

निर्माण प्रबंधन (Construction Management) के सिद्धांत  
[Nirman prabandhan (Construction Management) ke Siddhant]  
Prof. Chirag Kothari  
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Lecture– 33  
Daave aur Vivaad Ka Samadhaan



Department of Civil Engineering  
Indian Institute of Technology Kanpur

भारत सरकार की MOOCS पहल के अंतर्गत पाठ्यक्रम

निर्माण प्रबंधन के सिद्धांत  
Principles of Construction Management

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भारत सरकार की MOOCS पहल के अंतर्गत पाठ्यक्रम: निर्माण प्रबंधन के सिद्धांत

2

Namaskaar! Aapaka svaagat hai Bharat sarakaar kee MOOCS pahal ke antargat paathyakram Nirmaan Prabandhan ke Siddhaant (Principles of Construction Management) mein.

(Reference Time 00:24)



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भारत सरकार की MOOCS पहल के अंतर्गत पाठ्यक्रम: निर्माण प्रबंधन के सिद्धांत

3

Main Chirag Kothari, IIT Kanpur se apaka svaagat karata hoon.

(Reference Time 00:29)

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लेक्चर - 33  
दावे और विवाद का समाधान  
Claims & Dispute Resolution

4

Aaj ke lecture mein ham charcha karenge daave aur jo vivaad hote hain unake samaadhaan ke baare mein (claims and dispute resolution) par.

(Reference Time 00:40)

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पाठ्यक्रम के गौहयूल

- परिचय एवं विचारणा कर्मिभूत
- परिचयना की लक्षण का अनुमान
- विमोचक अनुमान
- पलदीय एवं कौटुम्बिक
- अनुबंध प्रबंधन
- सुरक्षा प्रबंधन एवं समापन

6

Is module mein hamane abhee tak dekha ek Anubandh kya hota hai (what is the contract)? Phir hamane charcha kee thee ek achchhe anubandh mein kya hota hai (essentials of a good contract)? Usake baad pichhale lecture mein hamane baat kee ki contract ke kya prakaar hote hain, kis prakaar ke contract construction mein use kie jaate hain (prayog laaye jaate hain). Aaj kee charcha claims aur dispute par rahegee. Jo vivaad aate hain nirmaan ke dauraan unaka kis tarah samaadhaan kiya ja sakata hai us par charcha rahegee.

(Reference Time 01:15)



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दावा क्या है ?  
What is claim?

- "किसी चीज की मांग या अनुरोध";  
"A demand or request for something considered one's due";
- उदाहरण
  - समय विस्तार (Time extension)
  - अतिरिक्त भुगतान (Additional payments)

7

Sabase pahale ham dekhate hain what is the claim (daava kya hai)? Kisee bhee cheej ke maang ya anurodh ek daava kahalaata hai, claim kahalaata hai (ek demand ya request for something). Udaaharan ke taur par samay ka vistaar ya time extension ke demand ke ja sakatee hai ya phir agar koe extra kaary kiya jaata hai to atirikt bhugataan ke demand ke ja sakatee hai. Is prakaar agar thekedaar ya phir client, maalik ya thekedaar jo kaam kar rahe hain vah kisee bhee prakaar ke request ya demand rakhate hain ya maang rakhate hain to use claim kaha jaata hai.

(Reference Time 02:04)



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प्रतिदावा क्या है?  
What is a Counter claim?

- प्रतिदावा (counter claim) एक जवाबी दावा (cross claim) है
- आमतौर पर दावे से बचाव के रूप में किया जाता है (defense to claim)
- दावेदार के विरुद्ध मौलिक दावा (substantive claim) जो स्वतंत्र कार्य (independent action) पर आधारित हो सकता था।

8

Isake baad ham charcha karenge ki counter claim kya hota hai ya prati daava kya hota hai? Prati daava ya counter claim adhikatar kisee bhee claim ke baad aata hai. Yah ek tarah ka javaabee daava hota hai, cross claim hota hai. Aamataur par yah daave ke bachaav ke roop

mein kiya jaata hai (defense to claim). Yahaan par daavedaar ke viruddh ek substantial claim hota hai jo ho sakata hai ki vah kisee bhee svatantr kaary ya independent action par aadhaarit ho, kahane ka matalab yah hai ki jab koee bhee ek party claim karatee hai to doosaree party apane bachaav mein ya to counter claim karatee hain jahaan par vah bataatee hai ki nahin unakee galatee nahin hai ya phir ho sakata hai ki jo doosaree party hai vah koee svatantr kaary jo (independent action) hain kisee nae kaaryon ke baare mein bhee apana naya daava rakh sakatee hai use substantive claim kahate hain.

**(Reference Time 03:10)**

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कोई दावा कब विवाद बन जाता है?  
When does a Claim become a Dispute?

- विवाद का तात्पर्य एक पक्ष द्वारा अधिकार का दावा (claim) और दूसरे पक्ष द्वारा उसका खण्डन (repudiation) करना है
- कोई भी दावा बिना अस्वीकृति के विवाद नहीं हो सकता (repudiation is must)
- दावे पर तब तक निर्णय (adjudication) नहीं दिया जा सकता जब तक कि यह विवाद न बन जाए।

मनो ज्ञान की सादृश्यता से ही ज्ञान संभव है 9

Aage badhate hain ab ham dekhate hain ki kab ek daava ya prati daava dispute banata hai ya vivaad banata hai. To ummeed karata hoon aap abhee tak samajh chuke honge ki koee bhee aisa claim ya adhikaar jisaka ek paksh daava kare aur doosara paksh usaka khandan kare use ham vivaad kahate hain. Koee bhee daava ya claim bina asveekrti ke vivaad nahin ho sakata. To maan leejie ek thekedaar ne koee claim kiya aur maalik ne use maan liya to ham use vivaad nahin kahenge. Vivaad ham sab jabhee kahenge jab vahaan par un-acceptance ho ya asveekrti ho. Daave par tab tak nirnay nahin diya ja sakata jab tak vah vivaad na ban jae, yah ek aur requirement hai.

