

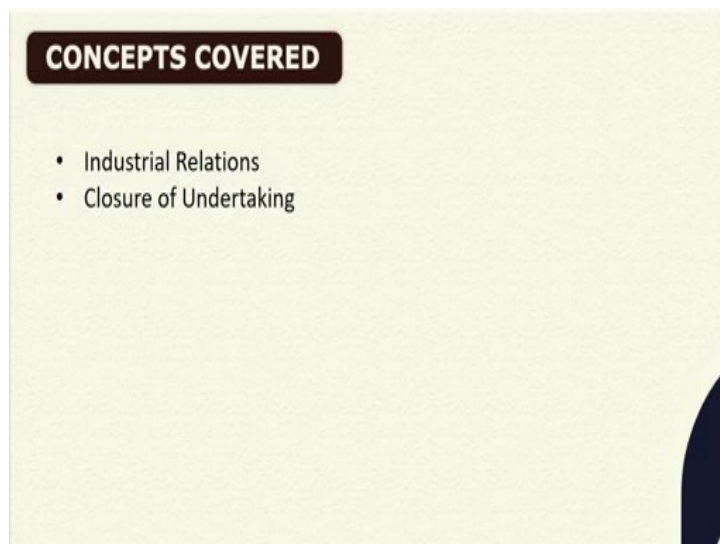
**New Labour Codes of India**  
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**Department of Intellectual Property Law**  
**Indian Institute of Technology, Kharagpur**  
**Lecture No 18**  
**Closure of Undertakings**

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Dear students, today we are going to discuss the Closure of Undertakings and how it differs from other firms. So, you can say that we discussed in the last classes the strike layoff, lockout, and retrenchment

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## KEYWORDS

- Closure

So, closure is something different from other forms of closing temporarily the establishment. So, in the last class, we talked about the layoff, the temporary closure due to certain exigencies on the part of the employer and here the objective is very clear, it is a permanent closing of the establishment, so, what are the reasons? And then what is the process for closing down of undertakings, what are the prerequisites, and whether permissions are required or not required of the respective governments? So, whether the compensation is to be paid or not to be paid.

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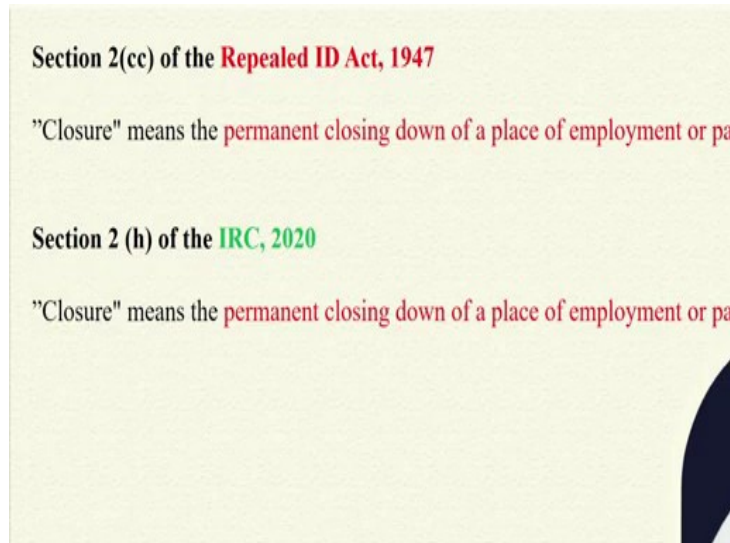
## Concept of closure

- Originally ID Act does not have provisions for Closure.
- The provision was added due to the SC Judgement in Hariprasad Shiv Shankar Shukla v.A.D.Diwelkar, AIR 1957 SC 121.
- S.2(cc) was added in the 1982 amendment.

So, what are the parameters and what is the concept of closure, whether there is any difference between the definition of closure under the ID Act and the difference in the new IR Code? This we are going to discuss today. So, if you look into the history, there was no

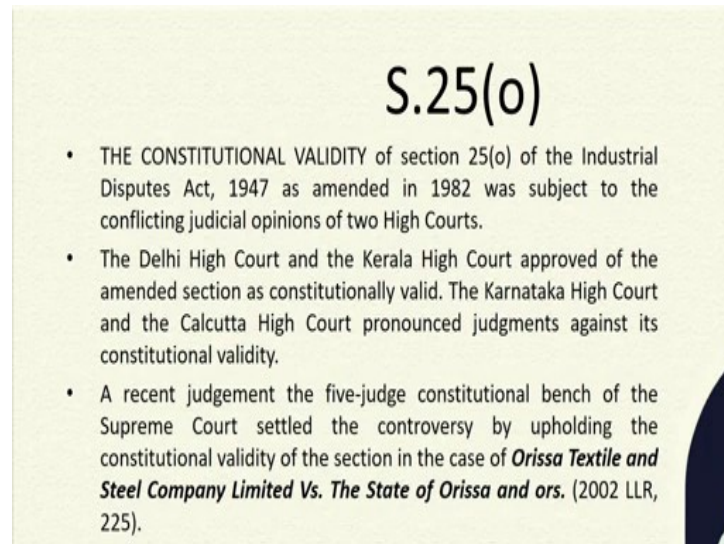
provision in the Industrial Disputes act 1947 on the closure of undertakings, this provision was later on inserted as a consequence of the Supreme Court judgement in Hariprasad Shiv Shankar Shukla versus A.D. Diwelkar in 1957. So, you can see a series of amendments after that to include many of the provisions of the ID Act, which is dealing with Closure later on. And we will discuss these provisions.

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Here, we can see that there is no difference, we cannot find the difference between the definition closure means permanent closing down of a place of employment or part thereof so, you can see the two definitions under Section 2(cc) of the ID Act and such a 2(h) of the Industrial Relations Code. So, there is no difference in the definitions.

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## S.25(o)

- THE CONSTITUTIONAL VALIDITY of section 25(o) of the Industrial Disputes Act, 1947 as amended in 1982 was subject to the conflicting judicial opinions of two High Courts.
- The Delhi High Court and the Kerala High Court approved of the amended section as constitutionally valid. The Karnataka High Court and the Calcutta High Court pronounced judgments against its constitutional validity.
- A recent judgement the five-judge constitutional bench of the Supreme Court settled the controversy by upholding the constitutional validity of the section in the case of *Orissa Textile and Steel Company Limited Vs. The State of Orissa and ors.* (2002 LLR, 225).

