Disputes Act and the worker under the defined under the new IR code.

This is very important from the perspective of raising an industrial dispute. So, again the question is now, there are so, many categories of workers included in the new IR code, this includes, you can say that the part-time workers and the people on contract and also the workers who are in.

So, we are mainly going to discuss about the contract of service and contract for service and try to see these two categories whether will come under the definition what is the difference between these two categories of workers and then what are their implications with regard to the Labour Law, which we concerned about.

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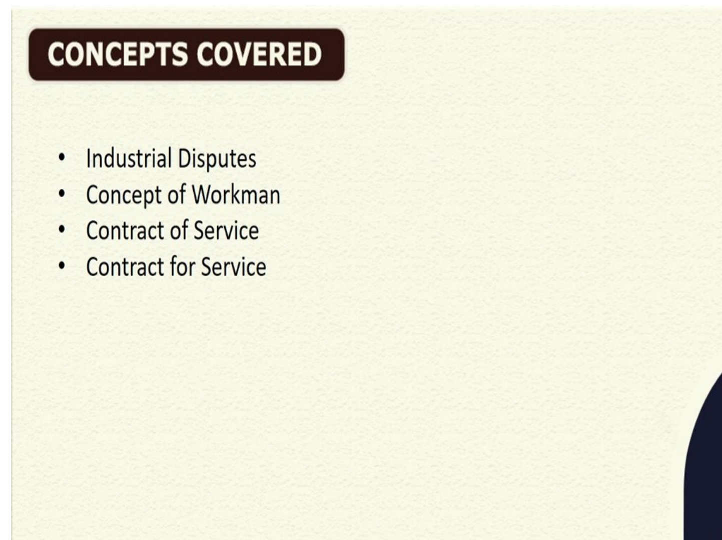

And so, as I told you the concept of the workman is important in the case of deciding whether a particular workman can raise an industrial dispute. Only a worker earlier in the definition of a workman and the new definition of worker can be able to raise an industrial dispute.

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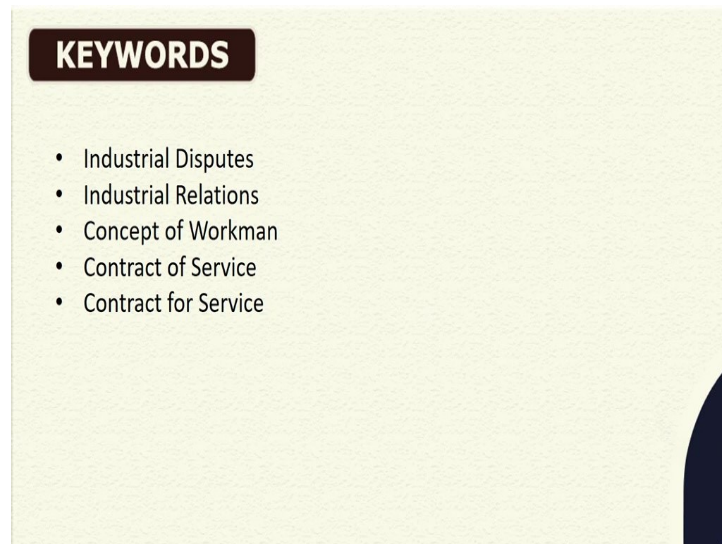

So, then the important question is related to whether he is in the contract of service or whether in the contract for service or whether he is on service or contract or for hire.

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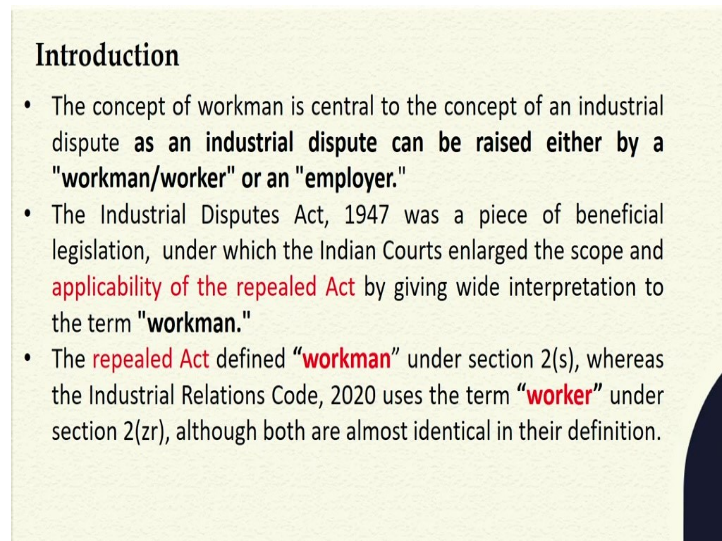

