

New Labour Codes of India
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Lecture 50

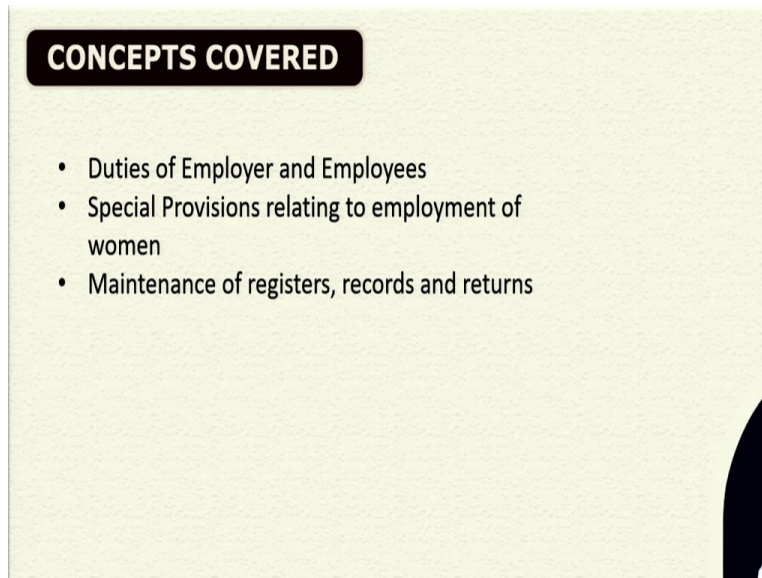
**Duties of Employer and Employees, Special Provisions Relating to Employment of Women
and Maintenance of Registers**

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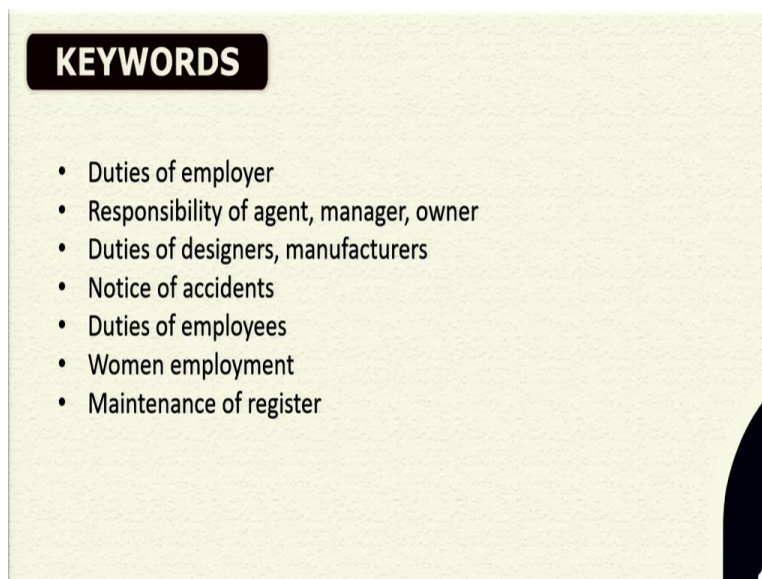
Dear students, in the last class of this week, we are going to talk about the duties of employers and employees, and also the maintenance of records, under the code. So, here the duties of employers and employees are very specific with regard to the earlier provisions as well as the new provisions in the code.

(Refer Slide Time: 00:47)



So, we will see the interior, the employers' duties and also the employees' duties and special provisions with regard to women employees. And what are the records to be kept, or the registers to be kept and returns to be filed by the employer from time to time.

(Refer Slide Time: 01:02)



So, we can see a lot of duties cast upon the employer, his agents, or the occupier, or the owner. And also, there are some duties, which you can find on the designs and manufacturers or the architects of factories when they are making the architectural plans for the building. And also, there is a duty cast upon the employer to give notice of accidents to the authorities.

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❑ Duties of employer and employee



And it is not only the duties cast upon employers, but there are some duties cast upon employees as well, and also the maintenance of registers. So, these duties are correlative with regard to these employees and employers.