**(Reference Time 04:02)**



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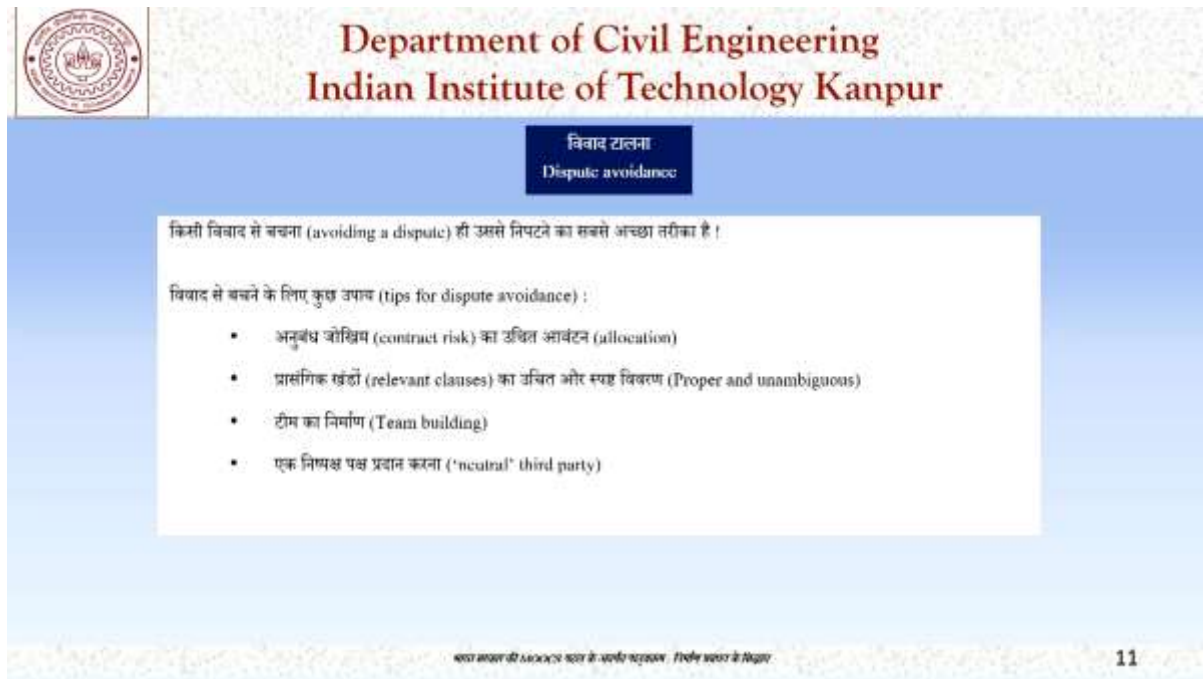


Ab ham charcha karate hain ki construction mein vivaad ke kaaran kya hote hain. Kisee bhee nirmaan kaary mein vivaad ke kaaran kya hain? Yah kuchh 12 kaaran hai ham in par ek-ek karake charcha karenge. Sabase pahala incorrect specifications ya galat specifications ya galat tathy. Maan leejie jab anubandh banaaya ja raha hai us samay kuchh galat specifications die gae hon ya jo tathy batae gae hon vah galat ho, to yah maamoolee baat hai ki jab nirmaan kaary hota hai to yah galat specifications vivaad ka kaaran banate hain. Usake baad doosara hai doshapoorn ya aspasht praavadhaan jab jo bhee provisions hamaare contract mein die gae hain vah spasht na hon ya unamen koe trutiyaan ho to vah bhee ek vivaad ka kaaran banata hai. Teesara vivaad jo hamaare bhaarat mein projects par bahut samaan hai vah hai kaaryasthal ko hand over karane mein deree. Maan leejie jis thekedaar ko kam karana hai use maalik us jameen ko dene vaala hai jahaan par kaary hoga, kae baar vahaan par usamen deree ho jaatee hai jis kaaran se vivaad hota hai kae baar aisa hota hai ki koe doosara thekedaar us jagah par kaam kar raha hai usaka kaam poorn hone ke baad hee naya thekedaar vahaan kaam kar sakata hai to use kaaran bhee hand over karane mein deree ho jaatee hai. Chautha hai adhik bhugataan kabhee kisee ka kaaran adhik payment ya over payment ho jae to vah bhee ek vivaad ka kaaran banata hai. Paanchava thekedaar kee galatee, agar kaary karane mein thekedaar se koe galatee ho jaatee hai aur vah use sveekaarata nahin hai ya vah use theek nahin karata hai to yah bhee ek vivaad ka kaaran banata hai. Isake baad aata hai jo bhee anubandh banae gae hain usaka doshapoorn prashaasan (pholtee edaministreshan), ho sakata hai ki contract mein jo likha gaya ho usaka poornatah paalan nahin kiya gaya aur usaka paalan nahin karane se yah ek vivaad ka kaaran bana. Isake baad ek aur vivaad ka kaaran hai suspension of work. Suspension of work matalab kaary ko rok diya jae, kae baar owner ya jo client hain vah kaary ko kuchh apne nijee kaaranon se rok dete hain ya phir kae baar galat kaam hone par kaam ruk jaata hai, kae baar aisa bhee ho sakata hai ki thekedaar bhee kaam rok den vah kisee bhee kaaran se ho sakata hai. Is prakaar kabhee bhee agar kaary rukata hai to yah ek vivaad ka kaaran banata hai. Isake baad agala mukhy kaaran hai change of settings jo kaary paristhiti hai usamen badalaav ho jae. Aisa maana jaata hai ki jab donon parties anubandh mein aatee hain ya contract mein aatee hain to vah maanakar chalatee hain ki jis bhee kaary ka nirmaan karana hai jahaan jo bhee project rahega vah vahaan kee settings kaisee rahengee isakee unhen jaanakaaree rahatee hai. Maan leejie usamen koe badalaav aata hai nirmaan ke dauraan usamen koe change aata hai to vah bhee ek vivaad ka kaaran banata hai. Agala jisake baare mein main abhee charcha kee any thekedaaron ke kaaran kaary ma en agar koe baadha aatee hai maan leejie koe hindrens aatee hai to vah bhee vivaad ka kaaran banata hai. Delay in payments bhugataan mein deree



bhee ek vivaad ka kaaran hai, kharaab gunavatta ka kaary puar quality work hamane pichhale module jahaan hamane gunavatta par baat kee thee yah charcha kee thee ki jab kharaab kaary kiya jaata hai to usake kaaran laagat kitanee badh jaatee hai aur adhikatar yah adhik laagat ek vivaad ka kaaran banatee. Aur aakharee mein aata hai thekedaar ya maalik ka anuchit ravaiya, hamaara thekedaar ya jo maalik hai unaka un reasonable attitude aisa koe kaary unake dvaara kiya jae jo aamataur par nahin kiya jaana chaahie. Yah kuchh vivaad ke kaaran hai kae baar in kaaranon se vivaad hota hai aur kaary sthagit ho jaata hai ya phir cost bahut jyaada badh jaatee hai.

