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Lecture - 22 Employer-employee: Duties and rights from both sides

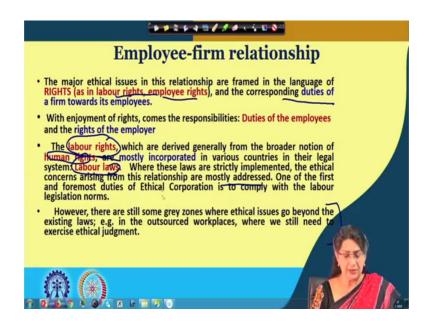
We are back once more and this time our topic is still going to be the employees. We are today are going to talk about the Duties and rights from both sides, you may recall that I have already said that this relationship is going to be reciprocal. So, with that in mind we are going to proceed to talk about the two directional duties and rights.

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But, I am not going to mention all the rights and duties that exist in this relationship that time constraint is there, but I am going to refer to the salient ones; the most major ones or the most important ones. Then in subsequent lectures I am going to take up some very specific issues also. So, let us proceed here.

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You see whenever we talk about rights in my earlier lessons I have mentioned that its tightly correlated with the concept of duties. You cannot enjoy privileges and rights or entitlements without also accepting some responsibilities, some duties, some obligations. So, I will hold on to that thought and I will ask you to remember that, when we say about employer employee relationship in most of the discussions you will find that there is an insistence upon rights and the rights of the employees. So, you will hear a lot about labour rights, employee rights and so on.

But we need to whiles talking about the labour rights and employee rights, we need to also talk about the corresponding duties of the employees towards the employer. Similarly, when we talk about the employers rights we have to remind ourselves that the employer also has some duties toward the employees. Coming back to the rights, now typically the employee rights generally covered under this generic name of labour rights. This labour rights were originally derived from the broader notion of human rights, human rights that is the umbrella from which the labour rights were derived. And this labour rights have been mostly incorporated in the legal systems of various countries.

So, when that happens, the right is not just an ethical or moral right it is also a law. So, typically you will find these rights in the labour laws of a country, same thing also in our country as well. Now, when this labour laws are very strictly implemented then most of

the ethical concerns with the enjoyment of these rights are automatically addressed, when it is very strictly implemented.

Whenever there is a weak implementation or poor implementation there are questions on both sides whether the rights are being given and whether the duties are being really honored, respected and so on. Apart from the labour laws there are some unclear areas also which I told you earlier when the laws are silent or are unclear that is when you get to see for the first time the ethical aspect of an organizational decision. So, there are plenty of such areas where the laws are not very clear and there are ethical issues where we need to exercise our ethical judgment about this labour rights and we will discuss some of this as we proceed here.

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Here is a small list of some of the important employee rights for example, right not to be forced into labour; whenever that is violated you will have cases of forced labour. You know people held in confinement and made to do work or trafficking as you know, we have serious problems people when they of they violate this there is human trafficking. Similarly, right to workplace health, safety; this come under the occupational health safety, whenever that is not respected there is serious questions about workplace or occupational safety of the worker. There may be the working conditions are very poor, the working hours are inhuman and so on, this is right to fair wages.

You know we will talk about that separately what does a fair wage mean, but wage is something that the employee is entitled to in return for the work and the time that he or she is investing in the organization. The issues ethical issues related to that would be the violation of the wage contract, minimum wage violation or the time and the mode of the payment are not satisfactory or there are very questionable deductions from the paycheck. This is an important right, the right to get equal payment for equal work, we in fact, have a special law to protect us. This is violated in the case where men and women are treated differently for the same amount of work, we call the gender discrimination.

Gender discrimination can show up not only in salary, but also in training and promotion and so on. Then there is right to retirement benefits. So, when that is not respected you are going to have non-payment or delayed payment of the retirement benefits. So, what the employee deserves employee is not getting, right to privacy. Now, this is we hear about it and you may remember that Supreme Court of India in 2017 said that it is a fundamental right, but its status is unclear in India. Because, there is no provision of right to privacy in the labour laws as such, but Article 21 from Indian constitution is often evoked in support of right to privacy.