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❑ Chapter – III: Duties of Employer and Employees, etc under **The Occupational Safety, Health and Working Conditions Code, 2020**

- Sec. 6: Duties of employer
- Sec. 7: Duties and responsibilities of owner, agent and manager in relation to mine
- Sec. 8: Duties of designers, manufacturers, importers or suppliers
- Sec. 9: Duties of architect, project engineers and designers
- Sec. 10: Notice of certain accident
- Sec. 11: Notice of certain dangerous occurrences
- sec. 12: Notice of certain diseases
- Sec. 13: Duties of employee
- Sec. 14: Rights of employee
- Sec. 15: Duty not to interfere with or misuse things

And the new code of Occupational Safety, Health and Working Conditions Code provides a comprehensive list of duties for employers as well as employees. So, we will see them one by one.

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□ **Sec. 6: Duties of Employer**

- Every employer shall ensure:
- a) That workplace is free from hazards which likely to cause injury or occupational disease to the employees;
 - b) To comply with the occupational safety and health standards declared u/ 18 or under drafted rules of the Occupational Safety, Health and Working Condition code, 2020;
 - c) To provide annual health examinations or test free of cost of employees;
 - d) To provide and maintain, as far as reasonably practicable a working environment that is safe and without risk to the health of the employees;

So, here, the duties of the employer are to ensure workplace safety, especially free from hazards, or causing any injury, or occupational disease to employees. All these are health-related. And to comply with the occupational health and safety standards, the rules made under this particular code. It is the duty of every employer to conduct health examinations, and health examination tests free of cost to the employees, especially the workers who are working in hazardous industries. And also, a safe working environment without any risk to the health of the employees is provided by the employer.

(Refer Slide Time: 03:18)

□ Sec. 6: Duties of Employer

- e) The disposal of **hazardous and toxic waste** including disposal of e-waste;
- f) To issue **a letter of appointment** to every employee on his appointment in the establishment in the form prescribed by the appropriate govt. and in absence of such letter, within 3 months of commencement of this Code, 2020 such letter be issued;
- g) That no charge is levied on any employee for providing **maintenance of safety and health at the workplace** including the conduct of medical examination and investigation for the purpose of detecting occupational diseases;
- h) That in relation to the factory, mines, dock work, building or other construction work of plantation, ensure and **responsible for the safety and health of employees, workers** and other persons who are on the work premises of the employer, with or without his knowledge.

So, the rules are made to that particular extent. Here, we can see that the disposal of hazardous and toxic waste and e-waste is to be done by the employer carefully, in accordance with the rules made. A letter of appointment is mandatory for every employee in appointing an establishment. So, the new code, provides that there must be an appointment order.

And also, maintenance and safety provision is there in order to keep the health, maintenance and safety of the workplace, the employer cannot charge the employee for any kind of equipment, any kind of apparel, or any kind of safety equipment. And also, the medical examination is to be conducted free of cost for detecting occupational diseases. And also, these provisions are applicable to factories mines, dock works, buildings or other construction work of plantations. And also the employees are responsible for the safety and health of employees and other persons working on the premises. So, the duty cast upon an employer is very wide.

(Refer Slide Time: 05:00)

❑ **Duties of employer in factory, mines, dock, building and other construction work or plantation:**

- The provision and **maintenance of plant** and system of work in the workplace are safe and without risk to health;
- The arrangements in the workplace for **ensuring safety** and absence of risk to health in connection with the use, handling, storage and transport of articles and substances;
- The provision of such information, instruction, **training, and supervision** as is necessary to ensure the health and safety of all employees;
- Maintenance of all places of work in the workplace in a safe condition and without risk to health and maintenance of means to access to and egress from, such place must be safe;
- Working environment of the **workplace must be safe for all employees** and without risk to health with regard to facilities and arrangements for their welfare at work.

And there are more duties on the employer in keeping factories, mines, docks, buildings, and other workers, and also including plantations. And provision for maintenance of plants, and systems in the workplace, without any risk to the health of employees and arrangement of workplace ensuring safety, and also the handling, storage, and transport of articles and substances, the employer has to take reasonable care. So, to that extent, the employers should provide adequate training and supervision to the workers, necessary to keep the health and safety of our employees.