So, we will see the other provisions, are there any differences in the provisions the ID Act Section 25(o) is one of the important provisions with regard to the procedure of closing down and the constitutional validity has been questioned in many of the cases and the Orissa Textiles and Steel Company Limited versus the state of Orissa in 2002 is one of the most important judgments. So, there is the divergence of opinions, a divergence of opinions among the High Courts in the country on this particular issue.

Especially, the Delhi High Court and Kerala High Court have approved the amended section of 1947. That is the 1982 amendment. And they said that is constitutionally valid. On the other hand, the Karnataka High Court and Calcutta High Court plot judgments against the constitutional validity of the amendments of 1982.

So, you can see that it is the constitutional validity is upheld by the Supreme Court in 2002 case, even though the provisions were amended in 1982, the Supreme Court has given the judgment in 2002 probably after 20 years. So, we can see that this particular provision 25(o) the procedure, the constitution's validity has been upheld by the Supreme Court.

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## Retrenchment and Closure

- When in the *Barsi Light Railway Company Vs Joglekar K.N. (1957 | LLJ, 243 SC)* case, the Supreme Court curtailed the meaning of the legislative definition of retrenchment as not applicable to cases of closure of an entire undertaking,
- it left the workers of a closed undertaking without any severance pay.
- **Severance pay equivalent to the retrenchment compensation was made compulsory for discharged employees of a closed undertaking by inserting section 25(fff) in 1957.**

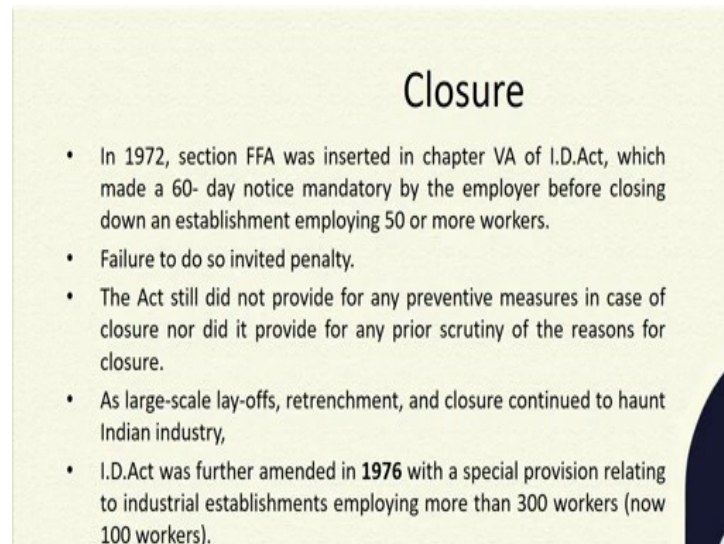
So, is there any comparative or there is a relationship between retrenchment and closure? So, you can see that the Supreme Court has looked into the matter of retrenchment and closure of the establishment or retrenchment of workmen and closure, is there any difference between these two concepts?

So, in *Barsi Light Railway Company versus Joglekar* in the 1957 judgment, you can see how the Supreme Court interpreted the definition of retrenchment. So, they said that the definition of retrenchment is not applicable to the case of closure so, it is a permanent closure of the India undertaking.

So, you can say that there was as we said that there was no provision, there was no provision for paying any kind of pay assets when somebody is closed undertaking at that point of time. But, in this particular case, Supreme Court held that, so, the severance pay is equivalent to the retrenchment compensation and it was made compulsory for the discharged employees of a closed undertaking.

Even though there is no conceptual comparison between retrenchment and closure, there was no provision to pay compensation in the case of closure at that point of time. So, the Supreme Court applied for the compensation, the severance pay equivalent was that of retrenchment compensation and asked the employer to pay compensation. So, this was one of the judgment which provided compensation in case of closure at that point of time.

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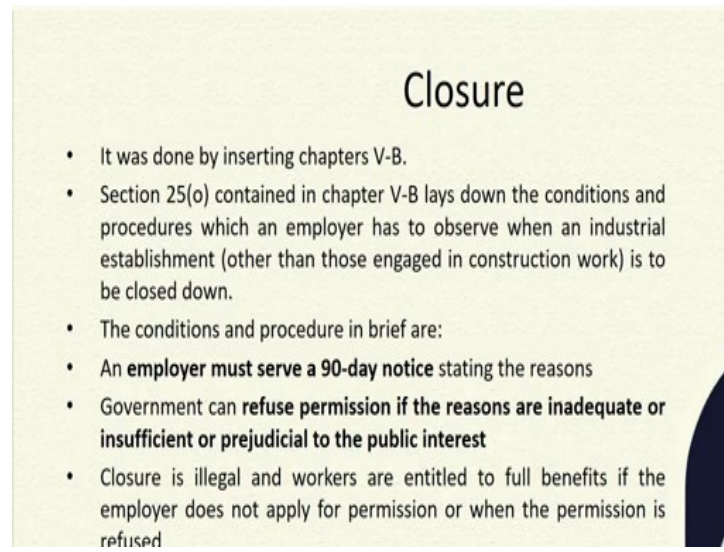
## Closure

- In 1972, section FFA was inserted in chapter VA of I.D.Act, which made a 60- day notice mandatory by the employer before closing down an establishment employing 50 or more workers.
- Failure to do so invited penalty.
- The Act still did not provide for any preventive measures in case of closure nor did it provide for any prior scrutiny of the reasons for closure.
- As large-scale lay-offs, retrenchment, and closure continued to haunt Indian industry,
- I.D.Act was further amended in 1976 with a special provision relating to industrial establishments employing more than 300 workers (now 100 workers).

And again, we can say that in 1972, again, this particular provision was section 25 FFA was inserted under the chapter 5A of the ID Act, which again made mandatory notice for 60 days period before closing down of any establishment employing 50 or more workers and a penalty is also imposed, a penalty is also imposed, if this particular notice period has not been served or not complied with. And we know that the prior scrutiny of the application at that point of time was not there.

So, what happened was the lack of specific provisions with regard to the process and procedure led to large-scale layoffs, retrenchment and closure the Indian industry was in trouble and the workers, and there was no provision to pay compensation at that point of time. Hence, again, the Industrial Dispute Act was amended in 1976. And special provisions were incorporated with regard to employing more than 300 workers at that point of time. So, it is presently it is again 100 and the Higher Court again increased it.

