

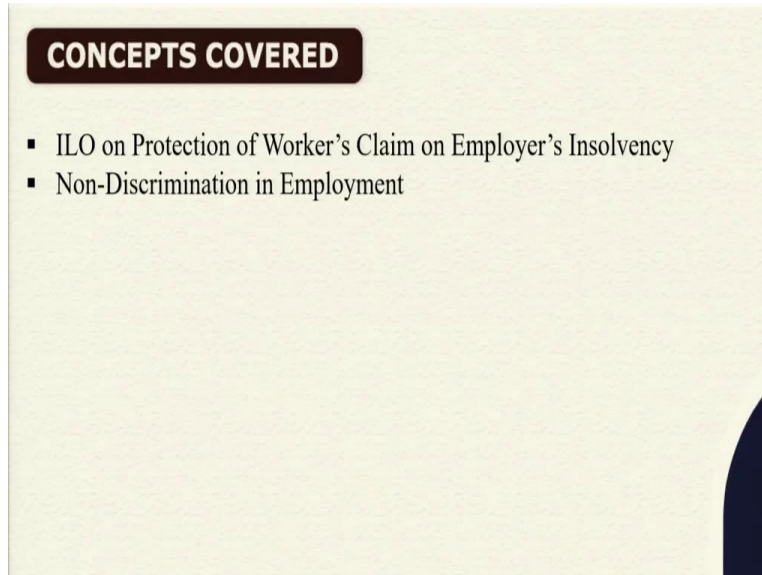
**New Labour Codes of India**  
**Professor K D Raju**  
**Rajiv Gandhi School of Intellectual Property Law**  
**Indian Institute of Technology, Kharagpur**  
**Lecture No: 30**  
**C-173: Protection of worker's claims**  
**(Employer's insolvency) Convention, 1992**  
**C-111- Discrimination**  
**(Employment and occupation) Convention, 1958**

(Refer Slide Time: 00:24)



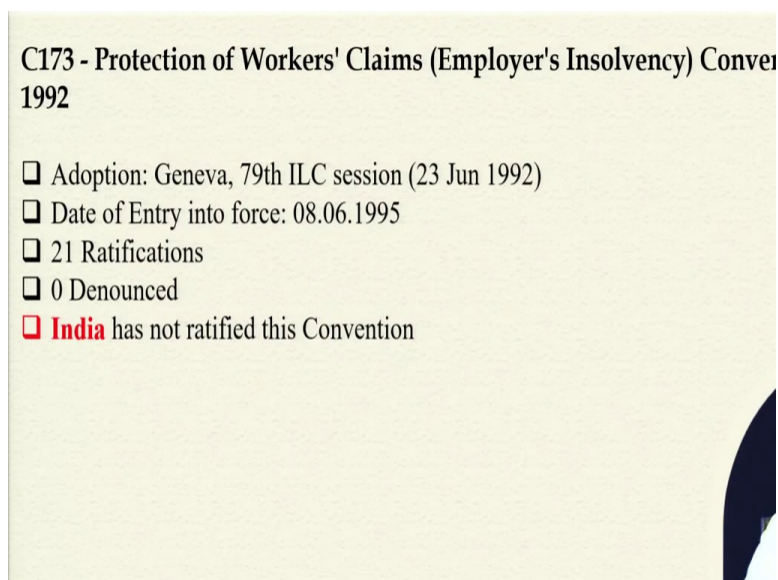
Dear students, we are going to discuss two conventions. The first one is on the Protection of Worker's Claims in the case of employer's insolvency convention 1992. And this is convention number 173 and under Labour Law, the international labour organization's convention is convention number 111, on discrimination, employment and occupation convention 1958. So, the first convention talks about the worker's claims in case of an employer's insolvency.

(Refer Slide Time: 01:00)



And the second convention talks about the case of non-discrimination in employment. So, we are going to discuss this because now, there are special provisions in every country with regard to insolvency and also special provisions with regard to non-discrimination provisions are in the constitutions of most of the countries.

(Refer Slide Time: 01:20)



So, first, we will talk about convention number 173, which talks about the worker's claims in case of insolvency of the employers. So, this is adopted in 1992 and came into force in 1995.

