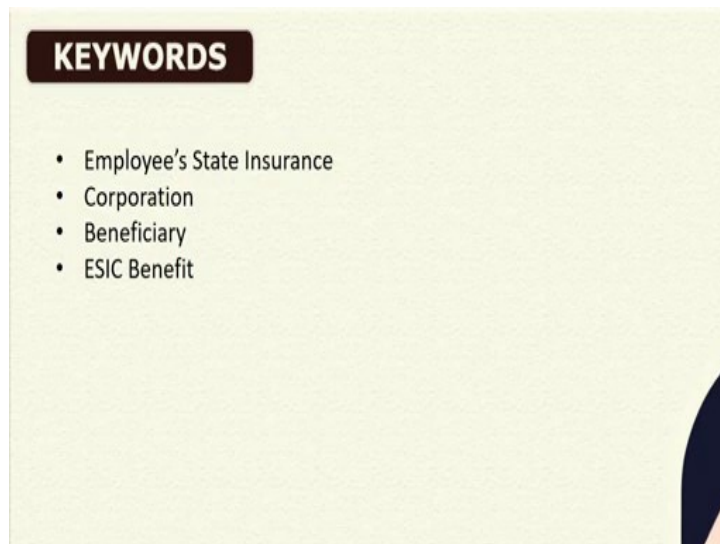


New Labor Courts of India
Professor K.D. Raju
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology, Kharagpur
Lecture 36
Employee's Standard Insurance

Dear students, in this class we are going to discuss about the ESI Corporation. So the new provisions are included in the Social Security Code and earlier in the ESI Act. So in the constitution of ESI Corporation, what are the benefits provided by this corporation, it's functioning, its duties and different kind of benefits which are available to the subscribers and what is the subscription modes, the employer contribution and employee contribution and also the working of ESI courts for settling claims between the corporation and its subscribers, appeal provisions. These are the topic which we are going to discuss in this particular class.

(Refer Slide Time 01:20)



❑ The Employee's State Insurance Act, 1948

- **Objective** – To provide **certain benefits to employees** in case of:
 - Sickness
 - Maternity
 - Employment Injury

And to make provisions for certain other matters incidental thereto

❑ Employee's State Insurance Corporation

- Employees' State Insurance Corporation ("ESIC") is a **statutory corporate body set up under the ESI Act 1948**, which is **responsible for the administration of ESI Scheme**.
- The ESI scheme is a **self-financed comprehensive social security scheme** devised to **protect the employees** covered under the scheme **against financial distress arising out of events of sickness, disablement or death due to employment injuries**.

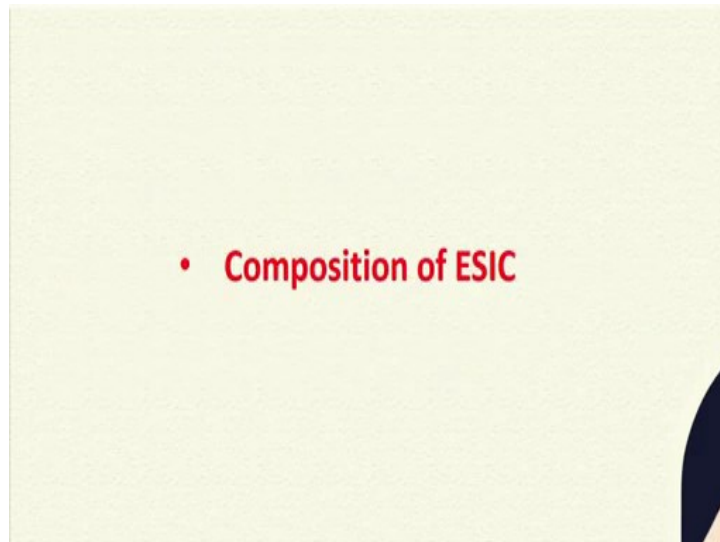
So, specifically, we know that the Employee State Insurance Corporation works all over India and provides medical benefits, sickness benefits that everybody knows about and other benefits also. What are the other benefits which are provided by the corporation we are going to discuss. So the ESI Act 1948 clearly says the objective is to provide certain benefits to employees that certain benefits include sickness, maternity and employment injury. So we can see that the 2 benefits are provided under other legislations as well. For example, the maternity benefit is provided under the ESI Act as well as the Maternity Benefit Act. So the claimants can claim maternity benefits only under one law not under two laws that is why now these are consolidated into single law Social Security Code, so there is only one law.