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## Closure

- It was done by inserting chapters V-B.
- Section 25(o) contained in chapter V-B lays down the conditions and procedures which an employer has to observe when an industrial establishment (other than those engaged in construction work) is to be closed down.
- The conditions and procedure in brief are:
  - An **employer must serve a 90-day notice** stating the reasons
  - Government can **refuse permission if the reasons are inadequate or insufficient or prejudicial to the public interest**
- Closure is illegal and workers are entitled to full benefits if the employer does not apply for permission or when the permission is refused

So, closure we can see that, they are and also the procedure for closure is elaborately mentioned under the ID Act. So, we can see that a notice period, so, the employer must survey now, you know 60 to 90 days. So, notice what are the reasons for stating the reasons for the closure of the establishment and also the a notice must be given to the government and the government can refuse the permission.

So, and also if the reasons are inadequate, or the government is not convinced, or the reasons are insufficient, and the most important ground is prejudicial to the public interest, then the closure will be considered as the government is not refused permission, the government is going to refuse permission in such cases.

And if the closure is done without governmental, authority, or governmental permission, that it will be the closure will be considered as illegal. And also a penalty will be imposed on the employer for not complying with the provisions of Section 25(o).

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Excel Wear vs. Union of India, Writ Petition, Supreme Court of 1978

- Excel Wear, served a notice on the State Govt. of Maharashtra, for previous approval of the intended closure of the undertaking in accordance with Section 25O(1) of the Act.
- The State Government refused to accord the approval for the reasons of “public interest” and communicated their decision “to not to close down the said undertaking”.
- Company is alleging that a right to close down the business is an integral part of the right to carry on the business under Article 19(1)(g) of the Constitution of India. Govt. urged that the restrictions imposed by the impugned law are quite reasonable and justified.
- Section 25-O of the Act as a whole relates to the awarding of punishment for infraction of the provisions of Section 25-O are constitutionally bad and invalid for violation of Article 19(1)(g) of the Constitution.

And the most important case with regard to this is the Excel Wear versus Union of India. And the Supreme Court has you know made the parameters for closure of undertakings under this case in 1978. Here, you can see that the Excel Wear you know, a notice period, a notice is so given to the state government of Maharashtra for previous approval of the intended closure. So, as we said that the process is mentioned under Section 25-O, and the state government in this case has refused to accord the approval for the reason saying public interest and also it is communicated to the employer.

So, not to close that particular undertaking. And this judgment was severely criticized by the industry. They said that this particular provision is unconstitutional because it violates, directly violates the fundamental rights under Article 19(1)(g) of the constitution. So, the government's these restrictions whether to close or not to close, the discretion is with the government. And the governments are using it very strictly. So, this is against the fundamental freedom to carry on business or not to carry on business.

So, but the court said that reasonable restrictions can be put under Article 19(1)(g) of the constitution. So, this provision is constitutionally valid. So, and also in violation of this particular in complying with the provisions of Section 25-O, will invite punishment and the industry has argued that this is also constitutionally bad, invalid, but the court has, you know, confirmed the constitutional validity in this particular case. So, reasonable restrictions can be put or the government have the discretion to grant or to refuse permission for closing down of any undertakings.



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## Closure

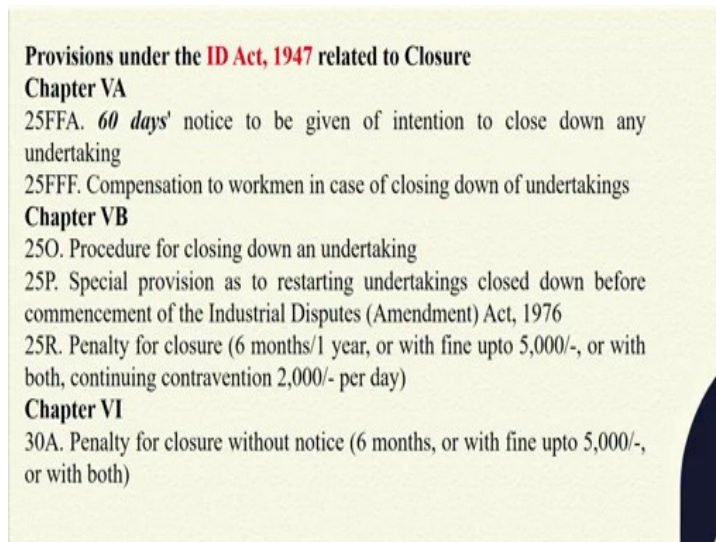
- Section 25(o) was struck down in *Excel Wear Vs Union of India and Other's case* (1978 II-LJ 527, SC) in 1978.
- Section 25(o) did not require the government to give any reasons for refusing permission to close.
- Permission could be denied in the public interest by whimsical and capricious order
- No time limit was fixed while refusing permission to close down.
- Even after approval for closure was granted, an employer has to comply with the liability under section 25(n) for notice and compensation as if it was retrenchment.
- The restriction on closure was excessive
- Act amended in 1982 to overcome the decision

So, if we closely look into this particular case, section 25(o) as you know, does not require the government to give any reason for refusing permission to close then the Supreme Court said that, if you are not providing any reason for refusing permission, that is a violation of the Indian constitution. So, which is on simply says that public interest.

So, the industry as I already said that the industry has already, you know, criticized this particular judgment as a whimsical order against the industry and closing down with no time limit was fixed, even after the approval of closure. So, the employer has to comply with all the liabilities under section 25(n). Because in an earlier case, the court ordered paying compensation under the retrenchment like retrenchment.

But actually, retrenchment is nothing to do with the closure. But Supreme Court said that there is no provision to pay compensation so, you pay the same as that of retrenchment, you pay compensation and industries have criticized this as a restriction on closure was excessive liability has been put on the industry. So, this led to the amendment of the ID Act again in 1982 to overcome the decision in Excel Wear that is why the amendment was made in 1982 to overcome Excel Wear's case.