And there is a very less number of countries that have ratified only 21 countries and India is not a party. India has not ratified this particular convention, because probably India does not want to take up more burden on the employers in case of insolvency or more international obligations in case of insolvency of the employers.

(Refer Slide Time: 02:00)

#### C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

- *Preamble*

- ...

- **Stressing the importance of the protection of workers' claims** in the event of the **insolvency of their employer** and recalling the provisions on this subject in Article 11 of the Protection of Wages Convention, 1949, and Article 11 of the Workmen's Compensation (Accidents) Convention, 1925, and

- Noting that, since the adoption of the Protection of Wages Convention, 1949, **greater value has been placed on the rehabilitation of insolvent enterprises** and that, **because of the social and economic consequences of insolvency**, efforts should be made where possible **to rehabilitate enterprises and safeguard**

Here the objective of the particular convention ILO convention says the importance of worker's claims because in most cases when the employer becomes insolvent, nobody is hit to the boards of workers or to their claims, their claims on wages, their claims on bonus, or their claims on other emoluments.

So, they have the last priority or least priority I would say. But the ILO convention says that, in case of insolvency of the employer, there will be the first claim will be of the workers under this particular convention so that this will place greater value on the workers and also this will enable the rehabilitation of workers in the insolvent enterprises and this is to mitigate the social and economic consequences of insolvency on workers.

So, rehabilitation also the enterprises safeguarding the employment of workers which is necessary to safeguard the interests of workers during the insolvency of any company.

(Refer Slide Time: 03:18)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

▪ *Preamble*

- Noting that since the adoption of the aforementioned standards, **significant developments have taken place** in the law and practice of many Members which have improved the protection of workers' claims in the event of insolvency of their employer.
- Having decided upon the adoption of certain proposals with regard **to the protection of workers' claims in the event of the insolvency of their employer**, which is the fourth item on the agenda of the session, and

And also the preamble says that the adoption of standards and adoption of certain standards and practices, protect workers' claims in case of insolvency of the employer. And the protection of worker's claims as I told you that the event of the employer is the only objective of this particular convention.

(Refer Slide Time: 03:48)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

*Article 1*

1. For the purposes of this Convention, the term **insolvency** refers to situations in which, in accordance with national law and practice, **proceedings have been opened relating to an employer's assets** with a view to the **collective reimbursement of its creditors**.

So, Article 1 talks about insolvency so insolvency is defined in the domestic legislation differently. So, here insolvency refers to situations in accordance with the national law and

practices and proceedings. What are the proceedings under different domestic legislations in the case of insolvency with regard to the employer's assets and collective reimbursement of them to the creditors? So, many countries have different laws with regard to the disbursement to creditors and also the priority list is different from country to country.

(Refer Slide Time: 04:40)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention  
1992

*Article 1*

1. For the purposes of this Convention, a Member **may extend the term "insolvency"** to **other situations** in which **workers' claims cannot be paid by reason of the financial situation of the employer**, for example where the amount of the *employer's assets is recognized as being insufficient to justify the opening of insolvency proceedings*.

So, this Article 1 of this particular convention says that the term insolvency to the extent to other situations where there are worker's claims cannot be paid by reason of the financial situation of the employer and when the amount of the employer's asset is recognized as being insufficient to justify the opening of insolvency proceedings.

So, the employer is not only meeting with the insolvency proceedings, but it is the assets are not sufficient to pay even the worker's claims.

(Refer Slide Time: 05:22)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

- **Article 2**
- The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with a national practice.
- India - The Insolvency and Bankruptcy Code, 2016 (IBC) is an Indian law that creates a consolidated framework that governs insolvency and bankruptcy proceedings for companies, partnership firms, and individuals.

Then, so, here we say these portions of this convention will be applicable by means of laws or regulations by any other means, consistent with the national practices. So, the question is whether members should follow this convention. So, the principle is very clear, every member country has to follow () the principles of this convention. So, if you look into India, so, the Indian practice, so, India has passed a brand new insolvency and bankruptcy code in 2016.

So, this is a consolidated law before that there were so many legislations under different enactments, whether it is a company law or it is Debt Recovery Act or other legislation, but now, all the proceedings are put into these insolvency and Bankruptcy code. And these proceedings are applicable to companies, partnership firms, individuals and anything which comes under insolvency. So, we have specific provisions with regard to the insolvency code. But India is not a party to this particular court.