So, adequate training should be given to the workers. All workplaces should be in safe condition without posing risk to the health and maintenance of any employees, those who are working. And simply, we can say that the employer should provide a working environment that must be safe for all employees without any risk to the health or welfare of the workers.

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❑ **Sec. 7: Duties and responsibilities of the owner, agent and manager in relation to mine:**

- The **owner and agent of every mine shall jointly and severally be responsible** for making financial and other provisions under this Code;
- **Burden of proof lies on the following persons** to prove that he has used due diligence to secure compliance with the provisions of this Code and taken reasonable means to prevent any mishappening:
 - a) **The officials appointed to perform duties of supervision;**
 - b) **The manager of the mine;**
 - c) **The owner and agent of the mine;**
 - d) **The person appointed, if any, to carry out the responsibility**

And also, we can see that there is a duty cast upon not only the employer's directly, responsibilities of owner agent manager, specifically with regard to the mine. So, there are special provisions are attached to the code with regard to mine, because mine is a special area of work where a higher degree of risk is involved. So, in the case of a mine, the owner and agent are jointly and severally responsible for making the financial provisions for the implementation of this particular code.

So, the burden of proof lies on the person. So, the officials appointed to perform the duties of supervision, the manager of the mine, the owner and agent of the mine, and any person who is appointed to carry out the responsibility of managing a mine under the new code. So, all these people are jointly and severally liable for the implementation of this particular code.

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❑ **Sec. 8: Duties of designers, manufacturers, importers or suppliers**

- Every designer, manufacturer, importer or supplier, who supplies any article, shall ensure:
 - a) As far as reasonably practicable that such article so designed and constructed in the establishment as to be safe and without risk to the health of the workers when properly used;
 - b) Carry out or arrange for carrying out such test and examination in the establishment as considered necessary for the effective implementation of the provisions;
 - c) With respect to such an article, adequate information must be available.

We are talking about certain duties cast upon the designers, manufacturers, importers or suppliers, who supply articles to these particular factories or establishments. So, these articles designed and constructed in the establishment safe must be made safely and without risk to the health of the workers, when it is used.

And also, carrying out such tests and examinations of these particular articles, for the effective implementation of these particular provisions. So, sufficient information should be made available to the workers on working of that particular machine. And adequate training to be given to the workers for running these particular machines as well.

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❑ **Sec. 9: Duties of architect, project engineers and designers**

➤ It is the duty of the architect, project engineers, and designers responsible for building or other construction work, to ensure that-

- At the planning stage, due consideration is given to the **safety and health aspects of the building workers** and employees, employed in the erection, operation, and execution of such projects and structures;
- Adequate care shall be taken by the **architect, project engineer and other professionals involved in the project**, not to include anything in the design which would involve the use of dangerous structures or other processes or materials, hazardous to the health or safety of the building workers and employees

And we talked about the duties of architects, project engineers, and designers of these factories at other establishments. So, there is a duty cast upon the architect, project engineer, and designers responsible for building when this construction work, they carry out. So, at the planning stage itself, the project appraisal committee should look into the safety and health aspect of the building workers.

And adequate care must be given by the architects and the project engineer and other professionals and not include anything in the design, which involves the use of dangerous structures, other materials, hazardous materials, and hazardous processes which is harmful to the health and safety of the building workers and also the employees. So, there is a particular duty cast on the designers, architects, and project engineers who are going to make these establishments and factories in the country, these provisions are included in the code.

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❑ **Sec. 10: Notice of certain accident**

- Notice of certain accidents at any place in an establishment shall be given to the concerned authorities and inquiry by the concerned authority; or if in case of no authority, by the Inspector-cum-facilitator on the direction of Chief Inspector-cum-Facilitator;
- It is the responsibility of
 - i. The employer or owner or agent or manager in respect to mines,
 - ii. Employer or manager in respect to factory or dock work,
 - iii. Employer in respect to plantation, building or other construction work or another establishment

It is the duty of every employer to send a notice to the authorities about certain accidents, and for the authorities, to conduct an inquiry. So, if there is no authority mentioned in the rules, the notice must be given to the Chief Inspector cum-Facilitator. So, the responsibility of the employer, owner, or agent with regard to mines, every employer or manager or occupier of the factory, in the case of factories and dock workers, and every employer in respect of plantation building or other construction work and other establishments. So, a notice of an accident is to be given to the appropriate authorities.