Employment injury, so just now we completed the class, earlier class which talks about employment injury and compensation, so earlier there was Workman Compensation Act

where you can claim employment injury benefits under the ESI scheme. So either one of the schemes you can claim, so now it is under the same code. So here the corporation, the Employee State Insurance Corporation which is the main body which is constituted under the ESI Act of 1948 is responsible, was responsible for administering the ESI scheme.

So it is in the mode of a self-financed comprehensive social security scheme, it protects the employees covered under this particular scheme one against the financial stress arising out of events of sickness, disablement, and death due to employment injuries. So if any victim can claim commutation under the ESI provisions or under Workman Compensation provisions still these options are available. So in which one they are getting more compensation they can opt for.

(Refer Slide Time 04:02)

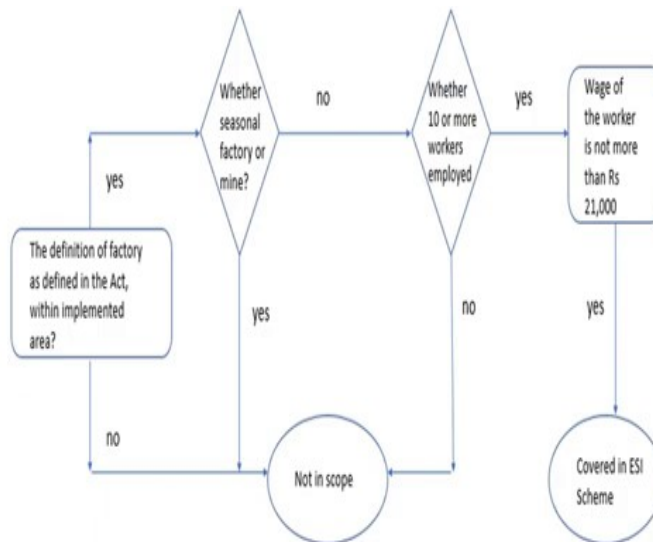


ESIC Composition

- The Director General of ESIC, *ex officio*
- Chairman appointed by the central government
- Vice-president appointed by the CG
- Not more than 5 persons nominated by the CG
- 1 person representing each state appointed by the CG
- 1 Person nominated by CG representing UTs
- 10 persons representing employers nominated by CG
- 10 persons representing employees nominated by CG
- 2 persons representing the medical profession nominated by CG
- 3 members of the parliament (2 from Lok Sabha and 1 from Rajya Sabha)

□ Applicability of ESI Schemes

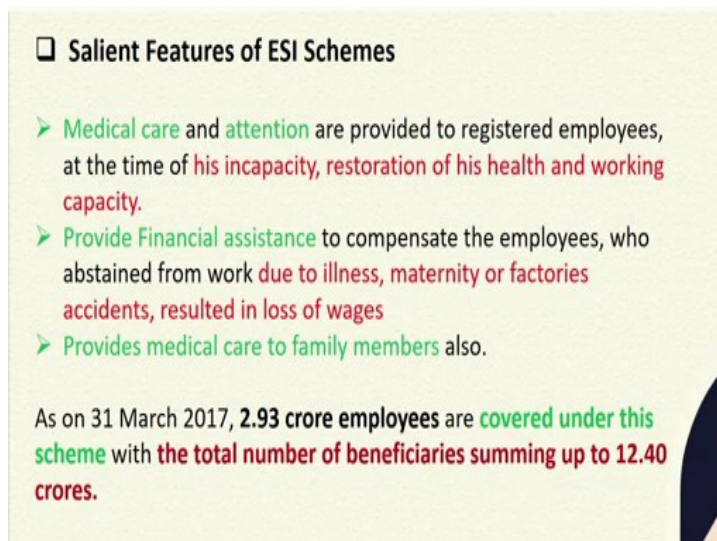
- The ESI scheme is applicable to:
- All factories;** and
 - Other establishments** as defined in the Act **with 10 or more persons employed** in such establishment and the **beneficiaries' monthly wage does not exceed Rs 21,000** are covered under the scheme.