So, we can see that the concept of workman as I said that the industrial dispute can be raised either by a workman or by an employer in the ID Act, it can be also referred to by the government as well. So, Industrial Disputes Act talks about the workman, which we saw in section 2(s) of the Industrial Disputes Act.

Then it comes to the IR code 2020 they use the terminology worker under Section 2(zr). So, when we look closely look into the definitions under the ID Act and IR code, it is almost similar or identical in nature, so, the worker is trying to include more categories of people.

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Section 2 (zr): Worker of Industrial Relations Code, 2020

- worker" means any person (*except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961* - Under the ID Act, 1947 apprentice were included)
- Employed in any industry to do any **manual, unskilled, skilled, technical, operational, clerical or supervisory work**
- For hire or reward,
- whether the terms of employment be **express or implied**, and includes working journalists and sales promotion employees **(Added in this Code)** and
- For the purposes of any proceeding under this Code in relation to an industrial dispute, **Includes** any such person who has been **dismissed, discharged or retrenched or otherwise terminated** in connection with, or as a consequence of, that dispute, or whose

So, the worker in the definition under the IR code, yesterday in the last to last class also we have talked about this, particularly when the week started the definition which clearly says that, so, the worker means any person other than an apprentice, those who are employed in an industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward.

So, whether it is irrespective of the fact that whether is employment is in writing express or implied and the addition is working journalists and sales promotion employees are added to the definition of worker in the new code IR code. So, and also this, this industrial dispute the dispute, what do you mean by exactly “dispute”? which includes if any person has been dismissed, discharged, retrench or otherwise his work is terminated as a result of a dispute. So, his or his is retrenched led to a dispute, then this particular dispute can be referred, and can go for dispute resolution. If he would not come under the definition of a worker, then there cannot be raised a dispute under the particular provisions of the IR code.

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Section 2 (zr): Worker

but does **not include** any such person—

I. who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
II. who is employed in the police service or as an officer or other employee of a prison; or
III. who is employed mainly in a managerial or administrative capacity; or
IV. who is employed in a supervisory capacity drawing wages **exceeding eighteen thousand(₹18,000/- Revised from earlier ₹1,600/-) rupees per month** or an amount notified.

And it very clearly says that the exception which we saw in the beginning class that the people who are under the Army, Navy, Police forces, Prison services, or especially those who are in managerial or administrative services. When the difference between the Industrial Dispute Act and the new code is that the supervisory people are included in the IR code and are now supervisory people, but it is subject to a salary cap, the salary cap is now 18,000 rupees per month. So, supervisory capacity is also included under the definition of worker or workman provided if he is getting a salary of less than 18,000 rupees.

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Worker under ID Act, 1947 - Repealed

- 2(s) "workman" means any person (including an apprentice) employed in any industry to do any **manual, unskilled, skilled, technical, operational, clerical or supervisory work**
- For hire or reward,
- Whether the terms of employment be **express or implied**, and
- **Includes** any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute,

But **does not include** any such person-

- (i) who is subject to the **Air Force** Act, 1950 or **Army** Act, 1950, or **Navy** Act, 1957 or
- (ii) who is employed in the **police** service or as an officer or other employee of a **prison**; or
- (iii) who is employed mainly in a **managerial or administrative capacity**; or

So, the worker as I told you that the workman you see the worker and workman we could not find any difference in the definition. Other than the supervisory capacity, you cannot find any

differences in the definition of worker or workman for all other purposes for all our class purposes, we may use workman and worker, but the definition given in the IR code is the worker and the earlier IR code says, workman.