(Refer Slide Time: 06:32)

### C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

#### Article 3

1. A Member which ratifies this Convention shall accept **either** the obligations of Part II, **providing for the protection of workers' claims by means of a privilege**, or the obligations of Part III, **providing for the protection of workers' claims by a guarantee institution, or the obligations of both Parts**.
2. This choice shall be indicated in a declaration accompanying its ratification.
3. A Member which has **initially accepted only Part II or only Part III** of this Convention may thereafter, by a declaration communicated to the Director-General of the International Labour Office, **extend its acceptance to the other Part**.

Here the member is ratifying this convention as providing the protection of worker's claims by means as a privilege. So, the obligations as a privilege and provide for the protection of workers' claims by guarantee. So, there must be an institutional framework, a guarantee institution. So, a claims guarantee institution and also the obligations of both parties should be taken into consideration.

So, the convention says that the member should accept parts 2 and 3 of this particular convention first, and then then it shall be reported back to the International Labour Office for the acceptance of other parts.

So, it is very simple that those parties who are adopting this convention should recognize that the credits or the worker's claims should be settled as a matter of privilege. So, that part 3 talks about there must be a guaranteed institution setting up of guarantee institution.

So, probably most governments may not like to pay the workers first and also the institutional mechanism, which is guaranteeing this particular payment that may be the one reason that there is the lowest number of ratifications.

(Refer Slide Time: 08:07)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

▪ *Article 4*

1. Subject to the exceptions provided for in paragraph 2 below, and to any limitations specified in accordance with Article 3, paragraph 3, **this Convention shall apply to all employees and to all branches of economic activity.**
2. The competent authority, **after consulting the most representative organisations of employers and workers, may exclude from Part II, Part III or both Parts of this Convention specific categories of workers, in particular public employees, by reason of the particular nature of their employment relationship,** or if there are other types of guarantee affording them protection equivalent to that provided by the Convention.
3. A Member **in its reports provide information on such exceptions**

And other provisions provide that this convention shall apply to all employees and to all branches of economic activity and also after consulting the representatives of employers' workmen and also these specific categories of workers.

So, especially public employees because of the reason of particular nature of their employment relationship. So, again the governments like the Indian government have a problem in the case of public employment or the people those go for working in the public sector employees and also, every member should report back to the ILO every year and provide information on any exceptions are made giving to and also the reasons for this any particular category of employees exempted, they should report back to the ILO what is the reason they have exempted based on what are the grounds under which they are exempted that should be included in the report.



(Refer Slide Time: 09:19)

C173 - Protection of Workers' Claims (Employer's Insolvency) Conversion Act, 1992

- *Article 5*
- In the event of an **employer's insolvency**, **workers' claims** arising out of employment **shall be protected by a privilege** so that they **are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share.**

And then in the case of an employer's insolvency as I told you, that the worker's claims will be the privilege claims. So, it shall be protected by a privilege and are paid out of the assets of the insolvent employer before non-privileged creditors can be paid their share. So, the worker's claim will be considered as a privileged credit.

So, this may have problems with employers. So, other creditors like the banks may not allow it. So, this worker's claims will come under the privileged credits and all other credits will be considered as non-privileged credits. So, Article 5, talks about this privilege and non-privileged creditors.

(Refer Slide Time: 10:11)

**C173 - Protection of Workers' Claims (Employer's Insolvency) Conversion Act 1992**

**Article 6**

The **privilege shall cover** at least:

- a) **The workers' claims for wages** relating to a prescribed period, which shall not be less than 3 months, prior to the insolvency or prior to the termination of the employment;
- b) **The workers' claims for holiday pay** due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year;
- c) **The workers' claims for amounts due in respect of other types of paid absence** relating to a prescribed period, which shall not be less than 3 months, prior to the insolvency or prior to the termination of the employment;

So, the privilege shall at least be to the worker's claims on relating to the prescribed particular period, so, which shall not be less than 3 months prior to the insolvency or prior to the termination of the employment.