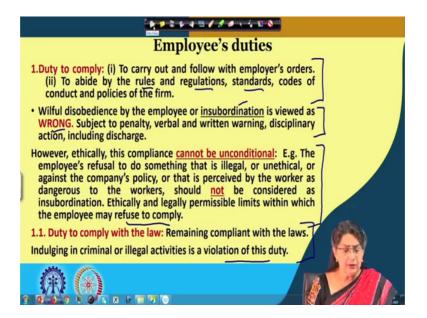
We are talking about the privacy of the employees and where it may be compromised as you know when the organization decides to put the employees under surveillance or tries to know more about the employee by various modes, question sometimes these are questionable modes. So, there can be number of issues, this is right to due process. Due process as in promotion or even when there is a disciplinary hearing, when this is not respected there may be unfairness in the judgement, discrimination and random hiring or firing; you know those are not very desirable one. This is a right which is also considered to be important, that is right to participation which means participation in the corporate decisions, important corporate decisions.

And this is right to association which actually comes to right to unionize, you know collective bargaining, getting in the association employee association, to make a bargain, to make a claim, to the organization jointly. When this is not given there are certain sectors when this is not this right does not exist or this right is not very clear. Till the other day it was not very clear for the IT sector in fact, IT sector does not have that many unions to say, but in manufacturing and others this right is very much there and its honored. Right to work; right to work so, this is violated when there is unfair treatment

in recruitment process or there is discrimination in the recruitment and finally, right to free speech, to speak the mind.

Now, this is again a constitutional right, it is not an absolute right though when there are public interest, the right to free speech is coddled. These are some of the important employee rights.

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Once we have talked about the rights, the time is to talk about the employee duties. So, what are they? The very first one is the duty to comply, comply with what? With the orders given by the employer, namely the corporation. The duty is also to comply with the rules and the regulations of the workplace, the codes, the standards, in the policies, the HR policies for example, of the workplace.

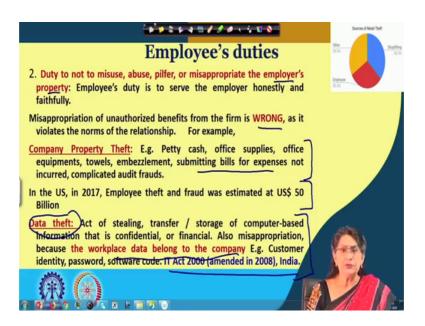
When that is not done and if it is done intentionally not to comply, we call it insubordination. Willful disobedience by the employee or insubordination is seen as a wrong behavior, unacceptable behavior and it is within the right of the employer to take disciplinary action about that.

While saying that let us make a this point also clear that duty to comply is not an unconditional duty for the employee, that is it is not an absolute duty. The employee also has within the employees rights, some ethical and legally permissible limits when the employee can refuse to comply. For example, if the employees asked to do something

illegal or unethical or against the employees religious beliefs for example, these are cases where the employee can on justifiable grounds refuse to comply and it will not be considered as insubordination for example.

The duty to comply also includes the duty to comply with the prevalent laws of the land. So, engaging in criminal activities or illegal activities would be a violation of this duty. So, that was our first duty did namely the duty to comply.

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Second one is equally important, the duty not to misuse, abuse, misappropriate or destroy in some way or other employer's property: namely the company's property and then this is where we need to understand the point very clearly. Company's assets, company's property is not employees property, though the employee is given the right to use it during the work hours for the corporations, for the business reasons.

The employee's duty is to serve the employer honestly. So, the property that does not belong to the employee should be respected as somebody else's property and it is the same law with personal property. So, misappropriation of unauthorized benefits or unauthorized use of company resources is seen as wrong and it violates the norms of this relationship.

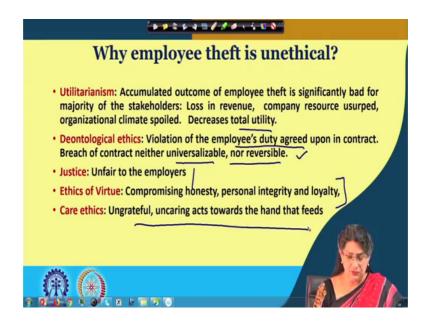
Specific example would be company property theft, employee theft of company property and it can start from petty cash; you know to big accounting frauds or big complicated

kind of audit frauds. For example, it can start with office supplies, it can be neon tubes, it can be towels of the office or it could be submitting the bill for expenses that we are not really incurred and so on. Is this a big problem? You bet it is. In fact, if you look at the figures sometimes it is astounding how much revenue, how much actually the company's lose because of employee theft.