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Worker under the Factories Act, 1948 - Repealed

- 2(l) of Factories Act, 1948 **"worker"** means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, **in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process**, or the subject of the manufacturing process but does not include any member of the armed forces of the Union;

So, as I told you, this worker is very clear. So, if you look into the definition of worker in the Factories Act of 1948, again it is repealed through the Occupational Safety Code. So, now, it says that, so, any person who is employed directly or through any particular agency, including a contractor for remuneration or not, in any manufacturing process or any cleaning any part of the machinery or premises used for a manufacturing process or any other kind of work identical to or connected with the manufacturing process or the subject of the manufacturing process, but does not include any member of the armed forces of the Union. So, the definitions of workman worker in the IR code and also the worker in the factories Act are similar in nature. So, the concept of worker is the category of workers those who are included are similar in nature.

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Delta Jute & Industries Ltd. Staff Association vs. State of West Bengal (145) FLR 105

- Challenge was made to an industrial award by the industrial tribunal against the union **that the persons are not workman within the meaning of section 2(s) of ID act.**
- A person working in a purely managerial and/or supervisory capacity **does not fall** within the definition of workman under ID Act.

We can find a number of judicial decisions which we are going through which we can see what the court says about. So, this is the 2015 case, where the Delta Jute and Industries Limited Staff Association versus the state of West Bengal. So, in this particular case, so, industry award, so, against the union and also the persons are not a workman within the meaning of Section 2(s) of the industrial disputes act. So, if people are working purely in a managerial capacity, supervisory capacity does not fall within the definition of the workman, this was a decision in 2015 remember?

And now, supervisory capacity is included subject to a cap on salary. So, they said that managerial capacity, they cannot reason industrial disputes under the ID Act because they will not come up with the definition of 2(s) of the ID act as a workman at that point of time.

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Burmah Shell Oil Storage and Distributing Company of India I
Burmah Shell Management Staff Association AIR 1971 SC 922

- Held to be **not workmen**
- (1) Transport Engineer
- (2) District Engineer
- (3) Foreman (chemicals) and
- (4) Sales Engineering Representatives must be held not to be workmen.
- A workman must be employed to do that work which is the **main work he is required to do, even though he may be incidentally doing other types of work.**

And here you can see that in one of these Burma shell cases very famous and the Burma Shell oil storage and distributing company of India Limited versus Burma shell management staff association. In this case, the court clearly held that the following people are not workman, Transport engineers, District engineers, Foreman chemical, or Sales engineering representatives. So, the court said that these people are these people will not come under the definition of the workman.

So, even though they are incidentally doing some work or main work, they are required to do. So, their main work is the main work is required to do even though he may be incidentally doing another type of work as well, but they will not come on to the definition of the terminology the definition, workman so, they cannot raise an industrial dispute under the ID Act at that point of time.

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The Workmen v. Greaves Cotton & Co. Ltd. 1972 AIR 319

- Further, a supervisor earning less than 500/- **may also raise an industrial dispute for an increment in wages** which may eventually exclude him from the definition of the workman.
- What has to be seen is whether on date of reference there was any dispute in respect of workmen which could be referred under the Act to the Tribunal.

So, here also we can see that with regard to supervisory capacity. So, supervisory capacity was always under question from the very beginning. So, whether he can raise the industrial dispute or not. And so, supervisory capacity was excluded from the purview of ID Act. But now, they are included with again a cap of 18,000 rupees.

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Gobind v. Presiding Officer, Labour Court and Another (2012) ILR 2 Punjab and Haryana 637

- **Part Time and Full-Time workman**
- The number of working hours is not considered while determining whether a person qualifies as "workman" or not.
- However, there must exist a **master-servant relationship** between the employee and his employer.
- An **independent contractor cannot** be termed as a workman.
- The employer must be in a position to control the manner of employee's work.

So, again, the question is whether the part-time or full-time workman or worker, whether can raise the questions. So, what the court said in Gobind versus Presiding Officer, Labour Court 2012 Punjab and Haryana judgment. So, in this case, whether the working hours are relevant whether the nature of work is relevant or what is permanent or it is they are temporary in nature. These are some of the parameters the court takes into consideration.

So, the court said that the number of working awards is not considered, a number of working hours are not considered for the that is not a parameter for the court to qualify to be a workman and there must be a Master servant relationship between the employee and his employer, there must be a master-servant relationship and even independent contractor cannot be termed as the workman, an independent contractor cannot be termed as a workman.