(Reference Time 08:22)



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विवाद टालना  
Dispute avoidance

किसी विवाद से बचना (avoiding a dispute) ही उससे निपटने का सबसे अच्छा तरीका है !

विवाद से बचने के लिए कुछ उपाय (tips for dispute avoidance) :

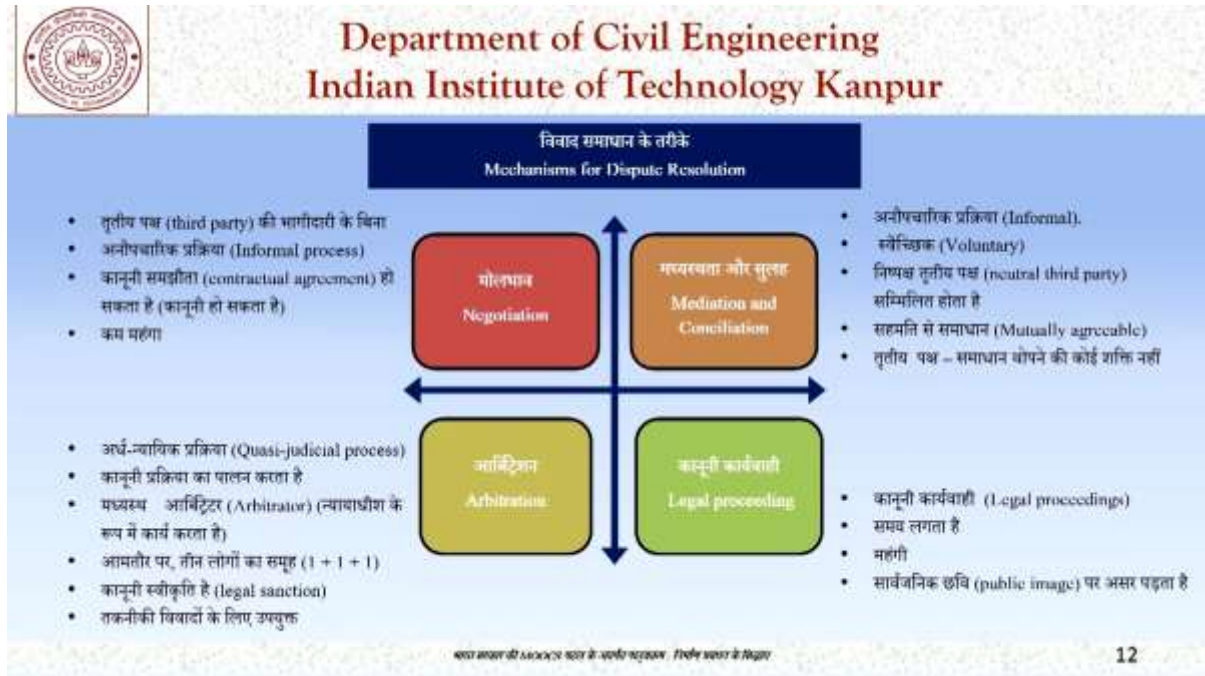
- अनुबंध जोखिम (contract risk) का उचित आवंटन (allocation)
- प्रासंगिक खंडों (relevant clauses) का उचित और स्पष्ट विवरण (Proper and unambiguous)
- टीम का निर्माण (Team building)
- एक निष्पक्ष पक्ष प्रदान करना ('neutral' third party)

11

Ab ham dekhenge ki kisee bhee vivaad ko avoid karana ya taalana kyon mahatvapoom hai aur vah kaise kiya ja sakata hai. Isake baad ham charcha karenge ki agar vivaad ho jaata hai to usaka nivaaran kaise kiya ja sakata hai, aaiye ham sab yahaan maanate hain ki kisee bhee vivaad se bachana use avoid karana hee usase nipatane ka sabase achchha tareeka hai. Vivaad se bachane ke lie kuchh upaay ya tips par ham charcha karate hain. Sabase pahala hai ki jo bhee hamaara anubandh hai usamen jo jokhim hai jo bhee risk hai usaka uचित allocation kiya jae. Allocation se matalab hai ki jo bhee hamaare jokhim hain, ham dekhen ki thekedaar ya client kaun us jokhim ko achchhe se sambhaal sakate hain us jokhim ke jimmedaaree unheen ko dee jae. Maan leejie ek jokhim hai land acquisition (bhoomi adhigrahan) ka jokhim hai ab agar hamen pata hai ki jo maalik ya owner hai vahee jameen khaalee karava sakate hain ya jameen pradaan kar sakate hain to yah jarooree hai kee bhoomi adhigrahan ya risk ya land allocation ka jo risk hai usaka jokhim owner uthae na ki vah jokhim thekedaar par aae isake baad yah bhee jarooree hai jo bhee relevent clauses hai, jo bhee praasangik khand hai jo hamaare contract ka bhaag hai vah uचित aur spasht hon, proper ho aur unambiguous ho. Saath hee saath jab anubandh banaaya jae to vah ek team building exercise ho, ek team ka nirmaan ho jahaan par sabhee ikaiyaan sabhee stakeholders ho, aisa nahin hona chaahie ki nirmaan ka jo contract hai vah sirph maalik ne banaaya aur jo thekedaar hai jo any specialized agencies hain unase koee bhee charcha na kee gae ho. Iseelie jarooree hai ki contract ka development ek team building exercise ho jo bhee us project mein agencies hain, jo bhee parties hain vah sab saath mein aae aur ek anubandh banaen taaki sab kee jarooraton ko sahee samay par samajha jae aur unhen anubandh mein joda jae. Kae baar yah jarooree hota hai ki ek nishpaksh paksh ho ek neutral third party ho ham yah maanate hain ki nirmaan kaaryon mein vivaad hona ek aam baat hai iseelie ham contract kee shuruat mein hee ek

neutral third party rakhate hain kae baar yah ek independent engineer ho sakata hai jise ham yah daayitv dete hain ki agar kisee bhee prakaar ka vivaad hota hai to vah neutral third party hamen madad karegee ki ham us vivaad se bach saken. To hamane ab dekha ki kisee bhee vivaad ko kis prakaar taala ja sakata hai. Isake alaava ek prakriya jo hai vah alternate dispute resolution kahalaatee hai jisake baare mein ham aage charcha karenge.