There is other than the objects or company assets company property, there is another kind of theft that is alarming and that is also has taken our grabbed our attention namely data theft; you know these days work is with knowledge and information. So, there are ways in which you can steal, you can misappropriate computer based information and that computer based information, if it is confidential and it is really sensitive, it is related to the company's work the employee is given just an access to use it for company purposes and the company misuses it or misappropriates it that is called data theft.

Now, why this is thought of as theft? Because, the workplace data remember belong to the company, the employees given the right to use it, but it does not belong to the employee. So, even when the job is change you do not really have any right to take the data with you without the consent of the organization. So, what kind of data are these? It could be customer identity, you know there are so many clients and or it could be customer passwords or the company passwords etcetera. So, for this reason there is a very specific law in our country namely IT Act 2000 which was amended in 2008.

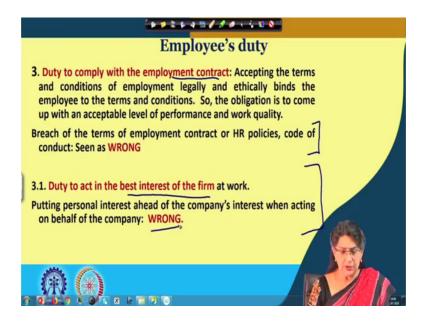
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We can talk about the employee theft also from the ethical purely ethical point of view and I will remind you about all the theories that we have learned. A utilitarianism and you will see that each one is going to say that employee theft is unethical, unacceptable. Utilitarianism for example, we will talk about the decrease of total utility here, you know nobody gets to have a benefit from that other than the employee rest of the all stakeholders get to lose specifically the company. Deontological ethics we will talk about how the breach of the contract you know or the sense of duty we will say that employed theft is first of all not universalizable and there is no way you can want it to be done to you.

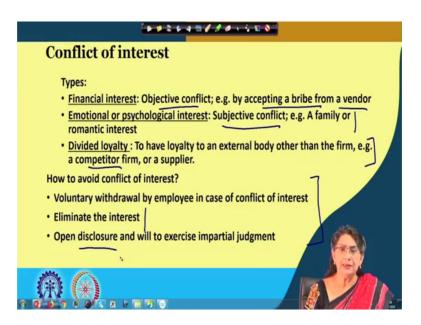
So, it is not reversible also that according to cannot would immediately say it is not one of the ethical duties and moreover the employee agreed in the contract to remain loyal to respect company properties. So, it cannot be the right thing to do. Justice will say that this is unfair to the employer, virtue ethics will point out that employ theft is an example of dishonesty. So, that is certainly not a virtue, its advice to stay away from and care ethics will typically talk about being irresponsible to the person who is giving you something; specially you are being ungrateful and uncaring to the hand that feeds you. So, these are some of the arguments that you will get to hear from the ethical theories about employee theft.

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The other duty that we want to bring to for is the duty to comply with the employment contract, remember the binding contract. So, accepting the terms and conditions of the work is accepting certain obligation to maintain to follow the norms that are mentioned there. Breach of that terms of employment or violating those willfully it would be seen as wrong. One of the special cases where this duty is floated is where the employees start to act in private interest rather than in the best interest of the company. So, putting personal interest ahead of the company's interest is definitely seen as wrong because, during the work and this is the terms and conditions of the work also.

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You are supposed to act on behalf of the company, putting the company's interest has the primary. When the employees starts to put the personal interest ahead of the company interest, there is a fierce conflict of interest situation. Conflict of interest your personal interest is going one direction, the company's interest is going another direction there is conflict between these two interest. When we call it the situation is of objective conflict when the interest is of the financial nature, namely you have accept the employer has employee has accepted a bribe from some party. Say if it is a purchase that your looking after, the employees looking after then the vendor has already greased the palm of the employee.

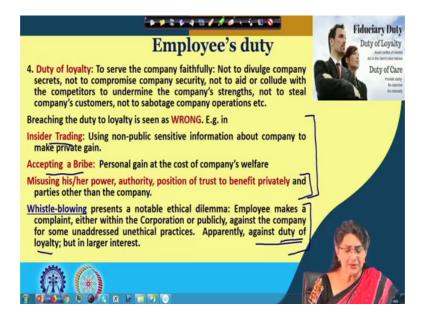
So, the contract goes out to the vendor because not because of the quality of the product, but because of the private gain of the employee. And there is a conflict because company

may not get the quality product, but the employee is benefited somehow. When there is emotional or psychological interest not money, but sort of an emotional involvement we call it a subjective conflict. For example, the party who is submitting the tender is a relative or a very close friend or a family or a family member or you have a romantic interest for example. So, in such cases also there is definitely conflict of interest. Divided loyalty is another situation of conflict of interest where loyalty is divided between the employer, namely the organization that the employee works for and somebody else, somebody external.