So, we are coming to the discussion about work for contract and of contract. So, here the employer must be in a position to control the employee, there was a master-servant relationship exists between the two people, then only he can be considered as a workman.

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S.K. Maini v. Carona Sahu Co. Ltd. 1994 SCC (L&S) 776

- Various types of workmen except for managerial force, the entire labour force has been included within the definition of workman under Section 2(s).
- But if the principal function is of supervisory nature, the employee concerned **will not be workman.**
- High Court was justified in holding that the appellant was **not a work-man** under Section

So, the working hours are not a parameter or not a criterion. And we continuously said that the managerial people are excluded, excluded from the purview of the dispute settlement process under the ID Act and the new codes. So, even though his designation is manager, but he is doing supervisory function and even then he is not going to be a workman which means, basically the function nature will be looked into.

And so, in this particular case also the court has looked into the nature of the work, if his nature is managerial in nature, then he will not come under the purview of this particular Act. As I told you with regard to the supervisory nature, now, the new code is including supervisory nature with a salary cap.

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Malabar Industrial Co. Ltd. v. Industrial Tribunal, Trivand
AIR 1958 Ker 202.

- Whether work of **conductor and mistries** in estate neither manual nor clerical but only supervisory in character and employees who worked as mistries are 'workmen' or not?
- Evidence regarding the work of the conductors makes it clear that **the work of a conductor in the estate is neither manual nor clerical but only, supervisory in character** and they are not workman.
- The evidence relating to the duties of the maistries makes it clear that these persons in spite of their designation as maistries get a salary of about Rs. 30/- per month and do earth work and other items of manual labour, very much in the same way as ordinary workmen. **They are workmen as defined in the Act.**

So, again, you know, whether the contractor, work of contractor and mistries, whether they are workman, so, the court said that the contractor and workman, the contractor, an independent contractor is somebody is different from mistries. So, here we can see that the contract is it is not the conductor it is a contractor. So, these particular people, their work is different, the contractor work is different from the mistries.

So, the court said that a mistry, who is working for a salary of 30 rupees per month does some kind of manual work, skilled work or unskilled work. So, it is related to the work of an ordinary workman. So, then they can be considered as a workman under the ID Act at that point of time. He can be considered as a workman at that point of time.

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G.M. Pillai v. III Labour Court, (1998) 2 LLJ 44

- It was said in the case that the main and the important element to find out whether a person is a workman or not is the **main or substantial work for which he has been employed and engaged and not his designation of any incidental work done, or required to be done, by him.**

And also here so, the cases as I told you that the judicial pronouncements are very important as a part of the jurisprudence. So, whether a person is a workman or not is an important question. So, here also his designation is not very important, but actually what work he does is important.

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A. Sundarambal v. Govt. of Goa, (1988) 4 SCC 42

- Any person who does not fit in the categories of t
'**skilled or unskilled manual, supervisory, technical**
clerical work', even if that person is employed in
industry, **is not a workman**.

And also if any person will not come under the definition or category of skilled, unskilled, manual supervisory technical or clerical work, so, then he is not going to be a workman if he will not come under the purview of this particular category. So, it is like the in the Gratuity Act or the so, you can say that, you know, once upon a time, the court said that teachers will not come into the purview of any of this category. So, they are not eligible for gratuity. So, if a person does not come under the purview of skilled, unskilled, manual supervisory or technical or even clerical in nature, he is not going to be a workman and he cannot raise an industrial dispute under the new code as well.

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Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivast
(2007) 1 SCC 491

- The respondent was offered appointment as **Legal Assistant** in the litigation section on a probation period of 1 year (in the pay scale of Rs. 330-560) on 04.06.1982.
- Performance was not found satisfactory and services were terminated with immediate effect.
- The Respondent was not performing any stereotype job. **His job involved creativity.**

So, in 2007 interesting case was whether a legal assistant will come under the purview of a workman So, these Muir Mills Unit of NTC limited versus Swayam Prakash Srivastava. The court said the legal assistant, who is appointed in the service, was in litigation on a probation period of one year. So, the court said yes. So, his service was terminated and found unsatisfactory. So, the respondent, the court said that yes, his job involved a special category involving creativity, it is not manual work. So, it says clear specific knowledge is required to do his work.