So, the worker's claims for holiday pay due as a result of work performed during the year in which the insolvency happened or the termination of employment occurred the preceding year and also the worker's claims for amounts due in respect of these other types of paid absence, for example, maternity benefits. So, it is going to be maternity benefit is going to be a privilege claim. So, which happened, 3 months or prior to the insolvency of that particular or termination of the employment?

Then Severance pay, so, we call it retrenchment pay termination of their employment. So, all these categories of payment worker's payment have a privileged claim on the assets of the employer in case of insolvency.

(Refer Slide Time: 11:28)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention  
1992

**LIMITATIONS**

*Article 7*

1. National laws or regulations may limit the protection by privilege workers' claims to a prescribed amount, which shall not be below a socially acceptable level.
2. Where the privilege afforded to workers' claims is so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value.

And limitations and it says that article 7 says which provides that national laws or regulations may limit the protection by the privilege of workers' claims to a prescribed amount which shall not be below a socially acceptable level. So, the national legislation should not put any cap even though you put a cap it must be at a socially acceptable level it should it must not be below a socially acceptable level.

So, again governments have problems accepting this so, called socially acceptable level what the socially acceptable level may differ from country to country. So, because the social conditions from least developed countries to developing countries developed countries are different.

And also, the privileges afforded to the worker's claims are limited, the prescribed amount shall be adjusted as necessary, so, as to maintain its value. So, there must be some arrangements and adjustments that can be made.

(Refer Slide Time: 12:34)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

**RANK OF PRIVILEGE**

*Article 8*

1. National laws or regulations shall give workers' claims a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system.
2. However, where workers' claims are protected by a guarantee institution in accordance with Part III of this Convention, the claims so protected may be given a lower rank of privilege than those of the State and the social security system.

Then the privileges again say that the national regulation shall give workers' claims a higher rank of privilege than most other privilege claims and in particular those state and the social security system.

So, here, the worker's claims have the most privileged out of this particular convention. So, part 2 and part 3, which we already talked about. So, here, so, which cannot be given a lower rank. So, the worker's claims must have a priority claim under this particular academician number 173 over any other claims against the employer in this particular convention.

(Refer Slide Time: 13:24)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

- **PART III. PROTECTION OF WORKERS' CLAIMS BY A GUARANTEE INSTITUTION**
- **GENERAL PRINCIPLES**
- *Article 9*
- **The payment of workers' claims** against their employer arising out of their employment **shall be guaranteed through a guarantee institution** when **payment cannot be made by the employer because of insolvency.**
- *Article 10*
- In giving effect to this Part of the Convention, a Member may, **after consulting the most representative organisations of employers and workers, adopt appropriate measures** for the purpose of

And again, we can see some of the important provisions that the payment of workers' claims against the employer arising out of their employment shall be guaranteed through a guarantee institution.

So, the governments will find it very difficult to implement this particular provision through a guarantee institution. Because, in this case, the employer may not be able to pay because of their insolvency, there may be insufficient assets to distribute the worker's claims also it says that article 10 provides that, so, after consultation of the representatives, organizations of employers and workers adopt appropriate measures for the purpose of preventing possible abuse of this particular provision.

So, this one is with regard to the privilege claims and the second provision is with regard to the organization, parts 2 and 3 with regard to this guarantee institution. So, in a guarantee institution, there must be sufficient funds to disburse these particular claims of workers.

(Refer Slide Time: 14:34)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

*Article 11*

1. The **organisation, management, operation and financing of wage guarantee institutions** shall be determined pursuant to Article 2.
2. The preceding paragraph **shall not prevent a Member**, in accordance with particular characteristics and needs, **from allowing insurance companies to provide the protection** referred to in Article 9, **as long as they offer sufficient guarantees.**

So, Article 11 provides that the organization's management operation and financing of wage guarantee institution shall be determined according to Article 2. So, it means that there must be an institutional mechanism to disburse a guarantee institutional guarantee institution and the disbursement system must be present. So, it must be protected through a guarantee institution. So this guarantee organizations will disburse the claims of workers.