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❑ **Sec. 11: Notice of certain dangerous occurrences**

- The notice of certain dangerous occurrences by the employer shall be given to the authorities determined by the appropriate govt by rules

And notice of certain dangerous occurrences. So, these dangerous occurrences must be mentioned by the state government in the rules to the schedules and also to be reported back to the state governments

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❑ **Sec. 12: Notice of certain diseases**

- Notice of **certain diseases specified in the 3rd Schedule** of this Code, 2020 shall be given by the employer to the authorities, determined by the appropriate govt;
- Medical Report should be sent by the medical practitioner to the Chief Inspector-cum-Facilitator, if he believes that the person attended by him has been suffering by such disease.

Moreover, it is the duty of the employer to report certain diseases which are mentioned under the two schedules, especially the third schedule which talks about occupational diseases. So, that is why now there must be mandatory free medical checkups to find out about occupational diseases. And the medical report should be sent by the medical practitioner, should be shared with the Chief Inspector cum-Facilitator, and also, the report must be shared with the workman's consent. So, it is not only the medical checkup that should be a concern, the report should be made available to the workers as well.

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❑ **S.41 (c) of Factories Act.**

- Every occupier of a factory involving any **hazardous process** shall:
- maintain accurate and **up-to-date health records** or, as the case may be, medical records, of the workers in the factory
- appoint persons who possess **qualifications and experience** in handling hazardous substances
- Provide for **medical examination of every worker.**

So, if you look into some of the old Factories Act, you can see that every occupier must inform especially those carrying on the hazardous process, must maintain up-to-date health reports. So, we already said what are the records to be kept, the health records of workers in the factory and also, appoint a person who possesses qualifications and experience in handling certain substances, provide the medical examination of every worker under the Factories Act old provisions.

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❑ **S.41 (h) of Factories Act.**

It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied with the existence of such **imminent danger** and send a report forthwith of the action taken to the nearest Inspector.

And also, it is the duty of the occupier agent or manager or any person who is in charge of the factory, to take immediate action, if he is satisfied that there is an imminent danger and send a report to the Inspector cum-Facilitator as soon as possible, if there is any imminent danger.

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❑ **S.7 of Factories Act.**



The occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing the name and situation of the factory, the name, and address of the occupier. (Section 7).

- ❑ Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes overcharges.

And also, it is noted that the occupier, at least 15 days before beginning to occupy or use any premises of a particular factory, send to the Chief Inspector, a written notice containing the name of the situation of the factory, the name, address, occupier, et cetera details, other details to the Chief Inspector of factories. When a manager is appointed, the occupier shall also send the Inspector, a written notice, with regard to the appointment of the manager within seven days of his appointment.

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❑ Responsibility of Occupier

Provincial Government v. Ganpat, AIR 1943 Nag 243.

- ❑ It was held in this case that the occupier or the manager of the factory admits the guilt under Section 92 of the Act,
- ❑ but alleges the clerk of the Factory to be the actual offender,
- ❑ the onus of establishing the innocence is on such occupier or the manager as the case may be.

And also, the responsibility of the occupier is very wide. So, in one of the old cases Provincial Government versus Ganpat, the Nagpur Court has mentioned, what are the duties of an occupier. It was held that the occupier or the manager of the factory admits the guilt if somebody is admitting the guilt. But he alleges the clerk of the factory was the actual offender.

So, if the onus of establishing innocence is on such occupier or manager as the case. So, but, it is very clear that the occupier of the factory is responsible for all the activities, he cannot blame the clerk or some other somebody else for what has happened in the factory. He cannot absolve the liability, he cannot escape from the liability of the duties which are statutorily mentioned under the Factories Act.