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Muir Mills Unit of NTC (U.P.) Ltd. v. Swayam Prakash Srivast
(2007) 1 SCC 491

- He not only used to render a **legal opinion** on a subject but also used to draft pleadings on behalf of the appellant as also represent it before various courts/authorities.
- He would also discharge quasi-judicial functions as an inquiry officer in departmental enquiries against workmen. **Such a job, in our considered opinion, would not make him a workman**.

And also, again, the court said that whatever the functions he discharges of a legal officer or an inquiry officer, a departmental inquiry is done against the workman. So, the legal assistant

is doing all these kinds of work. So, he said that these words will not come under the definition of any of the above categories of works skilled unskilled, etc, etc. And he cannot be considered as a workman and his termination of service cannot be raised as an industrial dispute, he can have other revenues of dispute resolution, but he cannot be considered as a workman.

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Devinder Singh v. Municipal Council, Sanaur, (2011) 6 SCC 584

- The court held that the *source of employment, method of recruitment, terms and conditions related to employment/contract of service, quantum of wages/pay and mode of payment* are not at all relevant for deciding whether or not a person is a workman within the purview of Section 2(s).
- Once the **test of employment for hire or reward for doing the specified type of work is satisfied**, the employee would fall within the definition of "workman".

So, here in this court also, so, very clearly said that the court held that the source of employment, method of recruitment, terms and conditions of employment or contract of service, the wages, the other the mode of payment, all those are not at all relevant for deciding whether a person is considered as a workman under the 2(s) of the ID Act and going to be the definition of worker under the new.

So, it is very clear, the test is if the employment for hire or reward for doing a specific type of work is satisfied, the employee would fall within the definition of the workman. So, we will see elaborately what is this test of for hire or reward. So, it is for on contract and for contract, we will see what is the difference between these two in the in the in the coming slides.

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Contract of Service and Contrac
Services

Contract of Service(Employment Contract) and Contract for Se
Hire Agreements or Agency)

- A contract of service is an agreement in which:
- One person agrees to employ another as an employee
- The other person agrees to serve the employer as an employee
- The agreement can be in writing, verbal, expressed or implied.
- It can be in the form of a letter of appointment or employment, or an apprenticeship agreement.
- However, to minimise disputes on the agreed terms and conditions, the contract should be in writing.

So, what is this contract of service and contract for service? So, what are the differences between these two and how it decides whether a person is a workman or not? Here, the contract of service or contract of employment or contract for service or so, contract for service which includes work for hire and works for hire agreements or agency agreements.

So, here in a contract of service, one person here entering into an agreement between the employer or the person a person agrees to employ the employer agrees to employ a person and the other person agrees to be employed and agrees to do the work. That agreement must be in writing, it can be verbal, or it is it can be expressed or implied.

So, it can be in the form of a letter of appointment and it can be so, in the form of even an oral agreement. So, as I told you that this is the usual way of appointment, contract of service,

contract of service, there must be an agreement between the employer and employee in a written form in the form of appointment order.

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Contract of Service(Employment Contract) and Contract for Se
Hire Agreements or Agency)

- Contract for Service and Contract of Service are common-law terms that are used to distinguish between the nature of service provided by a worker to the employer.
- While the contract of service refers to a person who is in employment, a contract for service refers to a person who provides his services to his clients.

So, as I told you in the contract for service, these are the two terminologies which distinguish between the nature of service provided by the worker to the employer. So, we said that the contract of service refers to a person who is in employment, a contract for service on the other hand, refers to a person who provides the service to his clients.

So, it can be an agency he can be an independent contractor. So, this is the difference and the first case contract of service, contract of employment, and employment contract there exist, the employer gives an order of appointment to an employee and the employee accepts that particular employment offer. The second case contract for service is the nature of an agency or higher agreements, the work for hire agreements and he can be an independent contractor who provides his services to his clients. So, there is a lot of difference.

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Contract of Service(Employment Contract) and Contract for Se
Hire Agreements or Agency)

- Contract of service refers to a person who is in service or employment whereas contract for service refers to a person who is an independent contractor.