So we have to look into the composition of this Employee State Insurance Corporation, because this Corporation is the main body that is administering this particular Act earlier, so you can see that the Director General of Employee State Insurance Corporation is the ex officio chairman. So he is appointed by the central government and the vice president is appointed also by the central government and not more than 5 people are nominated by the central government and one person representing each state is appointed by the central government and one person is nominated for the central government representing union territories and 10 persons representing employees and 10 persons representing employees and 2 persons are representing the medical profession nominated by central government and 3 members of the parliament, 2 from Lok Sabha and 1 from Rajya Sabha, so 3 members so this is the composition of the ESI Corporation.

And ESI schemes are applicable to all factories and all establishments where 10 or more persons are employed and also a monthly salary ceiling of Rs. 21,000 is covered under the scheme. So, people, who are getting less than 21,000 rupees salary per month will be covered under the ESI scheme and also 10 or more workers is the number which is prescribed. So here who is covered actually under the ESI scheme? So here people who are working in factories are eligible and the seasonal factory, so again the question is whether even though it is in the seasonal factory more than 10 workers are working then they are also eligible and whether they are 10 more than 10 workers, yes and the wages below Rs.21,000 they are covered under the ESI scheme.

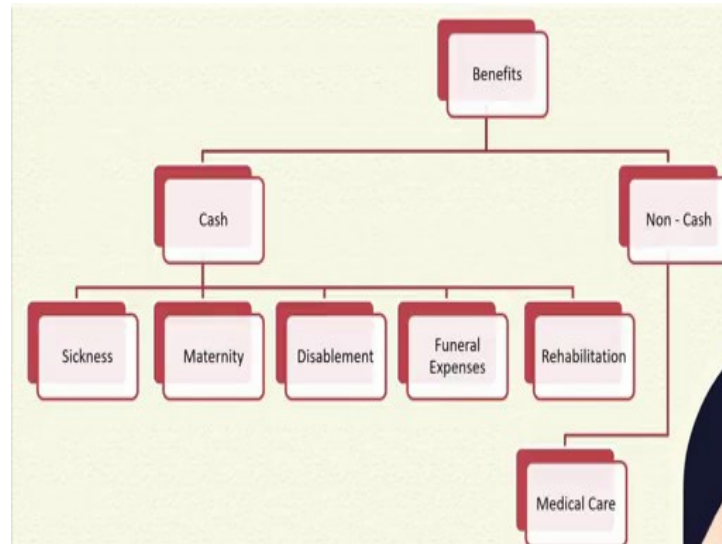
(Refer Slide Time 06:38)



Salient Features of ESI Schemes

- Medical care and attention are provided to registered employees, at the time of his incapacity, restoration of his health and working capacity.
- Provide Financial assistance to compensate the employees, who abstained from work due to illness, maternity or factories accidents, resulted in loss of wages
- Provides medical care to family members also.

As on 31 March 2017, 2.93 crore employees are covered under this scheme with the total number of beneficiaries summing up to 12.40 crores.



❑ Social Security Benefits under ESI Schemes

➤ As per Sec. 46:

- i. Medical Benefit
- ii. Sickness Benefit
- iii. Maternity Benefit
- iv. Disablement Benefit
- v. Dependents Benefit
- vi. Funeral Expenses
- vii. Other Benefits