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So, if you look into the formalities under the Industrial Disputes act 1947 Chapter 5A, which talks about 60 days' notice. 60 days notice is mandatory under Section 25FFA and also section 25FFF compensation to the workmen in case of closing down of undertaking has been incorporated in the 1982 amendment. And also the procedure for the closure of the undertaking is laid out. And you can see that there is a penalty, the penalty clause is also included for not complying with the procedures.

So, for example, the procedure for or penalty for closure without notice. So, 6 months and also the fines up to 5000 rupees or with both 6 months imprisonment, which is prescribed at that point of time.

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**IRC, 2020**

**Section 2(h) – Closure Defined**

**Chapter IX Lay-Off, Retrenchment and Closure**

- 74. 60 days' notice to be given of intention to close down any undertaking
- 75. Compensation to workers in case of closing down of undertakings

**Chapter X Special Provisions Relating to Lay-Off, Retrenchment and Closure in Certain Establishments**

- 80. Procedure for closing down an industrial establishment

**Chapter XIII Offences and Penalties**

- 86. Penalties

**Chapter IX  
Lay-Off, Retrenchment and Closure**

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**Chapter IX**  
74. **Sixty(60) days notice** to be given of intention to close down undertaking

- An employer who **intends to close down** an undertaking **Shall serve**, at least 60 days **before closure is to become effective**, a **notice**, **Stating clearly the reasons for the intended closure of the undertaking.**
- Nothing in this section shall apply to—
  - An industrial establishment in which **less than 50 workers are employed or were employed** on any day in the preceding **12 months;**
  - An industrial establishment set up for the **construction of buildings, bridges, roads, canals, dams or for other**

If you look into the IR code, almost similar portions we can see, there are no changes made to these particular provisions, and we will look into these elaborate provisions in detail and what are the provisions. So, this notice period we already said that any undertaking any employer wants to close down intends to close down and undertaking should give a 60 days' notice period this 60 days' notice period before closure has to be given to the government and also the reasons for the intended close, intended closure should be explained to the government.

And also if this is not applicable in the case of establishments where less than 50 workers are employed for any preceding you know 1 year period of time that is 12 months period of time. For example, if an industrial establishment is setting up for bridges or buildings, roads, canals, dams and other construction workers or project-type works, this is not applicable. So it means that they can once their work is complete, they can close down without any kind of this notice. So, the provision is not applicable to such kind of, such nature of work.

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**Chapter IX**  
75. **Compensation** to workers in case of closing down of undertakings

- Where an establishment is **closed down**
  - **For any reason whatsoever,**
  - Every **worker** who has been in **continuous service** for not less than 1 year **immediately before such closure**
  - **Shall, be entitled to notice and compensation, as if the worker had been retrenched**
- Provided that where the undertaking is closed down **on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid, shall not exceed his average pay for 3 months.**

And we already said that the provision is included with the amendment for compensation to the workers in case of the closing down of undertakings, and the compensation should be paid when the establishment is closed down. And also for reasons, any of the reasons, any reason irrespective of the reason that if the undertaking is closed down, then the compensation must be paid. And also they are entitled to notice as well as compensation. So, the court has made this particular observation the same as that of the retrenched worker.

So, for any reason, or unavoidable circumstances even though beyond the control of the employer, the compensation has to be paid. So, the compensation limit prescribed is the average pay for 3 months. So, in the case of undertakings also there is a financial liability on the employees to pay 3 months' average pay, average wages for all workmen in the closed establishment.

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**Chapter IX**  
75. **Compensation** to workers in case of closing down of undert

- The following **shall not be deemed** *unavoidable circumstances beyond the control of the employer*:
  - i. **Financial difficulties** (including **financial losses**); or
  - ii. **Accumulation of un-disposed stocks**; or
  - iii. The **expiry of the period of the lease or license** granted to it; or
  - iv. In case where the undertaking is engaged in **mining** operations, **exhaustion of the minerals** in the area in which operations are carried on

And also certain circumstances shall not be deemed unavoidable circumstances. For example, financial difficulties, financial losses, accumulation of undisposed stocks, expiry of the period of lease or license granted to it and also in the case of exhaustion, in the case of mining operations, exhaustion of the minerals in that particular area, this shall not be deemed to be unavoidable circumstances beyond the control of the employer.

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**Chapter IX**  
75. **Compensation** to workers in case of closing down of undert

- Where an undertaking engaged in **mining operations is closed down** by reason merely of exhaustion of the minerals,
- **No worker shall be entitled to any notice or compensation if**
  1. Employer provides the worker, within **20 km**, with alternative employment **at the same remuneration**, and **on the same terms and conditions of service**;
  2. The service of the worker **has not been interrupted by such alternative employment**; and
  3. Employer is, legally liable to pay to the worker, in the event of his retrenchment, compensation on the basis that **his service has been continuous** and has not been interrupted by such alternative employment.

And, we can look into the case of as we said that mining operations are a special industry because it requires a higher risk, as well as the operations, are very special with regard to

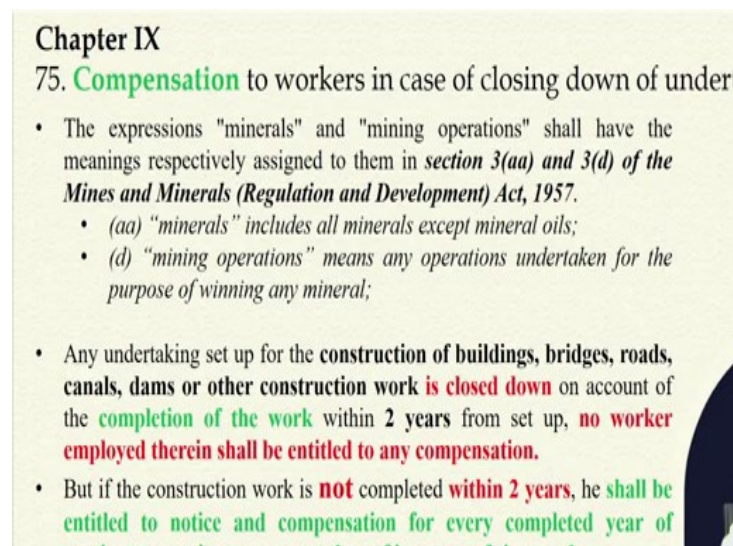
mining. And if when the undertakings are engaged in mining operations if the minerals are exhausted, they will be closed.