Suppose that the employee is already sort of favorable towards a competitor firm. So, obviously, there will be conflict of interest. Now, how do you manage this conflict of interest? By voluntarily withdrawing from such situations, by disclosing the conflict of interest. For example, if you know a family member is involved you might simply disclose it to the panel and withdraw from selection that panel. Or you can eliminate the interest that is easier said than done because you cannot always eliminate the interest. But, if you think that its coming in the way of the your professional life then certainly some people do take the hard road.

In any case open disclosure, disclosure is what is better rather than hiding it and then finally, the truth coming out.

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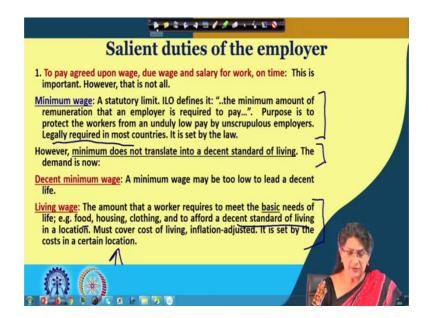
There is the duty of loyalty. So, to serve the company faithfully and breach of that is seen as a duty failure in the loyalty. We are talking about situations where the employee is not supposed to divulge company secrets or not to team up with the competitors, because of the duty of loyalty to the firm. When can this duty be compromised? There are number of situations when it can happen for example, its very easy to understand how a bribe acceptance can change this situation, you are already leaning towards the person who is benefiting you.

Insider trading which we have discussed last week about when we talked about corporate governance, also can be a very problematic situation for duty to loyalty. You are going not doing company the benefit, but your yourself you are gaining it privately and then misusing authority to benefit privately and some other third party, but not your all employer.

Whistle blowing presents to us a very interesting ethical dilemma with regard to duty of loyalty, whistle blowing is the act of an employee complaining against the firm that the employee works for. Suppose that the employee has found that the organization is doing engaged in some illegal or unethical practices. And the first complaint should be within the corporation and suppose the person, the employee does not find a resolution there and the employee decides to go public.

So, the reporting it to media, reporting it talking to the people outside against the organization the employee works for. Now, this present an ethical dilemma because apparently it is against the duty of loyalty by an employee. But, if there are very strong grounds for example, you find that the company you work for is actually dumping toxic substances in the nearby neighborhood and neighborhood does not know. And then in the name of public welfare for the better well being of the society, you can override the duty of loyalty; that is why I said it presents a very interesting ethical dilemma. When to do whistle blowing, how to do whistle blowing these are all presents a interesting problems, ethical problems here.

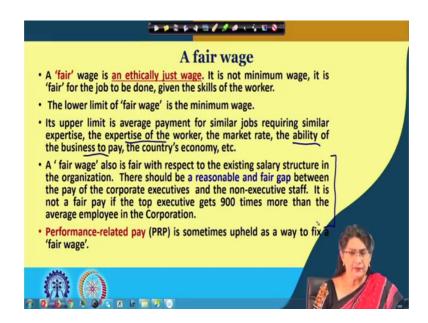
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Let us talk about the employer's duties. Now, these are the first one is to pay the wage, the wage that was agreed upon and on time, but that is not enough. First of all we know that there is the requirement for to pay the minimum wage, minimum wage that is employer is supposed to pay. Now, this sometimes we need to remind ourselves why this is important because, there are unscrupulous and exploitative employer who would pay abnormally low wages to the worker and the worker is desperate. So, the person accepts that, but that is why the law tries to protect the workers from such situations by making it legally required to pay a certain amount that is minimum wage.

But, minimum wage does not necessarily mean a decent minimum wage or a living wage. What is this living wage? And these days you will hear a discussion on living wage that is that this is the wage where the worker it allows the worker to meet the basic needs not extravagant needs, but the basic needs such as food, such as housing and to afford a decent standard of living in a certain location. A living wage is always location specific, you know it depends on the country that you are living in, it depends on a neighborhood you are living in, it depends on the economy that and its inflation adjusted. There is a lot of demand these days to for not just minimum wage, but a living wage.