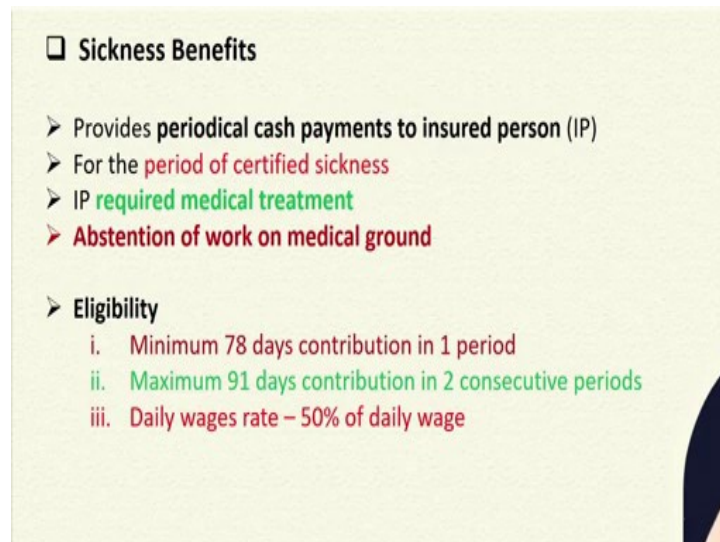
So the scheme is very simple and if you look into the salient features of the ESI scheme you can see the medical care attention through the series of hospitals administered by the ESI Corporation and which is necessary to cure the incapacity or restoration of his health and working capacity, so all the registered employees under the scheme are eligible to get.

Then providing financial assistance to compensate the employees who abstained from work due to this particular illness, maternity or the factories accidents or resulted in the loss of wages. The most important factor in the ESI scheme is the medical care for the family members. It is not only the benefits to the injured, but it is also his family members that are covered under this particular scheme.

So here we can see that more than around 3 crore beneficiaries, so the total if you can see that including their family members around 12.5 crore the total number of people are covered. This is a huge number of people who are actually covered under this particular scheme, and if you look into these benefits, what are the benefits available? So the benefits are 2 categories one is cash benefits and the non-cash benefit is medical care.

So cash benefits during sickness, maternity, disablement, funeral expenses which we talked about and rehabilitation expenses, so a wide variety of benefits are available under the ESI scheme. The scheme which is provided in which we already said these schemes are a number of schemes available for medical benefits, for example, sickness benefits, maternity benefits, disablement benefits, dependence benefits that is also one of the important factors dependent benefits and other benefits along with funeral benefits, so funeral expenses are included in the benefits.

(Refer Slide Time 09:20)



❑ Sickness Benefits

- Provides **periodical cash payments to insured person (IP)**
- For the **period of certified sickness**
- IP **required medical treatment**
- **Abstention of work on medical ground**

➤ **Eligibility**

- i. **Minimum 78 days contribution in 1 period**
- ii. **Maximum 91 days contribution in 2 consecutive periods**
- iii. **Daily wages rate – 50% of daily wage**

☐ Maternity Benefits

- Provide **periodical cash payment** for confinement or miscarriage or sickness arising out of pregnancy or premature birth of child to an insured woman, certified by medical officer or mid – wife.
- **Eligibility**
 - i. Contribution is same as for Sickness benefit
 - ii. Daily wage rate = Double of sickness benefit

☐ Disablement Benefit

- Provided for **disablement caused by Employment injury**
- **Eligibility**
 - i. **For Temporary Disablement** – Benefit shall be payable to the insured person till the temporary disablement lasts
 - ii. **For Partial/Total Disablement** – Benefit shall be payable to the insured person till his death
 - iii. **Daily Benefit rate for Temporary/ Total Disablement = Equivalent to 100% of wage rate**

☐ Dependent Benefits

- Paid at the rate of 90% of wage in the form of monthly payment to the dependents of the deceased insured person, in case of:
 - i. Death occurs due to employment injury; or
 - ii. Occupational hazards

If you look into the sickness benefit in the case of sickness, periodical payments to the insured person for the period of certified sickness and also we required inpatient medical treatment, so only during the period and abstention of work on medical grounds. So a minimum of 78 days contribution in one period means if somebody is working he should minimum work 78 days then only he is eligible for the scheme and so 2 periods, maximum 91 days contribution to consecutive periods and so the daily wages rate which we have already mentioned about.

So maternity benefits which include we already said that maternity benefits can be claimed under the ESI scheme or under the Maternity Benefit Act, so here are the cash payments for confinement, in the case of miscarriage, a sickness arising out of pregnancy, or premature childbirth, also this is certified, so you can say that it must be certified by a medical officer.