(Reference Time 11:33)



to aaiye ab maan leejie ki aapane har baat ka dhyaan rakha lekin phir bhee unfortunately koe na koe vivaad hue ab us vivaad ka samaadhaan kis prakaar ho sakata hai ham us par charcha karenge. Yah ek bahut mahatvapoomn step hai kyonki kae baar vivaad ke samaadhaan mein itana jyaada time lag jaata hai ki poora jo project hai vah bahut jyaada late ho jaata hai ya phir vivaad ke samaadhaan mein itana jyaada kharch ho jaata hai ki hamaare project kee total cost, jo kul cost hai vah bahut jyaada badh jaatee hai. Aapako vivaad samaadhaan ke lie court proceedings ya kaanoonee kaaryavaahee ke baare mein shaayad thodee jaanakaaree hogee. Usake pahale kuchh aur alternate dispute resolution ke tareeke hain jisape ham charcha karenge jo nirmaan kaaryon mein bahut helpfull rahate hain. Sabase pahala aata hai negotiation. Negotiation ko aam bhaasha mein agar kahen to molabhaav, yahaan par koe bhee third party kee bhaageedaaree nahin rahatee hai. Yah ek informal process (anaupachaarik prakriya) rahatee hai jahaan par jo bhee do parties jinake beech mein vivaad hua hai vah baithatee hain aur negotiate karatee hain vah baat karatee hain ki is vivaad ka samajhauta kis prakaar kiya ja sakata hai. Koe bhee third party yahaan par nahin rahatee hai. To yahaan par yah prakriya kam mahangee rahatee hai aur jaldee kee ja sakatee hai kyonki donon parties baithengee aur baat karengee aur vah chaahen to jo bhee samajhauta banakar aata hai use ek contractual agreement ke roop mein kaanoonee bhee bana sakatee hain use vah ek legal document bana sakatee hain to yah hua negotiation. Yah sabase achchha tareeka hota hai lekin kae baar do parties jo ek doosare ke saath vivaad mein hotee hain unhen ek saath baithak negotiate karaana mushkil ho jaata hai. Kae baar vah saath mein nahin baith paatee hain. Iseelie ek doosara tareeka hai madhyasthata ka, mediation aur conciliation ka. Yahaan par yahaan bhee ek anaupachaarik prakriya hai yah bhee svaichchhik hotee hai, voluntary hotee hai. Jahaan par jo bhee do parties vivaad mein hai vah unakee ichchha hai ki vah mediation karen ya na karen yah poornatah svaichchhik hotee hai. Yahaan par ek neutral third party rahatee hai ek nishpaksh third party rahatee hai hamane dekha negotiation mein koe bhee third party nahin rahatee hai lekin yahaan par mediation mein ek third party

rahatee hai jisaka kaary hota hai ki vah donon parties ke beech mein sulah kare aur koshish karen ki ek mutually agreeable samaadhaan aa jae jo donon parties ko maany ho, lekin isamen ek baat kee jaanakaaree bahut jarooree hai ki jo bhee party madhyasthata kar rahee hai vah jo bhee samaadhaan bataatee hai use vah thop nahin sakatee hai. Jo bhee samaadhaan nikalakar aata hai vah legally binding nahin hota hai yah sirph donon parties kee svaichchhik ya voluntary ichchha rahatee hai ki vah us samaadhaan ko maane ya na maane. Mediation aur conciliation mein ek third party ke hone se sulah ka raasta nikaala ja sakata hai. Isake baad aata hai arbitration mediation aur conciliation kee tarah arbitration mein bhee ek neutral third party rahatee hai lekin yah prakriya anaupachaarik nahin formal rahatee hai. Yah ek aupachaarik prakriya hotee hai jisamen kaanoonee prakriya ka paalan kiya jaata hai ise quasi judicial (ardh nyaayik prakriya) bhee kaha ja sakata hai. Yahaan par jo parties hotee hain vah pahale yah decide kar letee hai ki ek arbitration board ya ek arbitrators ka samooh aega vah milega aur dispute resolution mein madad karega. Adhikatar jo mediators hote hain ya arbitrators jo hote hain vah nyaayaadheesh ke roop mein kaary karate hain. Yah aamataur par teen logon ka ek group hota hai; jisamen pahala aadamee client ya maalik kee taraph se hota hai; doosara aadamee thekedaar kee taraph se. To ek-ek aadamee donon party kee taraph se hote hain aur ek aadamee teesara aadamee, ek third aadamee neutral hota hai jo donon parties kee taraph se nahin hota hai. Yah teen logon ka ek samooh pahale hee nirdhaarit kiya jaata hai ki agar poore project mein kisee bhee prakaar ka vivaad hoga, to arbitration kaun karega? Arbitration ka jo award hota hai ya arbitration mein jo arbitrators award dete hain use kaanoonee sveekrti hotee hai (legal section) hota hai aur yah procedure ya yah tareeka kisee bhee takaneekee vivaad jahaan par technical specifications ya technical drawings mein vivaad hai ya koe technical jaanakaaree se related vivaad hai us prakaar kee prakriya mein yah bahut hee jyaada useful rahata hai arbitration. Ham mediation aur arbitration donon ke baare mein aage aur charcha karenge lekin abhee main sirph ek haee level picture de raha hoon.