So, no worker shall be entitled to any notice or compensation if the employer provides the worker with another work within 20 kilometres, and alternate employment at the same remuneration is paid to within the limit of 20 kilometres and same terms and conditions of service. So, then there is no option for the worker other than to accept this alternate employment and there is no provision for compensation.

Secondly, if the service of the worker is not been interrupted by such alternative employment, there is no break in the service because of such alternate employment. And thirdly, the employer is there must be legally liable to pay the worker in the event of retrenchment compensation on the basis that his service has been continuous and has not been interrupted by alternative arrangements, or alternative employment.

So, in short, we can say that if the employer provides alternative employment within 20 kilometres of the closed in closing down of the undertaking, then the worker is not eligible for compensation.

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**Chapter IX**  
75. **Compensation** to workers in case of closing down of under

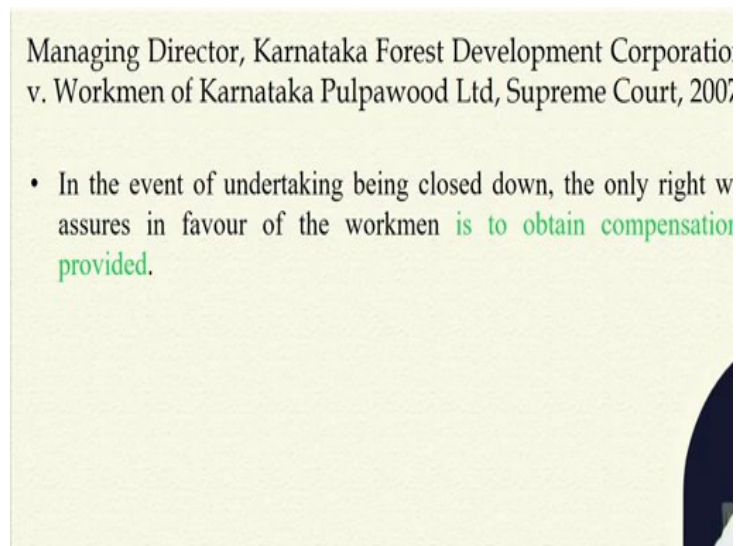
- The expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in *section 3(aa) and 3(d) of the Mines and Minerals (Regulation and Development) Act, 1957*.
  - (aa) "minerals" includes all minerals except mineral oils;
  - (d) "mining operations" means any operations undertaken for the purpose of winning any mineral;
- Any undertaking set up for the **construction of buildings, bridges, roads, canals, dams or other construction work is closed down** on account of the **completion of the work** within 2 years from set up, **no worker employed therein shall be entitled to any compensation.**
- But if the construction work is **not** completed **within 2 years**, he **shall be entitled to notice and compensation for every completed year of**

And the compensation, so, with regard to you know, minerals and it is defined, defined under the Mines Act, or the Mines and Minerals Regulation and Development Act of 1957. So, we are not going to get into the definitions, but in the case of project works like canals, dams,

bridges, and once the work is over. So, in that particular case also the employer or the workman is not entitled to any compensation.

But in the case, that the work is beyond 2 years, then they are entitled to the notice as well as compensation for every completed year of continuous service of more than 6 months. In retrenchment also, if somebody is worked more than 6 months, it will be considered as 1 year so, the working period is continuous in service.

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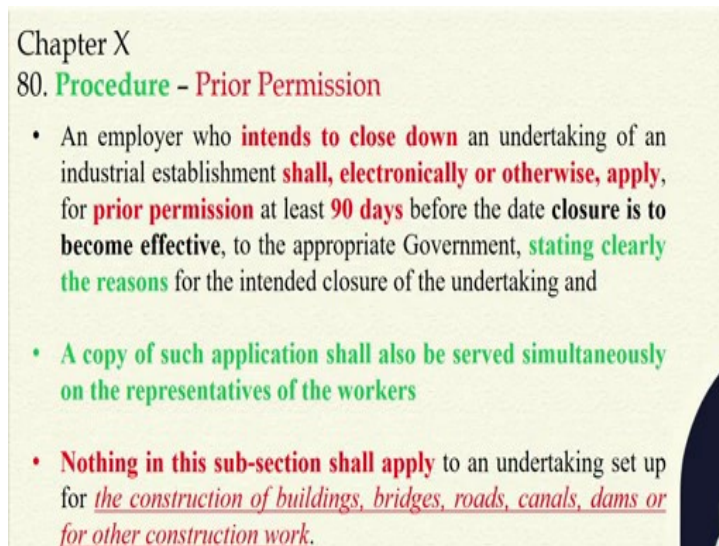
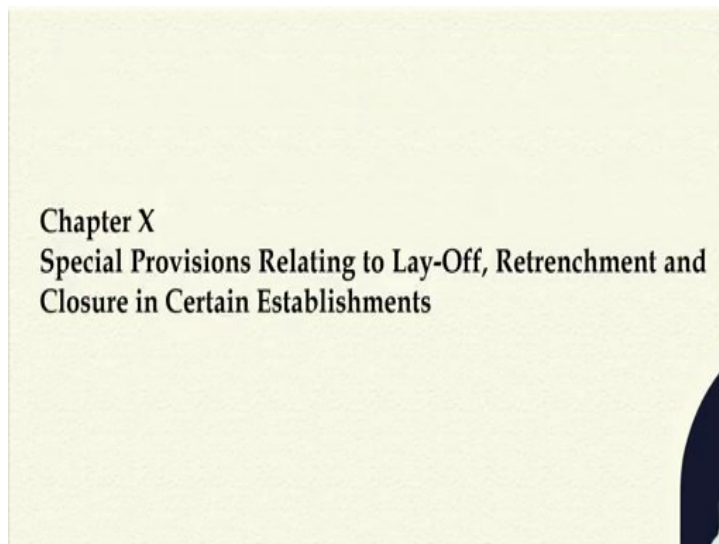


And in this particular case, the managing director Karnataka Forest Development Corporation Limited versus Workmen of Karnataka Pulpawood limited so, Supreme Court in 2007 held that even this undertaking was closed down. So, the only right left to the workers is to obtain compensation.

So, the closing down the government can take a decision whether to give permission or not to give permission, if permission is given for closing down the undertaking, then the only remedy left with the workmen is compensation. So, they cannot impose mal intentions on the part of the employer. We will see some of the cases where such kind of allegations are made later on what the court has decided.