(Refer Slide Time: 15:15)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention 1992

**CLAIMS PROTECTED BY A GUARANTEE INSTITUTION**

*Article 12*

The **workers' claims** protected pursuant to this Part of the Convention **shall include at least:**

- a) **The workers' claims for wages** relating to a prescribed period, which **shall not be less than 8 weeks**, prior to the insolvency or prior to the termination of the employment;
- b) **The workers' claims for holiday pay** due as a result of work performed during a prescribed period, which **shall not be less than 6 months**, prior to the insolvency or prior to the termination of the employment;
- c) **The workers' claims for amounts due in respect of other types of paid absence** relating to a prescribed period, which **shall not be less than 8 weeks**, prior to the insolvency or prior to the termination of employment;
- d) **Severance pay** due to workers upon termination of their employment.

And what are the claims protected by this guarantee institution? So, we said that this worker's claims are protected, so, included at least the worker's claim for wages this wages not less than 8 weeks, 8 weeks prior to the insolvency or termination of employment, this should be that means, 8 weeks, we know that at least 2 months of time wages should be guaranteed by this organization that is the guarantee institution.

Worker's claims for holiday pay. So, the particular period which we already mentioned about it must be shall not be less than 6 months prior to the insolvency or prior to the termination.

The worker's claims for amounts due in respect of so-paid absence shall not be less than 8 weeks, again 8 weeks prior to the insolvency or prior to the termination of employment. So, we talked about the Severance pay. So, due to the workers upon the termination of their employment, so, there is a priority claim with regard to the wages with regard to holiday pay with regard to other types of paid leaves, paid absence and then finally, the Severance pay or the retrenchment may also have a claim under these particular institutions.

(Refer Slide Time: 16:49)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convent  
1992

*Article 13*

1. Claims protected pursuant to this Part of the Convention **may be limited to a prescribed amount, which shall not be below a socially acceptable level**
2. Where the claims protected are so limited, **the prescribed amount shall be adjusted as necessary so as to maintain its value.**

So, the claims with regard to the convention may be limited to a prescribed amount, which shall not be below the socially acceptable level, so, we saw this particular terminology socially acceptable level. So, the socially acceptable level will change from place to place and country to country.

(Refer Slide Time: 17:11)

**C173 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992**

▪ **FINAL PROVISIONS**

▪ *Article 14*

- This Convention **revises the Protection of Wages Convention, 1949**, to the extent provided for in Article 3, paragraphs 6 and 7 above, **but does not that Convention to further ratifications.**

So, again, the convention revises the protection of wages convention 1949 to the extent of these particular provisions. So, it is this particular provision, this condition number 173, which gives specific provisions with regard to the claims of the privilege claims of workers as well as the institutional mechanism for disbursement of workers' claims in case of employers' insolvency.

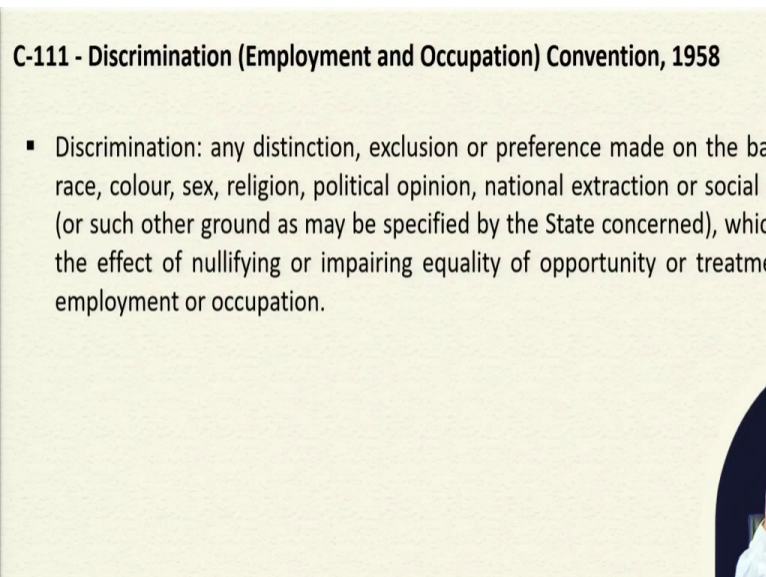
(Refer Slide Time: 17:39)

**C-111 - Discrimination (Employment and Occupation) Convention, 1958**



So, next, we are going to see convention number 111, which talks about discrimination, employment and occupation convention 1958. So, the name of the convention itself says what it talks about.