Aakhiree aata hai legal proceedings. Legal proceedings kaanoonee kaaryavaahee kahalaatee hain. Isamen adhikatar bahut jyaada samay lag jaata hai. Yah bahut jyaada mahangee hotee hain aur isamen jo public image hai, jo saarvajanik chhavi hai us par bhee asar padata hai. Iseelie vivaad ke dauraan jo bhee parties hain vah koshish karatee hain ki unhen kaanoonee kaarravaee ya legal proceedings tak na jaana pade aur vah arbitration, mediation ya negotiation ka prayog karake apana vivaad sulajha saken.

**(Reference Time 18:00)**





मध्यस्थता और सुलह  
Mediation and conciliation

- एक अनौपचारिक प्रक्रिया (informal process) जहाँ पक्षों के विवाद को निपटाने के प्रयासों में एक या अधिक तटस्थ तृतीय पक्षों (third party) द्वारा सहायता प्रदान की जाती है।
- मध्यस्थ किसी भी प्रकार का 'निर्णय' नहीं देते हैं; (no judgement);
- मध्यस्थ पक्षों को पारस्परिक रूप से स्वीकार्य समाधान (mutually acceptable solution) लाने में सहायता प्रदान करते हैं।
- मध्यस्थों के पास विवादित पक्षों पर कोई परिणाम घोषणे की कोई शक्ति नहीं होती है। (the mediators have no power to impose an outcome on disputing parties)

Aaiye ham is charcha ko aage badhaate hain aur dekhate hain mediation aur conciliation mein kya hota hai? Hamane baat kee ki yah ek informal process ya anaupachaarik prakriya hai jahaan pakshon ke vivaad ko nipataane ke lie prayaas kiya jaata hai ek third party sahaayak banatee hai jo isamen madad karatee hai. Jo bhee madhyasth party hai vah kisee bhee prakaar ka nirnay nahin de sakatee hai vah koee bhee judgment nahin de sakatee hai vah sirph sudhaar kara sakatee hai vah sirph bata sakatee hai lekin vah koee bhee nirnay nahin de sakatee hai aur jo bhee paksh hai yah aim rahata hai ya target rahata hai ki ek mutually acceptable solution paarasparik roop se ek sveekaary samaadhaan kee or badhane kee koshish rahatee hai. Jo bhee madhyasth paksh hain vah koshish karata hai ki jo parties hai unake beech mein ek mutually acceptable solution nikal sake aur jo hamaare mediators hain unake paas kisee bhee tarah ka power nahin hota hai ki vah parinaam ko thop paayen.

To maan leejie mediation hota hai aur mediators kuchh sulah kara dete hain aur bataate hain ki ab thekedaar ko ya maalik ko ya jo bhee do parties hain unhen kya-kya karana hoga. Vah sirph yah bata sakate hain lekin hamaare mediators ke paas aisa koee power nahin hota ki vah yah nirnay un par thop paayen ya use legally laagoo kara paen. Isakee ek khaas baat yah hai ki mediation aur conciliation private mein nijita ke saath aur gopaneeyata ke saath poorn kiya jaata hai, jisase yahaan par kharch bhee kam hota hai aur public image bhee kharaab nahin hotee hai.

**(Reference Time 19:56)**



पूर्व-मध्यस्थता (Pre-mediation )

- मध्यस्थता पर सहमति (Agreeing to mediate)
- प्रारंभिक जांच (initial enquiry) और पक्षों के साथ जुड़ाव (engagement with parties)
- प्रारंभिक कम्युनिकेशन (Preliminary communications) और तैयारियाँ

प्रत्यक्ष एवं अप्रत्यक्ष मध्यस्थता (Direct and indirect mediation)

- पक्षों से मिलना
- पक्षों की प्रस्तुति (presentation) ; जानकारी एकत्र करना (Information gathering)
- बातचीत को सुविधाजनक बनाना (Facilitating negotiation)
- मध्यस्थता समाप्त करना और समझौते दर्ज करना (Terminating mediation and recording agreements)

मध्यस्थता के बाद Post-mediation

- परिणाम का अनुपालन (Compliance)

Aaiye ab ham dekhate hain ek mediation prakriya mein kya hota hai? Sabase pahale ham dekhate hain pre-mediation kya hota hai? Mediation (madhyasthata) shuroo hone se pahale kya kaary hote hain? Sabase pahale ek sahamati banatee hai ki haan vivaad hua hai aur is vivaad ko sulajhaane ke lie ham madhyasthata kee madad lenee hongee. Ek sahamati banatee hai phir jo mediator hai vah ek praarambhik jaanch ya initially inquiry karate hain aur jo bhee paksh is vivaad se jude hue hote hain unake saath baatacheet karate hain. Phir ek preliminary communication (praarambhik communication) hota hai aur mediation kee taiyaaree hotee hain. Yahaan par yah decide kiya jaata hai ki mediation kab hoga, kin-kin vivaadon par hoga, kaun se vivaad kee charcha pahale hogee aur kaun-kaun se aise paksh hain jo vahaan par maujood hone chaahie. Is prakaar kee sabhee jaanakaaree pre-mediation mein tay kee jaatee hai. Phir mediation ke dauraan direct aur in-direct mediation hota hai, jahaan par pakshon se mila jaata hai. Pakshon se kaha jaata hai ki vah apane prastuti ya presentation den ki vivaad ka kya kaaran hai aur unaka kya paksh hai to yahaan par goel rahata hai information gathering ka (jaanakaaree ekatr karane) ka usake baad madhyasth jo hota hai ya mediator jo hota hai vah koshish karata hai ki vah baatacheet ko facilitate kare, use suvidhaajanak banae. Aur phir agar koe nirnay nikalata hai ya koe nirnay nahin bhee nikalata hai to madhyasthata ko samaapt kiya jaata hai aur ek samajhauta jo aaya hai use darj kiya jaata hai. Samajhauta ya to solution nikalane ke baad jo bhee steps likhee gae hogee use samajhaute mein likha jaata hai ya phir yah likha jaata hai ki is mediation se koe samaadhaan nahin nikal paaya isalie aap agale stage jo arbitration hai vahaan jae ya phir court jaayen. Post mediation na jo bhee parinaam die gae the usakee compliance dekhee jaatee hai ki vah jo kaha gaya tha vah donon parties ne kiya ki nahin.