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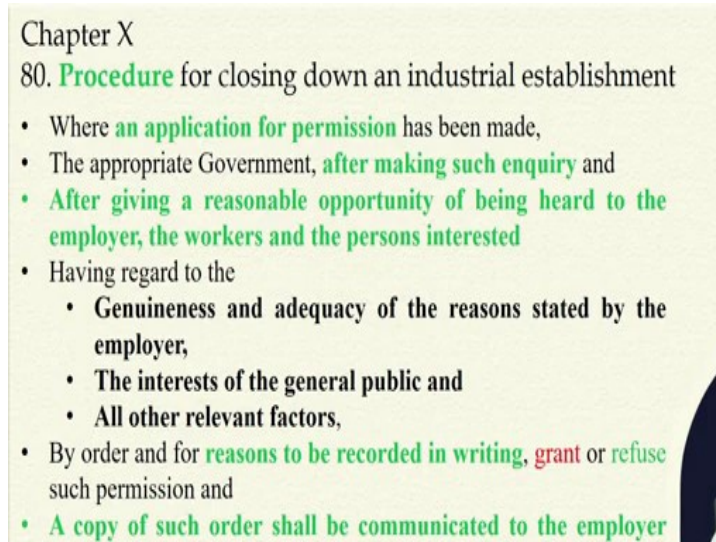


So, we said that prior permission was to be sought from the respective governments. And now, we already said that these permissions have to be sought electronically and now, 90 days before the closure, it is not 60 days, 90 days prior, you know, the employer has to apply for the prior permission for closure to be made to the government and definitely the reasons behind the closure of undertaking to be explained to the government.

So, if and also simultaneously, a copy of the application to be given to the unions that unions can be representative unions or labour unions, negotiating unions, an application copy of the to be given to this representative union or negotiating union as well. And also we can see that this is not applicable to the construction of bridges, roads, canals, dams or those were in the

nature of projects. Otherwise, now, 90 days notice is mandatory for the government to the closure for seeking permission.

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Chapter X

80. **Procedure** for closing down an industrial establishment

- Where **an application for permission** has been made,
- The appropriate Government, **after making such enquiry** and
- **After giving a reasonable opportunity of being heard to the employer, the workers and the persons interested**
- Having regard to the
  - **Genuineness and adequacy of the reasons stated by the employer,**
  - **The interests of the general public and**
  - **All other relevant factors,**
- By order and for **reasons to be recorded in writing, grant or refuse** such permission and
- **A copy of such order shall be communicated to the employer**

And what are the procedures for closing down an industrial establishment? And here we can see that an online application is to be submitted and the appropriate government will make an inquiry and opportunity for being heard to be given to all the concerned parties, whether to the employer or to the workers and all other people it may not be the, not only be the negotiating unions and also all persons interested will be given an opportunity of being heard.

And the government will look into the genuineness and adequacy of reasons stated by the employer and also the government as, like Excel Wears, the government will look into the public interest and all relevant factors before closing it down. And the order of granting or refusing such permission is to be given to the employer in writing and a copy of the order is to be given to the employer as well as to the workers. So, the government will use these particular options very sparingly, because they will look into the reasons, especially reasons and the public interest which is involved.

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## Closing

- **Azad Kamgar Union Vs. M/S. Metagraphs Pvt. Ltd.**
- Industrial Disputes Act (1947), S.25FFA - Closure of undertaking - Undertaking not economically viable –
- Settlement between Management and Union of Workmen to reduce workmen in phases –
- Management taking the decision to close down entire undertaking - Such decision not taken to **victimize workmen** or with any ulterior motive –
- Charge of victimization and malafide or ulterior motive is a serious charge –
- It requires to be proved with equal seriousness –
- No material to even draw an inference that closure was for the

And in Azad Kamgar Union versus M/S Metagraphs Private Limited. So, here again, the reasons for closing down have been considered by the court. So, here the undertaking or the employer said that this is economically not viable. So, the management decided to you know, phase out these employees in instalments, so, reduce the workforce in phases and management said that, this management said that this is specifically to save, economically this particular industry is not viable. So, they have to get rid of the excess. So, they want to close it down in phases.

So, in order to reduce the hardships, they said that in order to reduce the hardships, they said that they are going to do it in phases, and this decision is not taken to victimize the workmen or with any ulterior motives and there is no malafidness or victimization or ulterior motive. Or, because definitely malafidness or ulterior motives is a serious offence and serious charges against management.

So, the court said that the victimization or malafidness or ulterior motives require to be proved, seriously it has to be proved looked into. If there is no material evidence to show that there are no ulterior motives or an objective of victimizing the workmen, then the closure is valid, if there is no ulterior motive, if the employer feels that it is economically not viable, then the industry can be closed. So, the closure is valid.

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Chapter X  
80. **Procedure - Deemed to be Granted**

- Where an application has been made and
- The appropriate Government *does not communicate the order granting or refusing to grant permission*
- To the employer within **60 days** from the date of application
- The permission applied for **shall be deemed to have been granted** on the expiration of **60 days** and
- The application **shall be deemed to have been disposed of** accordingly by the appropriate Government.

And procedure in certain cases, if the government is not making any decision within 60 days, or not communicating any decision within 60 days, then it will be deemed to be granted, the permission is deemed to be granted so 60 days, the employer to wait. And if 60 days period is over, the application will be deemed to be disposed of and the permission has been deemed to be granted. If the government is not going to give, the government is not going to communicate its decision within 60 days.