So, here also so, as I told you that person who is in the second category is an independent contractor.

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Contract of Service(Employment Contract) and Contract for Se
Hire Agreements or Agency)

- A contract of service is an agreement (whether orally or in writing) binding on parties who are commonly referred to as "employer" and "employee".
- However, **it is important to look at the terms of the contract to determine the type of contract**.
- A **contract for services**, such a contract refers to a relationship akin to an agency.
- Generally, a person engaged via a contract for services is **not an employee**.
- For example, a contractor who paints your house or who procures raw material for you.

When it comes to the differences, which we can see that, so, this contract of service, that particular agreement is binding on both parties. So, once it is bindingly agreed by both the parties, they will become an employer and employee, but as I told you that the terms of employment, the terms of contractor, and the terms of the contract are very important. On the other hand, the contract for services so, it is a relation of an agency and he offers his services to the employer. So, we see, generally, the second category of people entering into the

contract is not considered are not consider to be an employee. So, he will be an independent contractor, he cannot be considered as an employee or workplace of the employer.

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Contract of Service(Employment Contract) and Contract for Se[r]
for Hire Agreements or Agency)

- The distinction between a "contract of service" and a "contract for services" is vital in determining an individual's legal position.
- Only an employee under a contract of service will be entitled to invoke the **jurisdiction of the Industrial Court in the event that his rights under the statute had been violated by the employer**.
- If not, the petition can only seek remedy for a breach of contract in a Civil Court or through the specific performance of the contract.

So, again, if you look into the distinction between these two, this distinction is very important and vital for the legal position to raise an industrial dispute only an employee under the contract of services will be entitled to invoke the jurisdiction of industrial courts. And now, it is going to be the tribunals or any kind of rights that are violated by the employer. So, he can seek remedy otherwise, the other people can only go to a Civil court, though to these particular industrial tribunals.

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Contract of Service(Employment Contract)

- A contract of service is an agreement that is entered into by the company with an individual for availing his/her services.
- The individual here is the **employee** of the company and is entitled to the benefits that the employees of the company receive or are entitled to from time to time during the course of their employment.
- The company enjoys control over the work created by the employee and the employee is bound to obey the orders of his employer.

So, here as I told you, the individual employee of a particular company, so, he is entitled to benefits of all the benefits under labour law, but the contract for service and independent contractor is not eligible for other you can say that Social Security measures. And also, the most important aspect is the employer the relationship between employer and employee. So, the employer has control over the employee and the employee is bound by the discipline of the company, the standing orders of the company and also the instructions of the employer.

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Contract for Service(Work for Hire Agreements or Agency)

- A contract for service is an agreement that is entered into by the company with a third-party for availing its services.
- The third-party is an independent service provider, **not an employee of the company**.
- The third party is **not entitled to the benefits that the employees** of the company receive or are entitled to from time to time during the course of their employment.
- The company does not exercise control over the third-party.

And when we look into the work for hire or agreements or agency or we call it for contract for service, so, they are third-party services availed by the employer. So, they are independent service providers, they are not an employee of the company. So, a third party is not entitled to the benefits of an employee at all. So, the question comes whether he is a workman definitely the answer is he would not come under the definition of the workman.

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Factors that determine the Relationship

- The commercial intent of the parties who are entering into such contracts.
- Frequency of services needed (regular/day-to-day activities or one-time/occasional)
- Core Activities or Peripheral Activities
- Who wants to retain the ownership of the work created out of the contract between the parties?
- Who has the right to supervise and control the work not only in the matter of directing what work has to be done but also the manner in which the work shall be done?
- Test as to whether the person employed is integrated into the employer's business or is a mere accessory

So, it is very clear that the fact is involved in the contract of service and contract for service. So, in the case of availing services, it is contract for service and also the frequency of services required day to day activities, occasional one time or these regular activities or whether it is a core activity of the employer or the peripheral activities of the employer. And also, the supervisory control, always the case of workman the supervisory control is with the employer. So, these tests are applicable in the case of a contract of service and a contract for service.