(Reference Time 22:24)



मध्यस्थता के फायदे  
Benefits of mediation

- विवाद का जल्दी निवारण (Faster)
- सस्ता (cheaper)
- आगे के विवादों को कम करता है (Minimizes further disputes)
- कम्युनिकेशन के मार्ग खोलता है (Opens channels of communication)
- रिश्ते को बनाए रखता है और बढ़ाता है (Preserves and enhances relationship)
- पक्षों को सशक्त बनाता है (Empowers parties)

Ab ham baat karenge madhyasthata ke kya phayade hain? Sabase pahala yah faster hai, jaldee kiya ja sakata hai; cheapest ya sasta hai aur aage ke vivaadon ko kam karata hai kyonki donon parties ek jagah aakar baithatee hain aur unake beech mein sulah ho jaatee hai. To isase aage koe vivaad ho isamen kamee aatee hai aur ek communication ka maarg bhee khul jaata hai. Saath-hee-saath jo hamaaree parties hain unake rishte bane rahate hain aur unako kabhee-kabhee badhaava bhee milata hai. To mediation ke baad donon parties phir bhee saath mein milakar aage kaary kar paatee hain yah pakshon ke sashaktikaran mein bhee madad karata hai. Yah madhyasthata ke kuchh phayade hain hamane charcha kee thee ki madhyasthata se jo solution nikalata hai vah legally binding nahin hota hai, use thopa nahin ja sakata hai. Yah kae baar khud mein vivaad ka kaaran ban jaata hai kyonki ho sakata hai madhyasthata hone ke baad donon parties mein us samay to sulah ho gae lekin vah aage jaakar jo unhen kaha gaya hai us baat ka paalan na karen. Iseelie kae baar arbitration kee madad lee jaatee hai kyonki arbitration se jo decision liya jaata hai vah legally binding hota hai kaanoonee taur par use maany kiya jaata hai.

**(Reference Time 23:56)**



## Department of Civil Engineering Indian Institute of Technology Kanpur

### विवाद समाधान के तरीके Mechanisms for Dispute Resolution



Aaiye ham charcha karate hain ki arbitration kis prakaar hota hai aur isamen kya anek pahaloo rahate hain, us par ham charcha karate hain.

(Reference Time 24:06)



## Department of Civil Engineering Indian Institute of Technology Kanpur

### आर्बिट्रटर का चयन Selection of arbitrator

- उच्च सत्यनिष्ठा (high integrity), पूर्णतः निष्पक्ष व्यक्ति (impartial)
- प्राकृतिक न्याय (natural justice) के सिद्धांतों और व्यावहारिक दृष्टिकोण (practical approach) को लागू करने में विश्वास रखता है।
- उस कार्य क्षेत्र की जानकारी रखने वाला तकनीकी व्यक्ति (Technical domain knowledge)
- कानूनी प्रक्रिया को समझने वाला (legal procedures & evidences)

Sabase pahale aata hai selection of arbitrator. Jo arbitrator hai usaka chayan kis prakaar hota hai? Ham chaahate hain ki aisa vyakti ka chunaav ho jo hae integrity ka ho (uchch saty nishtha) ka ho; saath hee saath vah impartial ho vah nishpaksh rahe ke decision le paen; saath hee saath vah vyakti jo bhee natural justice ke siddhaant hai principles hai unamen maanata ho aur vah ek practical approach rakhata ho ki kisee bhee vivaad ko kis prakaar sulajhaaya jaega. Saath hee saath kae baar nirmaan kaaryon mein yah jarooree hota hai ki jo vivaad hai jo hamaara arbitrator hai use us kaaryakshetr kee jaanakaaree ho. Use technical domain knowledge ho taaki vah technically kya problem hai vah samajh pae aur sahee decision de pae. Saath hee saath technical knowledge ke saath jarooree hai ki arbitrator ko kaanoonee prakriya jo legal procedures hain usakee bhee samajh ho, use yah bhee pata ho ki jo evidence

pakshon dvaara die gae hain unhen kis prakaar dekhana hai aur kis prakaar un evidence ko dekhane aur samajhane ke baad nirnay dena hai.

(Reference Time 25:33)



**Department of Civil Engineering**  
**Indian Institute of Technology Kanpur**

**अर्बिट्रेटर के कर्तव्य**  
**Duties of arbitrator**

- मध्यस्थ के रूप में नियुक्ति पर, यह जांच करे कि क्या वह योग्य है (qualified or unqualified)
- विवादों के तहत मुद्दों को समझें - या तो एक बैठक के माध्यम से (meetings), या, पक्षों को नोटिस (notice) भेजें और पक्षों से बयान या प्रस्तुतियाँ माँगे
- मामलों के बारे में पूर्व जानकारी के बारे में पक्षों से आवश्यक खुलासा (Necessary disclosure)
- दूसरे पक्ष की अनुपस्थिति में कोई साक्ष्य (evidence) प्राप्त न करे
- किसी भी पक्ष की अनुपस्थिति में किसी गवाह से पूछताछ (examine a witness) न करे
- उसे निजी तौर पर जांच करनी चाहिए; अपने अधिकार किसी अन्य को नहीं सौंपना चाहिए
- संदर्भ के दायरे से बाहर नहीं जाना चाहिए (Should not exceed the scope of reference)
- निर्धारित समय सारणी (time schedule) का पालन करे