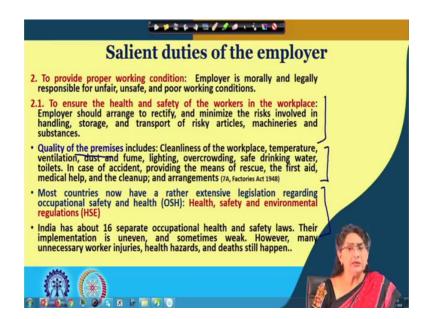
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And this brings us to this topic of fair wage. What wage is a fair wage? Remember it is not minimum wage, minimum wage actually constitutes the minimum limit of fair wage. But, then there are many other considerations that has to come in to make it an equitable wage. And, some of these are the expertise of the worker, the market rate or the ability of the business to pay the country's economy and so on.

It is fair for all and in fact, it should be fair also to the existing salary structure in the organization. There should not be too wide a gap between the top executives pay and the ordinary average worker's pay. Some people say that performance related pay is an example of a fair wage, it depends on the kind of performance that you show.

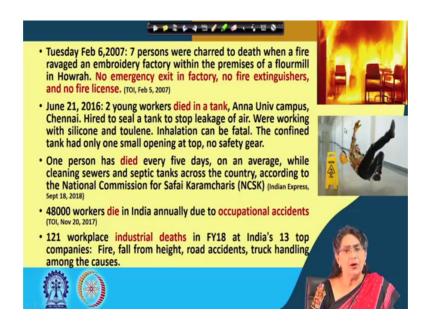
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The employer is also supposed to provide the proper working conditions, we all know that and one of the major issues under that is they provide workplace health and safety. We call it occupational health and safety, this is discussed very well you know in our laws. In fact, if you look into Factory Act 1948, you will find that there is discussion, there is also specific mention about what does it mean to have the quality of the workplace.

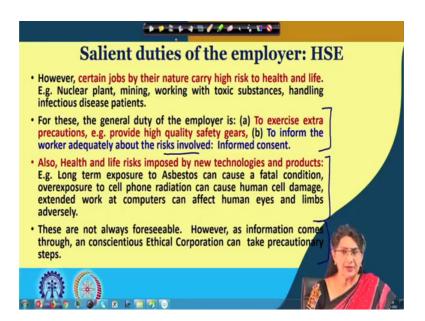
And it covers so many important conditions including safe drinking, water the light, the temperature and so on. Most countries have rather extensive legal system about the occupational health and safety laws which we call HSE. But, India has many such occupational health and safety laws, but that does not stop the accidental deaths or industrial accidents.

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You know it keeps on happening in every country including India.

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So, we want to mention only at the end at this point that you know certain jobs can be risky on their own, I mean because of nature of the work. For example, if you work in mines for example, or if your job is related to handling toxic or hazardous substances, in such cases there is an extra duty on the part of the employer to provide the extra precautions. And, to inform, educate the employees about the risks involved, this is the

most crucial thing. The education has to come from the employer, it is the owners of the employer to keep the employees informed about the risks.

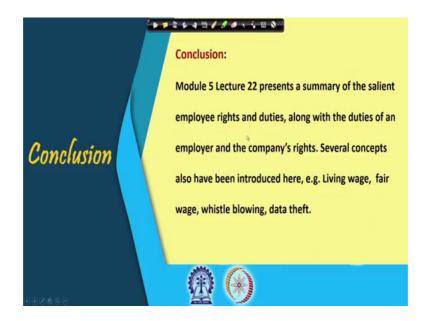
Similarly, there are some unforeseen dangers that comes with technology changes or things that are too new. For example, when asbestos came in as a fire retardant substance, you know nobody in those times knew about the disease the fatal disease that long exposure to asbestos can bring in. And, these days we talk about the cell phone radiation, that it can do some damage to the cells or you know working with computers can create some special physical problems and so on. These are not actually foreseeable always, but still we have to say that the employer has some duties, a conscientious ethical corporation would still try to take care of the occupational health and safety of the workers.

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With that we will end our lecture today. So, thank you for listening to me.

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I will be back with more material on this subject in the next lecture.

Thank you.