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Factors that determine the Relationship

- Whether wage or other remuneration is paid by the employer?
- Whether there is a sufficient degree of control by the employer?
- Test as to who owns the assets with which the work is to be done or who ultimately make a profit or loss
- Whether a business is being run for the employer or on one's own account
- Whether the employer has economic control over the work subsistence, skill, and continued employment to determine whether a particular worker works for himself or for his

And other factors which you can see that whether the wages are paid or remuneration is paid by the employer and whether the sufficient control, the degree of control is with the

employer. The test as I told you, who owns the assets and controls the employee or the work is to be taken into consideration and also so, whether the business is run by the that is also very important. So, the employer-employee relationship is another important factor in the determination of this particular distinction between these two terminologies contract of service and contract for service.

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Sushilaben Indravadan Gandhi & Anr. v. The New India Assurance C Limited & Ors, Supreme Court, 2020

- Whether the deceased surgeon could have been said to be an employee of the insured hospital; and
- Whether the limitation of liability clause was to be applied in favour or against the insurance company on the basis of determination of the **contractual arrangement between the deceased surgeon and insured hospital**
- **Held That:** The factors which make the doctor's contract as a "***Contract for Service***" outweigh the factors which would point in the opposite direction. Thus, the Court observed that as per the terms of the contract, the deceased surgeon was an ***independent professional*** and **not a regular employee of the insured hospital**.

And here if you look into some of the judgments or jurisprudence of the courts, we can see that see the appointment of a doctor in this particular case the question was the appointment of a doctor in Sushilaben Indravadan Gandhi and another versus the New India Assurance Company Limited and others, so, very recent case of 2020.

So, the question was a surgeon was appointed, so, whether he is an employee of the hospital so, the liability so, what was the relationship between the hospital and the doctor, the surgeon who was appointed and whether the insurance company is liable. So, here there was a contractual agreement between the deceased surgeon and the hospital.

The court said that the fact is which constitutes the terminologies in the agreement. So, what was the nature of that particular contract? So, the court found that it is a contract for service and also the factors, are the factors, we saw the various factors which determine whether it is a contract for service or contract of service.

So, the court observed that, as per the terms of the contract between the hospital and the doctor, the deceased surgeon was an independent professional, not a regular employee of the insured hospital. So, the consequences are very severe. So, if he is not a workman or an

employee of the hospital, he will not be able to claim any benefits under the new IR code or in the Industrial Disputes Act.

So, this is what we said, the contractual words in the appointment order are very important as far as a workman is concerned or an employee is concerned. So, finally, the court may end up declaring that that particular person is in a contract for service not a contract of service. So, ultimately, he will be held to be not at work when under the particular Act. So, you have to be careful in dealing with entering into agreements with the employees.

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General Assurance Society Ltd. v. Chandumull Jain, (1966) 3 SCR 500

- Held that: In a contract of insurance there is a requirement of *uberrima* i.e. good faith on the part of the assured and **the contract is likely t construed contra proferentem that is against the company in cas ambiguity or doubt.**

But it is very clearly said that the contract terminology of the contract is likely to work on stood contra proferentum that is against the company in case of ambiguity or doubt. So, the terminology of the contract is very important in the determination of the service and also the legal status of the employee or workman.

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Chintaman Rao v. State of M.P., 1958 SCR 1340

- **A Contractor is a person who, in the pursuit of an independent business, undertakes to do specific jobs work for other persons, without submitting himself to their control with respect to the details of the work.**
- There is, a clear-cut distinction between a contractor and a workman.
- "contractor means one who makes an agreement to carry out certain work specified but not on a contract of service."

The famous case, one of these old cases is Chintaman Rao versus, the state of MP. Here a contractor is different from an employee. So, who is the contractor? A contractor is a person who in the pursuit of an independent business undertakes to do specific jobs or works for other persons without submitting himself to their control with respect to the details of the work, this is the definition given by the court to a contractor. So, there is a clear distinction between a contractor and an employee or a workman. So, the contract of service and contract for service. This distinction is evident in the first case they are workman or employee. The second case they are not workman at all.

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Satish Chandra Anand vs. Union of India, AIR 1953 SC 250

- *Article 311 of Indian Constitution :* ***Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State***.—*(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed........*
- Petitioner was appointed by GOI on a 5-year contract of service in the Ministry of Labour.