So eligibility for the contribution is the same for sickness benefits, so the eligibility conditions are also the same. In the case of disablement caused by employment injury, as we already talked about these, in the case of employment injury the employee can claim benefits under the ESI scheme or under the employee compensation scheme. So here also temporary disablement and or partial or total disablement and in that particular case it shall be payable to ensure temporary disablement last and also in the case of death the benefit shall be payable to the person until his death, partial and total disablement and here the daily benefit rate is 100 percent of the wages in case of total disablement.

Here in the case of dependents benefit we said that the dependents are eligible to get benefits, dependents are eligible to get even 90 percent of wages in the form of monthly payment to the dependents of the deceased insured person, in case of death occurred due to the employment injury or occupational hazards, so dependents are eligible to get even 90 percent of the wages in the form of monthly payments.

(Refer Slide Time 12:13)

❑ Other Benefits

- **Funeral Expenses** – Rs. 10,000/- payable to the dependents or to that person who performs last rites from day one of entering insurable employment
- **Confinement Expenses** – An insured woman or an insured person, in respect of his wife, in case of confinement occurs at a place where necessary medical facilities under ESI Scheme are not available

❑ Rate of Contribution

- **Employee's Contribution Rate = 0.75% of wages**
- **Employer's Contribution Rate = 3.25% of the wages paid/payable of their employees**
- The employer makes the contribution from its own share in favor of those employees whose daily average wage is Rs 137 as these employees are exempted from own contribution.
- The employer is required to pay his contribution and deduct employees' contribution from wages and deposit the same with ESIC within 15 days from the last day of the calendar month in which the contribution fall due

ESIC contribution rates (Reduced w.e.f. 01/07/2019)		
Particulars	Current Rate	Reduced Rate
Employer Share	4.75%	3.25%
Employee Share	1.75%	0.75%
Total	6.50%	4.00%

Other benefits include the funeral expenses increase to ten thousand rupees payable to the dependents of the deceased person or insured person. In the case of the pregnant woman in the case of maternity benefits or confinement expenses, so in respect of a person in the case but in respect of his wife if the confinement occurs at a place where necessary medical facilities of the ESI scheme are not available then also that expenses are borne by the corporation in the case of that is confinement expenses.

The rate of contribution is a very small amount, so the employee has to pay only 0.75 of the wages and the employer contribution is 3.25 of the wages. So the employer has to pay probably a chunk of the liability and the employees have to pay a very small amount and the total contribution is 4 percent. Also, you can say that here is the employee's daily wage so the total calculation is now increased, so we said that the wage ceiling is there and that it is the duty of the employer to deduct this particular percentage and deposited it with the ESI Corporation within 15 days of his last payment calendar. So the contribution if the employer fails to deduct this particular money and deposit it with the ESI Corporation then there is the punishments are there for the employer.

Here you can see that the present rate and also the reduced rate are there; so you say contribution rates it can be up to 4.75 and the reduced rate is 3.25 and employee share is 1.75 and 0.75 reduce dates. So in the case of enhanced rates 6.5 percent and 4 percent in the case of reduced rates, so the respective central government will notify which are those industries applicable to the enhanced rate and also the reduced rate. So the ordinary rate and reduce rates certain exemptions can be made in the case of reduced rates by the central government.

So in the reduced rate, it is 4 percent and in the case of the ordinary rate, it is 6.5 percent contribution.

(Refer Slide Time 15:00)

- **Position of ESI under The Code on Social Security, 2020**

- ❑ **Sec. 25: Constitution of Employee's State Insurance Fund**

- Contribution made and received on behalf of ESIC, shall be paid into a fund – **Employee's State Insurance Fund**
- **Fund held and administered by Corporation**
- Corporation **accepts grants, donations, CSR (Corporate Social Responsibility) Fund, gifts from Central government, State governments, Local authorities or any other individual or body, irrespective of its incorporation**
- The fund shall be **deposited or invested in the prescribed manner of the Central government**

❑ Purpose of Employee's State Insurance Fund

- i. For payment of benefits of medical treatment and attendance to insured person and his family
- ii. For payment of fees and allowances to member of Corporation, the Standing Committee, the Medical Benefit Committee or any other Committees
- iii. For payment of salaries, leave and joining time allowances, travelling, compensatory allowances, gratuities and compassionate allowances, pension of officers and staff of Corporation
- iv. For establishing and maintaining hospitals, dispensaries and other institutions