(Refer Slide Time: 17:59)



So, everywhere there is discrimination. So, what is exactly the definition of discrimination? So, this convention says that discrimination means any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin or such other as grounds that may be specified by the state concerned, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

So, discrimination is basically based on sex, colour, religion, political opinion, and national social origin, and also we can say that which is going to impair the quality of opportunity or treatment in employment and occupation. So, this definition of discrimination covers everything, maybe the social factors, as well as you can say that the economic factors as well included.

(Refer Slide Time: 19:26)

#### **C-111 - Discrimination (Employment and Occupation) Convention, 1958**

- Each State which ratifies the Convention undertakes to declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating any discrimination in respect of:
  - access to vocational training;
  - access to employment and to particular occupations;
  - and terms and conditions of employment.

So, here, each state ratifies the convention undertakes to declare a national policy, a national policy on non-discrimination, to promote equality of opportunity and treatment with a view to eliminating all discrimination in the case of access to vocational training, access to employment, to particular occupations, the terms and conditions of employment. So, there must be a policy. So, there must be a non-discrimination policy for every government those who are adopting this particular convention.

(Refer Slide Time: 20:10)

#### **C-111 - Discrimination (Employment and Occupation) Convention, 1958**

- In particular, it has to:
  - seek the co-operation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of its policy;
  - repeal any statutory or administrative provisions which are inconsistent with the policy;
  - enact legislation and promote educational programmes to secure its acceptance;

And specifically, the focus is on the cooperation of employers and workers, organizations and other appropriate bodies in promoting acceptance and the observance of this particular policy and also repealing any domestic statutory provisions, or administrative provisions, which are inconsistent with this particular policy.

So, first of all, every member country has to come out with a particular policy and then appropriate changes or amendments are to be made to the existing populations and existing legislation in accordance with this particular policy. And, most importantly, enact legislation and promote educational programs to secure their acceptance of non-discrimination in employment.

(Refer Slide Time: 21:09)

#### **C-111 - Discrimination (Employment and Occupation) Convention, 1958**

- ensure observance of the policy in employment, vocational guidance,
- vocational training and placement services under the direction of a national authority;
- indicate in its annual reports on the application of the Convention the action was taken in pursuance of this policy.

And the other provisions which we can see that observance of the policy in employment, vocational guidance, vocational training and placement services. So, there must be a national authority. So, we can see that the government has come up with national databases, and national employment authorities.

So, the annual reports have to be submitted to ILO and what type of actions has been taken in pursuance to the implementation of that particular policy. So, national employment exchanges, we can find, in pursuance of this particular convention, and the policy of non-discrimination.

(Refer Slide Time: 21:54)

**C-111 - Discrimination (Employment and Occupation) Convention, 1958**

- The Convention establishes the following three types of measures which are not deemed to be discrimination:
- measures designed to meet the particular requirements for specific work;
- measures which might be justified to protect the security of the State;
- measures of protection or assistance.

And again, this particular convention number 111, talks about three types of measures, which are not deemed to be discrimination.

A measure designed to meet the particular requirements of specific work for simply, we can say an example that now, the governments are started quoting in fire force, the women workers in fire force earlier, the women workers are not taken in fire force, women worker are not taken in armies, specific forces, but now, it is eliminated, and the woman is recruited in almost each and every recruitments measure, which may be justified to protect the security of the state certain specific areas, measures of protection or assistance.

So, as a measure of protection or assistance, so, then also this is not going to be discrimination.

(Refer Slide Time: 23:03)