कक्षा सभ्यता की ASSOCIATES कक्षा के अध्यक्ष प्रो. कृष्णम. विश्वनाथन के द्वारा

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Ab ham charcha karenge ki ek arbitrator kee duties kya hotee hai? Usake kartavy kya hote hain? Sabase pahala jab usaka chunaav hota hai ya ek madhyasth kee niyukti ho jaatee hai to use yah dekhana hota hai ki kya vah is vivaad ko sulajhaane ke lie yogy hai ya nahin hai vah qualified hai ya unqualified hai. Saath hee saath use vivaad jo hua hai usake tathy ko samajhane ke lie koshish karana hota hai, vah chaahe to ek baithak bula sakata hai taaki vah use adhik jaanakaaree mile ya phir vah pakshon ko notice bhej sakata hai aur use jo bhee jaanakaaree chaahie usakee maang rakh sakata hai. Meetings aur notice kee madad se har mudde ke tah tak jaana ek arbitrator ka kaary hota hai. Saath hee saath agar arbitrator ko is kes ke baare mein koee bhee poorn jaanakaaree hai to yah usaka daayitv banata hai ki vah pakshon ko is baare mein pahale hee bata de. Yah ek aavashyak khulaasa hota hai maan leejie kisee bhee arbitrator ko kisee project ke baare mein kisee bhee kaaran se kuchh poorv mein jaanakaaree hai to use yah bataana hota hai ki main is vivaad ke baare mein pahale se jaanata hoon aur use jis bhee prakaar kee jaanakaaree rahatee hai vah use donon pakshon ko bataanee hotee hai phir ek arbitrator ka yah daayitv hota hai ki vah doosare paksh kee anupasthiti mein koee bhee evidence praapt na kare. Arbitrator yah nahin kar sakata hai ki vah kisee ek party se evidence le jab doosare party vahaan par na ho to donon parties ka hona jarooree hai jab bhee koee naya evidence aata hai. Saath hee saath kisee bhee paksh kee anupasthiti mein gavaah se poochhataachh karana bhee mana hai kisee bhee vitanes ko examine karana bhee mana hai aur isake alaava ek arbitrator ka daayitv hota hai ki vah nijee taur par poornatah jaanch karen vah apana kaary kisee aur ko na saumpe par poora kaary vah khud karen aur usake jimmedaaree le saath hee saath use sandarbh ke daayare se baahar nahin jaana chaahie ek scope of reference hota hai use axceed nahin karana hota hai ek arbitrator ko jo vivaad sulajhaane ke lie die gae hain vah sirph unheen vivaadon ko sulajhae aur usake baahar ya usake daayare se baahar na jae aur jo kar rahe hain arbitrator unhen ek times schedule ka paalan karana chaahie taaki samay par us vivaad ka nivaaran kiya ja sake yah huee kuchh duties ya kartavy jo ek arbitrator ko paalan karana chaahie.

(Reference Time 28:48)





## Department of Civil Engineering Indian Institute of Technology Kanpur

### अवॉर्ड और उसके बाद की कार्यवाही Making of an award and subsequent proceedings

- समय सीमा की जानकारी
- वैध अवॉर्ड के आवश्यक तत्व (Essentials of valid award)
  - मध्यस्थता समझौते की दिशा में होना चाहिए (in the direction of arbitration agreement)
  - लिखित एवं हस्ताक्षरित (signed) होना चाहिए
  - संदर्भित सभी मामलों के प्रति निश्चित और निर्देशित (certain and directed) होना चाहिए
  - कंसिस्टेंट और अंतिम (Consistent and final)
  - इसमें इसके निष्पादन के लिए आवश्यक सभी दिशा-निर्देश शामिल होने चाहिए (directions necessary for its performance)

(क्रमशः)

अवॉर्ड और उसके बाद की कार्यवाही: निर्णय और अंतिम

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Ab ham baat karate hain jo bhee hamaara arbitrator ek award banaata hai vah kis prakaar banata hai aur usake baad kya kaaryavaahee hotee hai sabase pahale yah jarooree hai ki arbitrator ne jo bhee award diya hai jo final judgment diya hai usamen vah ek samay seema rakhe vah batae ki jo bhee nivaaran ke lie steps batae gae hain vah kitane-kitane samay mein poore ho jaane chaahie isase is baat mein madad hotee hai ki jo parties jinhen un steps ka implementation karana hai unhen pata hota hai ki unhen yah kitane din mein karana hai. Maan leejie kaha jae ki owner ko payment karana hai to award mein yah likha hona chaahie kee payment agale 90 dinon mein karana hai yah agale do maheene mein karana hai is prakaar kee jaanakaaree likhee honee chaahie. Saath hee saath ek vaidy award ya vailid award ke kuchh aavashyak tatv hain jo kuchh is prakaar hai jo bhee award diya gaya hai vah madhyasthata samajhaute jo arbitration ka agreement hua hai usee kee disha mein hona chaahie jab do parties ne ek anubandh sain kiya tha unhonne kaha hoga ki agar koee vivaad hota hai kis prakaar nivaaran karenge aur vah kis-kis baat ka dhyaan rakhenge aur aise kya pahaloo hain jo unake daayitv mein aaenge aur aise kya pahaloo hain jo arbitrator ke daayitv mein nahin aaenge sabase pahale jarooree hai ki jo madhyasthata ka samajhauta aa raha hai vah arbitration agreement kee disha mein ho vah likhit (written) ho aur signed bhee ho saath hee saath sabhee maamalon mein vah ek nishchit aur nirdeshit hona chaahie(certain hona chaahie aur director hona chaahie) jo bhee award likha gaya hai vah consistent hona chaahie. Aisa nahin hona chaahie ki award ke andar do jagah par aisee baaten likhee gae hon jo ek doosare se mel nahin kha rahe hain poornatah consistent hona chaahie aur jo bhee award vah de rahe hain vah final hona chaahie ya antim hona chaahie usake baad yah bhee jarooree hai ki jo award diya gaya hai isaka nishpaadan karane ke lie jo bhee dishaanirdesh hain vah usamen achchhe se shaamil hona chaahie kyonki ham chaahate hain ki ek baar award de diya gaya hai to usaka paalan ho to usake paalan ke lie jo bhee dishaanirdesh hain, vah bahut spasht roop se likha hona chaahie.

**(Reference Time 31:35)**



आर्बिट्रेशन के बाद की कार्रवाई  
Post arbitration proceedings

- 1996 के अधिनियम के अनुसार, आर्बिट्रेटर (Arbitrator) अवॉर्ड का नोटिस भेज सकता है, और, यदि कोई पक्ष उसमें कुछ खामी/सुधार पाता है, तो मध्यस्थ उसकी समीक्षा और संशोधन कर सकता है।
- आम तौर पर इसके लिए दी गई समय सीमा अवॉर्ड की तारीख से 28 दिन की होती है।
- अंतिम निर्णय (final decision) होते ही मध्यस्थ (arbitrator) का अधिकार समाप्त हो जाता है तथा वह इस विवाद पर दूसरा निर्णय देने का अधिकार नहीं रखता है।