❑ Purpose of Employee's State Insurance Fund

- v. For payment of contributions to any State government, local authority or any private body or individual towards the cost of medical treatment of insured person
- vi. Defraying the cost of auditing the accounts of the Corporation
- vii. Defraying the cost of Employee's Insurance Courts
- viii. For payment of any sums under any contract entered by Corporation or Standing Committee
- ix. Payment of any sums under decree or order or judgement passed against the Corporation
- x. Defraying the cost for instituting or defending in civil or criminal proceedings

So if you look into the Social Security court we can see that the respective provisions are almost the same provisions included in the Social Security Code as well and section 25 says that an Employee's State Insurance fund is to be constituted. So the fund is going to be administered by the corporation, the same system which is followed in the earlier legislation and also the additional provisions are included in the Social Security Code.

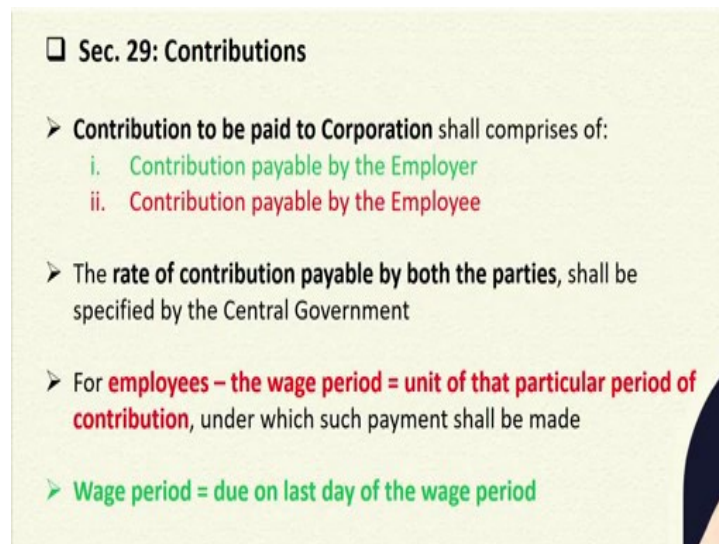
For example, the corporation can accept grants, donations, and the social corporate or corporate social responsibility funds, and gifts from central government, state governments, local authorities, or any other individual body irrespective of its incorporation which means whether it is a legal entity or it is individuals or any persons can donate money to the ESI Corporation. As you can see this government will prescribe where this money is to be

deposited or invested by the ESI Corporation, so these additional provisions are included in the new act.

The employee's purpose is very specifically mentioned in the new code, so the code says basically the payment benefits or the medical treatments are to the insured person and his family, and also these funds are to be used for salaries and other things for the various boards, so members of the corporation, standing committee, medical board, etc. The salaries are to be paid from this particular fund, so their travelling expenses, compensatory allowance, gratuities and all the expenditure to be born from this particular fund as well as the establishing and maintaining hospitals and dispensaries and other institutions.

As I already said that so one of the important factors in maintaining these hospitals all over the country, ESI hospitals are special hospitals only for the purposes of these particular employees, so a large number of employees can be benefited from these ESI hospitals. The payment of contributions or local authority, and purpose of employee state insurance fund is to the payment basically of this insured person and his family and also other expenditures which we already mentioned about can be expenditure from this particular fund.

(Refer Slide Time 17:48)



□ **Sec. 29: Contributions**

- **Contribution to be paid to Corporation** shall comprises of:
 - i. **Contribution payable by the Employer**
 - ii. **Contribution payable by the Employee**
- The **rate of contribution payable by both the parties**, shall be specified by the Central Government
- For **employees - the wage period = unit of that particular period of contribution**, under which such payment shall be made
- **Wage period = due on last day of the wage period**

❑ Payment of Contribution by Employer

- He shall **pay for every employee** (whether directly employed/ through Contractor)
- **Neither the employer nor the contractor** shall **be entitled to deduct the employer's contribution** from any wages or otherwise recover it from him
- The deduction **from employee's wage for ESI purpose**, shall be deemed to be **entrusted to employer, for paying the same on contribution**