**C-111 - Discrimination (Employment and Occupation) Convention, 1958**

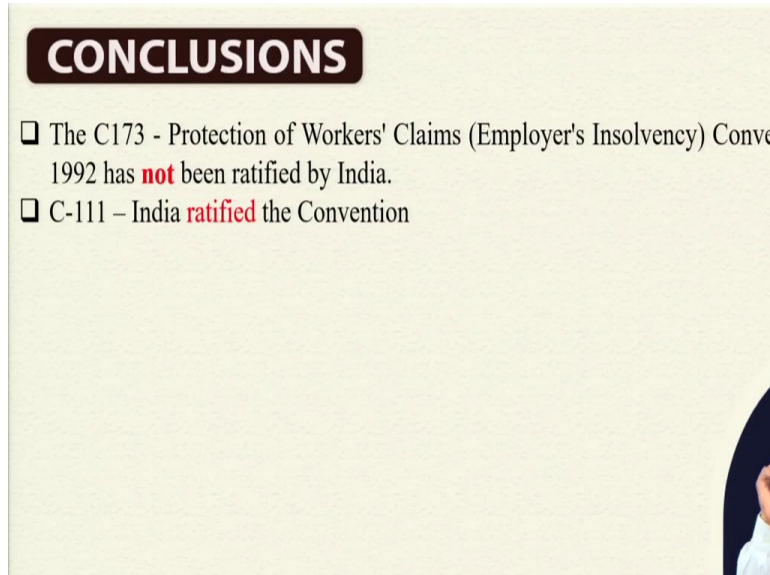
- **Article 14 of the Indian constitution: - Equality**
- **Article 15 of the Indian constitution: -** discrimination among people based on race, religion, caste, sex, or place of birth.
- **Article 16 of the Indian constitution:** special assistance to underprivileged classes of the society that are most prone to discrimination.
- **Article 39 of the Indian constitution: - Equal rights**

So, there are some exceptions, when we look into our own domestic law, our constitution, there are a number of provisions, which we include before this convention itself in our constitution, Article 14 of the constitution, which talks about equality before the law and equal protection of laws, article 15, which talks about specifically discrimination among people based on race, religion, caste, sex, place of birth.

So, under the non-discrimination principle, which we can see in the article, we talked about 15, or 16 specific provisions with regard to underprivileged classes of society or women so, which are prone to discrimination. So, special provisions under Article 16, and Article 39 which we already talked about equal rights, equal pay for equal work, and equal rights for men and women.

So, our constitution is very well included sufficient provisions under Part 3 and also Part 4 fundamental rights back to principles of state policies, in which we have included the principle of non-discrimination.

(Refer Slide Time: 24:39)

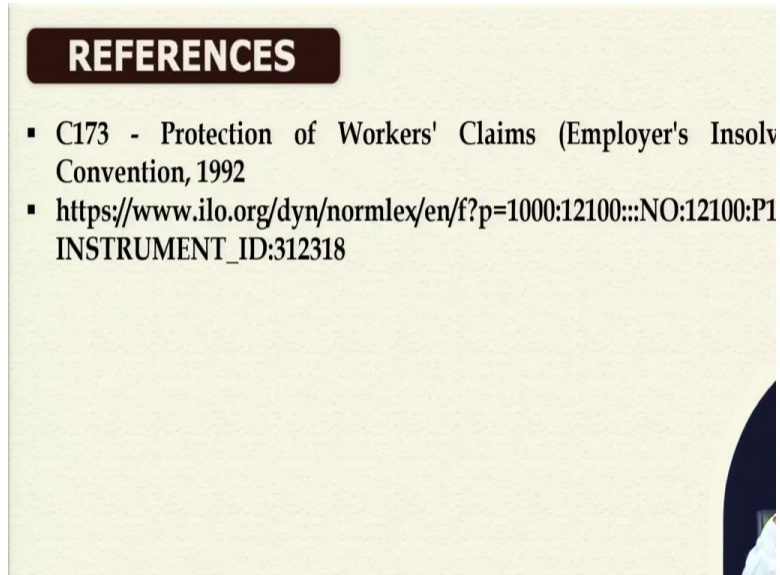


So, very simply, in conclusion, I would say that the first convention number 173, which talks very clear provisions with regard to the worker's claims in the case of insolvency of the employer and the second convention, it is very close to the equal pay for equal work convention or equal remuneration convention.

So, the non-discrimination convention in the employments convention number 111 and convention number 111 is ratified by India and convention number 173 is not ratified by India, because of many business reasons India has not ratified that particular convention so, so they are not ready to take into the international obligations at this point of time.

So, this is all about these two conventions and I think probably this week completely we have discussed so many International Labour Organization conventions, as well as other international law conventions, very specifically relating to wages, non-discrimination, equal opportunities for men and women or non-discrimination of men and women in the workplace and also the protection of worker's claims in case of insolvency.

(Refer Slide Time: 26:04)



So, I think these are very important international instruments which every worker should know about their rights. Thank you.