Ab ham dekhate hain kee post arbitration kya hota hai? Arbitration act 1996 ke anusaar award ka notice bheja jaata hai aur agar donon pakshon ko lagata hai ki usamen kuchh khaamee hai ya sudhaar kee jaroorat hai to vah isakee jaanakaaree arbitrator ko de sakate hain aur arbitrator usakee sameeksha kar sakata hai aur chaahe to usamen kuchh sanshodhan bhee kar sakata hai. Aamataur par yah kaary karane ke lie 28 din ka samay rahata hai. 28 din ke andar-andar parties ko yah bataana hota hai ki vah award se agar khush nahin hai to kin kaaranon se khush nahin hai aur ya unhen use award mein kya sudhaar kiya jaana chaahie aur jis prakaar mainne kaha pahale bhee ki yah ek antim nirnay yah final decision hota hai arbitrator aisa nahin kah sakata hai ki aap abhee itana karie aur aage kuchh aur baaten hain jo ham aapako baad mein bataenge is prakaar nahin hota hai poora award ka jo decision hai vah antim decision hota hai aur arbitrator jo bhee madhyasth hai usakee jimmedaaree award dene ke baad samaapt ho jaatee hai to hamane dekha ki jo arbitrator hai vah us vivaad par kabhee doosara nirnay nahin de sakata hai lekin agar kisee kaaran se jo hamaare thekedaar ya client ya jo bhee paartiyaan hain vah arbitration ke award se khush nahin hai to vah chaahe to ise court mein le ja sakatee hain legal proseedings kee or le ja sakatee hain.

**(Reference Time 33:21)**



मध्यस्थता के लाभ  
Advantages of arbitration

- एक औपचारिक और अर्ध-न्यायिक प्रक्रिया (formal and quasi-judicial process)
- निर्णय लागू किये जा सकते हैं (Decision can be imposed)
- सस्ता (less costly)
- तकनीकी विवादों के लिए सबसे उपयुक्त (Best suited for technical disputes)
- मध्यस्थ द्वारा विशेषज्ञ कानूनी और तकनीकी सलाह (legal and technical) प्राप्त की जा सकती है
- कार्यो की साइट का दौरा किया जा सकता है (site visit)
- अंतरिम राहत दी जा सकती है (Interim relief can be granted)
- कोई प्रचार शामिल नहीं है (No bad publicity)
- आपसी सुविधा के अनुसार सुनवाई का समय और स्थान तय किया जा सकता है
- अपील के खिलाफ न्यायालय में अपील की जा सकती है।

Ab ham dekhate hain madhyasthata ke laabh (advantages of arbitration) sabase pahale yah ek aupachaarik aur formal prakriya hai yahaan par jo bhee nirnay aate hain use laagoo kiya ja sakata hai use impose kiya ja sakata hai yah sasta ya less costly hota hai agar aap ise compare karen judicial process ya court kee prakriya se yah takaneekee vivaad technical dispute ke lie bahut jyaada upayukt rahata hai saath hee saath madhyasth dvaaraa legal aur technical donon prakaar kee salaah praapt kee ja sakatee hai agar aap court mein dekhenge to kae baar takaneekee salaah ke lie madhyasth dvaaraa legal aur technical salaah donon praapt kee ja sakatee hai yah arbitration ka ek laabh hai aur nirmaan kaaryon mein kae baar jarooree hota hai ki kaary kee site visit kee jae arbitration is baat mein sahaayak hai ki thekedaar ya jo bhee paksh involved hai unake saath arbitrator site visit kar pae legal proceedings ya court proceedings mein kae baar yah karana mushkil ho jaata hai arbitrator agar chaahe to vah kuchh antarim raahat interim relief bhee de sakate hain aur arbitration kee madad se kisee bhee prakaar kee bad publicity nahin hotee hai kyonki isamen prachaar nahin hota hai arbitration kis prakaar hoga yah document mein pahale se likha hota hai isalie parties apana ek arbitration board jahaan mainne kaha teen log hote hain jyaada bhee ho sakate hain par adhikatar teen log hote hain unhen bulaatee hain aur baat karatee hain aur ek nirnay par aatee hain aur vah nirnay kaanoonee taur par laagoo hota hai to isamen kisee bhee prakaar kee bad publicity nahin hotee hai saath hee saath aapasee suvidha ke anusaar sunavaee ka samay aur sthaan tay kiya ja sakata hai donon parties pahale hee yah nirnay kar sakatee hain ki agar arbitration hota hai to usakee sunavaee kahaan par hogee aur kis samay par hogee yah agar aap ise legal procedures ya court ke najariye se dekhen to bahut fast hota hai quick hota hai aur saath hee saath jahaan ham chaahe vahaan par yah kaary kiya ja sakata hai yah arbitration ke kuchh advantages hain aur jis prakaar mainne pahale bhee charcha kee agar kisee kaaran se jo parties hai unhen arbitration ke award se sahamati nahin hai to vah is award ke khilaaph nyaayaalay mein ja sakatee hain aur nyaayaalay is award kee sameeksha vaapas kaise kar sakata hai arbitration ke award kee court mein appeal kee ja sakatee hai.

(Reference Time 36:20)



## Department of Civil Engineering Indian Institute of Technology Kanpur

विवाद समाधान के तरीके  
Mechanisms for Dispute Resolution



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To abhee tak hamane dekha ki negotiation kya hota hai, mediation kya hota hai, arbitration kya hota hai agar kisee kaaran se arbitration avord ya arbitration se sulah nahin kee jad ka detee hai to kaanoonee kaarravaee kee ja sakatee hai kaanoonee kaaryavaahee mein bahut jyaada samay lagata hai kaanoonee procedures bahut jyaada costly bhee hote hain aur kae baar aisa hota hai ki project ke samaapt hone ke baad kaanoonee kaarravaee saalon-saalon tak chalatee rahatee hai iselie jo bhee hamaaree parties hotee hain contract mein judatee hain vah koshish karatee hain ki kisee bhee vivaad ka samaadhaan legal proseedings ya kaanoonee kaarravaee se nahin arbitration, mediation ya negotiation kee madad se kiya jae iselie yah kuchh alternat dispute resolution kee technic hai jo nirmaan kaaryon mein bahut jyaada sahaayak hotee hain aaj kee charcha ham yahee tak karenge.

(Reference Time 37:21)



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:: धन्यवाद ::

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Bahut-bahut dhanyavaad!