❑ Sec. 48: Constitution of Employee's Insurance Court

- The **State government** constitute an **Employee's Insurance Court** for such local area
- The Court shall consists of such number of judges as decided by the State government
- The **judicial officer or a legal practitioner of five years Standing experience is qualified to be a Judge of the Employee's Insurance Court**
- The **State government may appoint same court for two or more local areas or two or more court for same local area**
- In case of **more than 2 courts for same local area**, the **State government shall distribute business among them**

❑ Sec. 49: Matters Decided by the ESI Court

- **Dispute arises on:**
 - ❑ **Employment of a person or the liability of an employer to pay the employee's contribution**
 - ❑ **The rate of wages or average daily wages of an employee**
 - ❑ **Employer's rate of contribution in ESI**
 - ❑ **The person who is or was the employer in respect of any employee**
 - ❑ **The right of any person for any prescribed benefits and its mode of discharge**
 - ❑ **The direction of the Corporation on review on payment of dependent's benefit**

So section 28 says every employee in an establishment shall be insured either electronically or manually prescribed by the central government. So now the registration is going to be electronically, so the employee is called the insured person, if somebody is getting an ESI benefit he will be known as an insured person who is paying a contribution so in the advent of technology, now the ESI corporation made it a compulsory for electronic registration of all insured persons and contribution which we already talked about, this employer contribution and employee contribution to be paid, deducted by the employer and deposited by the employer to this particular fund it is the duty of the employer to deduct such contributions and every employee, so ESI contribution to be paid for every employee which is including permanent workers or it is the temporary workers or somebody is work through contractors as well ESI benefit has to be provided.

So unauthorized deductions are prohibited, and the only permitted deduction is a contribution, employees contributions can only be deducted not employer contributions are deducted and to be deposited within 15 days of the wage calendar month. So the payment of contribution by the employer is the remittance fee to be contributed by the employer, not the employee, so contribution paid in the case of the employee which we already said that it must be paid by the employer but can be deducted from the employee's contribution, can be deducted from the salary of the employee. So in the case of a contractual employee, the contract shall maintain a register of employees and submit the same to the employer for settlement of the contribution amount. It is the duty of the employer to pay the contribution.

So we said that the Employees Insurance Courts are the sui-generis courts for the claim settlements. The state government has to designate certain courts as employee insurance courts; so the courts will be functioning in accordance with the notification by the state governments. So the judicial officers or legal practitioners of 5 years standing and experience as qualified to be a judge of the employees' insurance court. So, the Finance Act 2017 very specifically mentioning about the point of judges to this particular kind of tribunal or court. The appropriate state governments designate certain courts as ESI courts so it is the duty of the state governments to notify the specific specialized ESI courts.

If there is a dispute arising out of this particular claim settlement whether it is with regard to the daily wages or with regard to the employer's contribution or with regard to the employees' contribution, in anything related to the contributions or dependent benefits, the claimants can approach the particular court.

(Refer Slide Time 22:00)

❑ Sec. 49: Matters Decided by the ESI Court

➤ Dispute arises on:

❑ Any other disputes arises between:-

- i. An employer and the Corporation;
- ii. An employer and the Contractor;
- iii. A person and the Corporation;
- iv. An employer and an employee or contractor

In respect of any contribution or benefit or any other due payable/recoverable

- ❑ Claim for recovery of contributions from employer
- ❑ Claim for recovery of amount of benefits received by a person, who is not entitled for it

❑ Sec. 49: Matters Decided by the ESI Court

➤ Dispute arises on:

- ❑ Claim against an employer who fails to register his employees
- ❑ Claim under the order of the appellant authority
- ❑ Claim by an employer to recover contributions from any contractor
- ❑ Claim for recovery of any benefit admissible under the Code, 2020

❑ Sec. 50: Powers of Employee's Insurance Court

➤ The Court have all the powers of a Civil Court, for:

- i. Issuing of summon and enforcing the attendance of witnesses
- ii. Compelling the discovery and production of documents and material objects
- iii. Administering oath, and
- iv. Recording evidence