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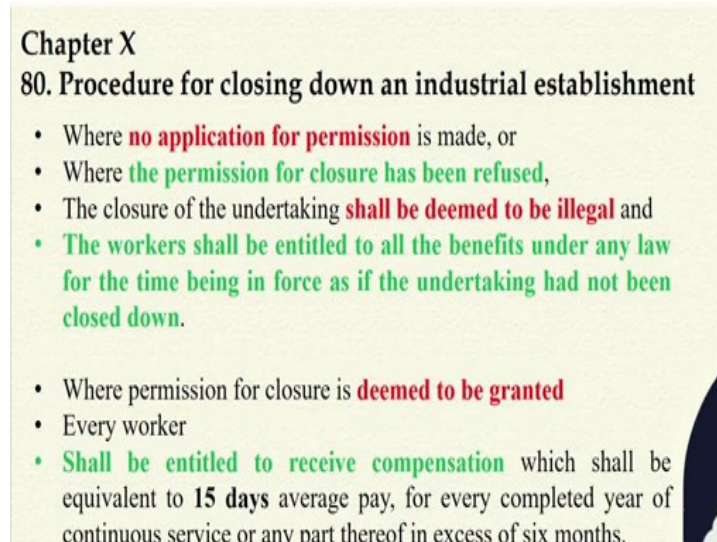
Chapter X  
80. **Procedure** for closing down an industrial establishment

- An **order** of the appropriate Government **granting or refusing** to grant permission **shall, be final and binding on all the parties** and
- **Shall remain in force for 1 year from the date of such order.**
- The appropriate Government may,
- Either on its own motion or on the application made by the employer or any worker,
- **Review** its order *granting or refusing to grant permission* or
- **Refer the matter to a Tribunal for adjudication:**
- The **Tribunal** shall pass an award within **30 days** of such reference.

So, again, whether the order may be granted or refused, shall be final and binding on all the parties. And it is easy, it is going to be enforced for 1 year from the date of order whether it is

granted or refused. So, review petitions can be filed after 1 year and also the matter can be referred to the tribunal for adjudication. So, the tribunal must pass an order within 30 days of such reference. So, an appeal can be filed. They can go to the appropriate tribunals, state tribunals or central tribunals. So, within 30 days an appeal can be filed.

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**Chapter X**  
**80. Procedure for closing down an industrial establishment**

- Where **no application for permission** is made, or
- Where **the permission for closure has been refused,**
- The closure of the undertaking **shall be deemed to be illegal** and
- **The workers shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.**

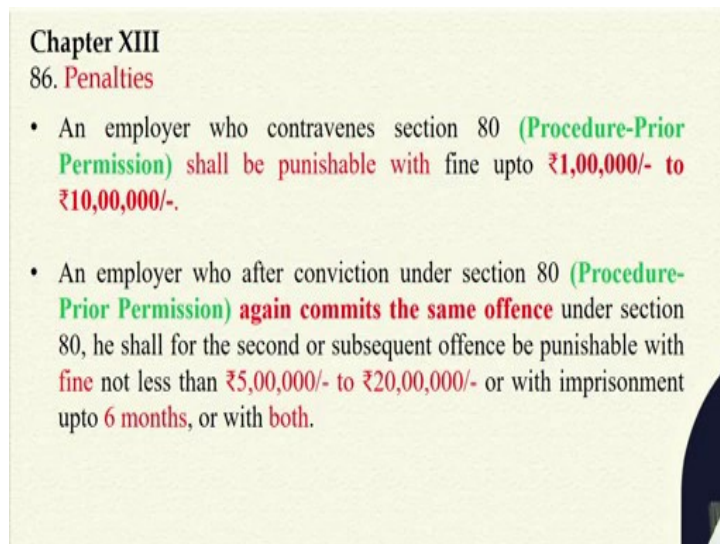
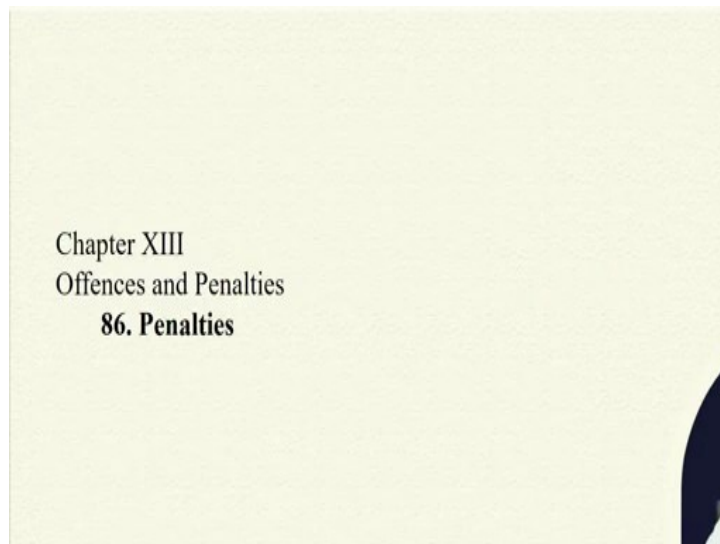
- Where permission for closure is **deemed to be granted**
- Every worker
- **Shall be entitled to receive compensation** which shall be equivalent to **15 days** average pay, for every completed year of continuous service or any part thereof in excess of six months.

And if there is no application for permission is made, or where the permission is, has been refused, in such cases, the closure of the undertaking shall be deemed to be illegal. So, and the workers, in that case, the workers shall be entitled to all the benefits to get the compensation the same as that if the undertaking had not been closed down.

So, it means that if somebody is closed the undertaking without permission, the workers are eligible to get all the benefits including wages. And in the case of permission, the closer is deemed to be granted. And then also every worker is shall be entitled to receive compensation which is equivalent to 15 days average pay, 15 days average pay for every completed year of continuous service.

Earlier we saw that it was for 3 months now, it is 15 days average pay for every completed year of continuous service. So, it means if more than 6 months, they are eligible to get 1 year of that 15 days average pay. So, the compensation now, the compensation is specifically provided to the close, the workers of closed industries.

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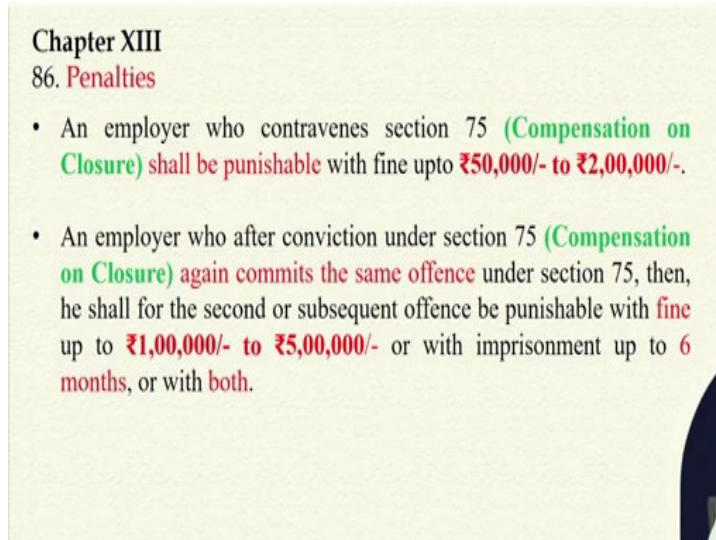


And noncompliance with the provisions especially the old provisions 25, the process and procedures and who is violating and personally the sections 80 the procedure for prior permission. So, if somebody is not taking prior permission and then closes down the undertaking there is a punishment which is a fine upto 1 lakh rupees to 10 lakh rupees.