So, I think we have examined enough cases, but here the most important factor is whether a person is dismissed from the government service and whether he has the right to raise an interstate dispute. So, somebody is appointed. So, Article 311 of the Indian constitution says that dismissal, removal or reduction in rank of persons employed in civil capacities of the Union or the state. So, the question in this particular case was whether a person appointed for a 5-year contract whether the end of his term five years whether it amounts to termination of his services.

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Satish Chandra Anand vs. Union of India, AIR 1953 SC 250

- Termination of **contract of service** by Government by Notice
- Held that:
- Art. 311 has no application because this is neither a dismissal nor removal from service nor is it a reduction in rank. It is an ordinary case of a contract being terminated by notice.

What the Court said that somebody is ending the contractor is not termination. So, the ending of the temporary 5-year term is not termination at all, there is no dispute and also, more importantly, Article 311 of the Indian Constitution has no application because there is no question of dismissal or removal from somebody from service once is the term is over in accordance with the agreement that means, the agreement means the contract the contractual appointment. So, if the 311 is related to a contract of service not a contract for service, so, the legal status differs between these two terminologies.

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Govt. of AP vs. Syed Yousuddin Ahmed, AIR 1997 SC 3439

- The relationship between the Government and its servant is not like an ordinary contract of service between a master and servant but a **legal relationship something in the nature of status.**
- Origin of government **service is contractual**, but once appointed to his post or office, his rights and obligations are not then determined by consent of both the parties but by statutory provisions.

And also, we can very clearly say that the real legal relationship is somebody in the government service gets a status. So, the government service is contractual but once appointed to the particular post, his rights and obligations are not determined by consent of both the parties, but by statutory provisions. So, even though he may be appointed on contractual terms, you know, the other obligations rights and obligations will be determined by service routes. So, government service is something different, even though you are in contractual appointments.

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CONCLUSIONS

- The importance of falling within the definition of "workman/worker" ca be over-emphasized as it gives certain legal protections and benefi compared to the status of a worker/managerial/supervisory/administrative role.
- Similarly, a contract of service gives legal benefits to employee along wit status of "employee", which contract for service lacks.

So, in conclusion, I would say that the definition of a workman is a very important important for the purpose of raising a dispute to that extent, the contract of service and contract for

services are very important. So, everyone must be very clear when they enter into contracts with the employees, whether they are contract in contract of employment or contract for in service.

So, for or of or for these are the two terminologies that are very important with regard to a particular person who is employed, because this legal status, this particular legal status is going to have devastating effects. Once there is a dispute between the employer and employee or some eventualities happened even for Workman Compensation Act.

So, there is a repercussion so, under the ID Act as well as under the IR code, it is clear that a person must come under the definition of workman or the new definition worker, then only we can raise a dispute. So, this is all about the concept of the workman and also the two terminologies contract for service and contract of service.

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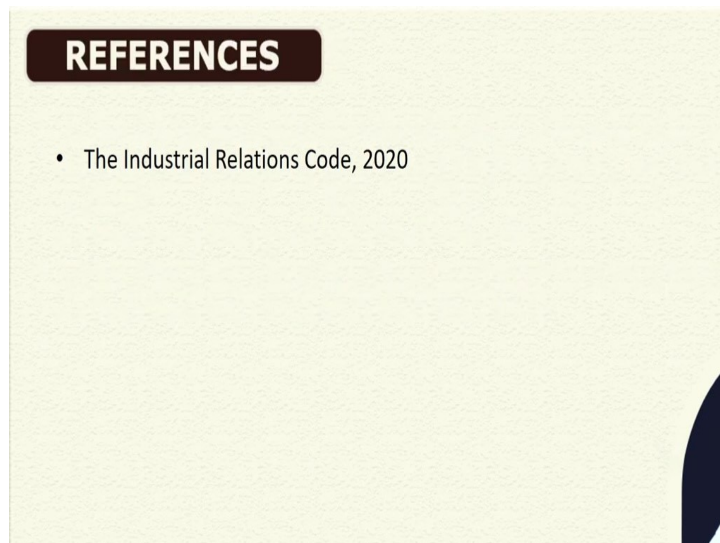

So, we can see, the relevant provisions in the IR code with regard to this. Thank you