- ##### ➤ Such Court shall be deemed to be a civil court u/s. 195 (Prosecution for contempt of lawful authority of public servants, for offences against public justice and offences relating to documents given in evidence) and chapter – XXVI (Provisions as

❑ Sec. 50: Powers of Employee's Insurance Court

- The ESI Court for discharging the functions, follows the procedure as prescribed by the State government
- All costs incidental to ESI Court proceeding shall be made by the State government, at the discretion of the Court
- An order of the ESI Court shall be enforceable in the same manner as if it was a decree passed in a suit by a Civil Court

Here disputes arise between employer and corporation, employer and the contractor, a person and the corporation, and employer and the employee or contractor, all these kinds of disputes can be placed before the court as also the claim for recovery of contributions from the employer and claim of recovery of amounts from benefits received by a person who is not entitled to it. So these are recoverable amounts by the order of the ESI court and also a claim against an employer who fails to register its employees, so the employees can approach this particular court and the claim order of the appellant authority also can go to the court. Then recoverable contributions from the contractor; then claim for recovery of benefits admissible under this particular court.

So any kind of claim which is related to the insurer or insurance or employer or employee or contractor and the principal employer can go to this particular ESI court and the insurance courts have powers of civil court for the purpose of summoning anybody or enforcing the attendance of anybody or compelling the discovery of the production of documents and also recording evidence, for all the purposes it will be considered as the provisions of the civil court, functions of a civil court and also discharging this particular functions is in accordance with the rules made by the state governments. So the order of the ESI court is enforceable like any other civil court in the jurisdiction of any other civil court in India and the enforceability is like civil courts.

(Refer Slide Time 23:58)

❑ Sec. 51: Proceedings of Employee's Insurance Court

- The commencement of proceedings, Court fees and procedure shall be done according to the prescribed manner, notified by the appropriate government
- Limitation of Proceeding – 3 years from the date on which cause of action arises
- An application, appearance or act done by any person before Employee's Insurance Court, shall be done by a legal practitioner or by an officer of a registered trade union or with the permission of that Court, by any other person
- The Court submits any question of law for the decision of the High Court and it decides the pending question according to such decision

❑ Sec. 52: Appeal to High Court

- An appeal against the order of the Employee's Insurance Court shall lie to the High Court, if it involves a substantial question of law
- The appeal shall be filed within 60 days from the date of order
- The relevant provisions of the Limitation Act, 1963 shall also applies to the appeal
- When ESIC presents an appeal against the order of Employee's Insurance Court, till the direction of the High Court has been passed, the payment of impugned order shall be stayed

CONCLUSIONS

- The Employee's State Insurance and its associated Benefits is the best piece of social legislation and labour welfare Schemes enacted and implemented in India
- The present Social Security Code, 2020 doesn't vanished the concept of Employee's State Insurance Scheme, rather it expressly allowed all categories of workers from both organized and unorganized sectors

REFERENCES

- The Employee's State Insurance, Act 1948
- The Code on Social Security, 2020

So, insurance courts and the people or the proceedings which you can see that the people have to file a complaint within 3 years of the course of action. So any kind of question of law you can file an appeal and the High Court decides in with regard to the question of law on the decisions and the appeal will lie to the High Court and an appeal will lie against the orders of the insurance courts to the High Courts only with regard to the substantial question of law and the Limitation Act is also applicable and also the order of the Employees Insurance Court, the imbued orders can be stated by the high courts. So the insurance courts work under the high courts are the operating courts.

So we can see that the provisions of the ESI Corporation, the constitution of the corporation as well as administration of the Employees State Insurance are elaborately provided under the Social Security Code and also you can see that the schemes and benefits and some additional benefits are also included under the ESI scheme. So more importantly all kinds of employees whether it is in the organized sector or unorganized sector are included in the scheme of the ESI scheme. So we hope that this is going to be beneficial to all the employees whether in the organized sector or unorganized sector in India. So already there are around 12.5 crore beneficiaries are there including the registered and their family members. So with this advent of the introduction of this no code on social security, this number is going to be increased and more and more ESI courts are to be established in the country, thank you.