So, it is a huge amount of 1 lakh to 10 lakh rupees is fine and also you can see that so, it is a huge amount or you know they have to pay the penalties for not taking prior permissions. And also we can see that the second type is a second time if somebody is repeating the offence. In that case, the punish, the offence is punishable with a fine which is not less than 5 lakh rupees and which can be extended to 20 lakh rupees and also imprisonment for upto 6 months or both.

So, under the new IR code, no employer will be tired to close the undertaking without giving proper notice or without getting proper permission. So, because the penalty is going to be very huge. So, 1 lakh to 10 lakh rupees, so, the penalty is going to be very huge and the liability of the employer is going to be increased.

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**Chapter XIII**  
**86. Penalties**

- An employer who contravenes section 75 (**Compensation on Closure**) shall be punishable with fine upto **₹50,000/- to ₹2,00,000/-**.
- An employer who after conviction under section 75 (**Compensation on Closure**) again commits the same offence under section 75, then, he shall for the second or subsequent offence be punishable with fine up to **₹1,00,000/- to ₹5,00,000/-** or with imprisonment up to **6 months**, or with both.

And also we can see that the violation of Section 75 is that if the employer is not going to pay compensation in that case, that offence is punishable with fine upto 50 thousand to 2 lakh rupees. So, if the employer is not going to pay the compensation, the fine will be very high. And also we can say that the second type offence is going to be a fine from 1 lakh to 5 lakh rupees or imprisonment for a period of 6 months or it can be both. So, penalties are very high with regard to a contravention of the provisions, and related provisions.

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## Judicial Pronouncements

Hindalco Industries Ltd vs. Union of India And Others, 1994 SC

- It was held that **even though the closure of an undertaking was not a planned and voluntary closure** by the company Section 25-O of the Industrial Disputes Act, 1947 (**Compensation To Workmen**) would be applicable.

So, we look into one or two more cases, we can see that, so, if it is the undertaking was not a planned and voluntary closure, even though it is not a planned closure, the workers are eligible to get compensation. So, in Hindalco industries, it is held that the workers are eligible to get compensation in that particular case.



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S.G. Chemicals and Dyes Trading Employees' Union vs. S.G. Chemicals and Dyes Trading Limited, (03.04.1986 - SC)

- SG Chemicals intimated its intention to close down the Undertaking. In the said notice, the number of workmen on the roll was **90**. The **Union** raised a demand **not to terminate the services** of the employees.
- The Company **closed down** the said Division.
- The Company **retained only 6 employees**.
- The Company **did not pay** to the **84** employees whose services have terminated without any salary.
- The Company, offered to **84** employees retrenchment compensation.
- Held: Closure was **illegal** because it did not fulfil conditions of Section 25O of the Industrial Dispute Act

And here also you can see that, so, the closing down and the proper notice period, proper notice is to be given. So, if the company is not going to pay the employees and their services have been terminated without any salary or, if some employees have been given retrenchment compensation in such kind of cases and retaining only a few employees. So, such kinds of closures are illegal, because, if any employer is not going to fulfil the sections of section 25O, then under the ID Act, then there is going to be illegal closure.

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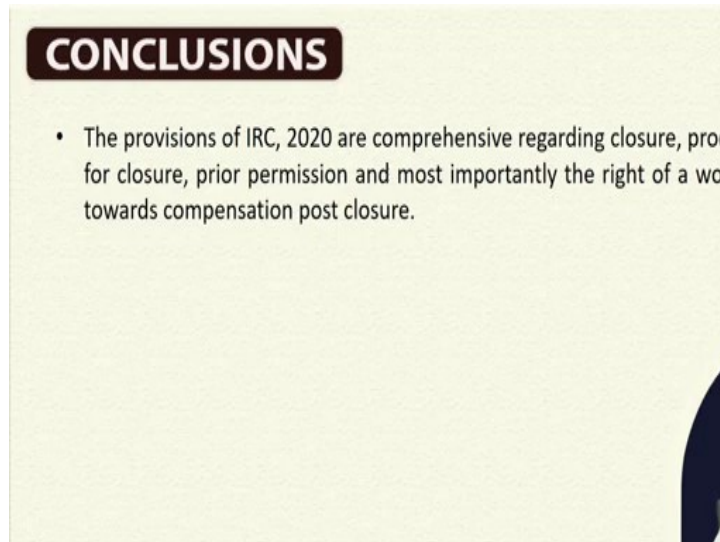
Kalinga Tubes Ltd. vs. Their Workmen, AIR 1969 SC 90

- It was held that the Company **could not justify the reason of the closure** of the undertaking **was due to unavoidable circumstances beyond the control of the Company therein** and the compensation would be payable as the undertaking was closed down "**for any reason whatsoever**" within Section 25FFF(1) of the ID Act.

And we can see that the reasons given by the employee should be justified if the companies of the employer cannot justify the reason for the closure and unavoidable circumstances. So, sometimes it may be beyond the control of the company or establishment itself then also the

workers are eligible to get compensation, and the workers are eligible to get compensation for any reason. So, you mentioned any unavoidable circumstances then also the workers are eligible to get compensation. So, this is held in Kalinga Tubes Ltd versus Their Workmen in 1969.

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So, in conclusion, we can say that the provisions of the Industrial Relations Code now completely included the gap in the ID Act, there are specific provisions for giving notice, there are specific provisions for providing compensation and also the compensation package, what will be the compensation it is very specifically said and also most importantly, the notice period has also been mentioned.

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## REFERENCES

- Industrial Relations Code, 2020

Thank  
you



So contravention of the provisions, any one of these preconditions will attract a huge penalty which is spreading from 1 lakh rupees to 20 lakh rupees. So, the Industrial Relations Code is comprehensive in nature, simple in nature and clear provisions are provided in the case of the closure of an establishment. Thank you.