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□ Sec. 13: Duties of the Employee

- Every employee at the workplace shall –
 - a) Take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at the workplace;
 - b) Comply with the safety and health requirements specified in the standards;
 - c) Co-operate with the employer in meeting the statutory obligations of the employer under this Code;
 - d) In case of an unsafe and unhealthy situation, as soon as practicable, report such situation to his employer or to the health and safety representative

We already said that it is not only the duty of the employer, there are certain duties to the employee as well. So, every employee in the workplace will take reasonable care for maintaining the health and safety of himself and also his fellow workman. So, he should not do such acts and commissions and omissions in the workplace which are going to be harmful to himself and other workmen.

And comply with the safety requirements and the health requirements specified in the standards, cooperate with the employer in meeting the statutory obligations and in case of an unhealthy, unsafe situation his employer, the safety of the representative is very important as far as the unsafe, reporting of an unsafe and unhealthy situation, reporting to the occupier. So, if the unsafe and unhealthy situation is continuous, so, it is the duty of every employee to report this to the Inspector cum-Facilitator.

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□ **Sec. 13: Duties of the Employee**

- e) In case of mine, if the employee faces any **unhealthy or unsafe situation**, shall immediately report to the agent or manager or safety officer or any other person, appointed by the employer, as prescribed by the appropriate govt;
- f) Not willfully interfere with or misuse or neglect any appliance, convenience or other thing provided at the workplace for the purpose of securing the health, safety and welfare of workers;
- g) Not to do, willfully and without reasonable cause, anything, likely to endanger himself or others; and
- h) Perform such other duties as prescribed by the appropriate govt.

And also, if such, we already said that a report immediately to the occupier, the agent, or the Safety Officer appointed by the employer. And at the same time no willful inference or misuse or neglect of any appliances or any machines, which is harmful to the health and safety of the workman. So, that means that no worker should inflict any injury themselves by his neglect.

And willful and without reasonable cause, if any endangers himself and others, so, he is not supposed to perform such other duties as prescribed by the appropriate governments. So, that means the state government should come out with the appropriate rules with regard to the performance of duties of employees also should be mentioned.

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❑ **Sec. 14: Rights of Employee**

- To obtain from employer information relating to employee's health and safety at work;
- To represent the employer directly or through a member of the Safety Committee;
- To give information regarding the imminent danger to health;
- To take immediate remedial action by the employer or the employee if he is satisfied with the existence of such imminent danger and send the report of such action to the Inspector-cum-Facilitator

Several rights are also there for every employee. So, this includes obtaining from the employer information relating to the employee's health and safety at work. So, we already said that the employer has to do a health checkup. It is the right of the employee to get the report from the employer and the status of the health of the employee.

And also, representing the employer directly through the members of the safety committee. And also, it is the right of every employee to give information regarding an imminent danger to the health, and also take immediate action against the employer. So, if such imminent danger exists and sends such a report of such action to the Inspector cum-Facilitator. So, these are some of the rights cast upon the employees.

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❑ **Sec. 15: Duty not to interfere with or misuse things**

- No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health, safety or welfare under this Code, 2020

And also, Section 15 of the code says, that duty not to interfere with the misuse of things. No person shall intentionally or recklessly interfere with the damage or misuse of anything which is provided in the interest of health, safety or welfare under the code. He is not supposed to damage any equipment, which is provided to the employee, or any fencing to the trolleys or pulleys or the machinery which is provided, or no equipment should be intentionally, or recklessly damaged by the employee.

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❑ **Chapter – X: Special Provision relating to employment of women**



So, as you can see, there are special provisions with regard to employment which we already said in the new code.

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❑ **Sec. 43: Employment of women**

- Women shall be entitled to be employed in all establishments for all types of work
- They also be employed, **with their consent before 6:00 AM and beyond 7:00 PM**, subject to certain conditions relating to safety, holidays and working hours or any other conditions, to be observed by the employer, as prescribed by the appropriate govt.

The new code permits the working of women from beyond 7 pm (7 pm to 6 am). The condition which is furnished, there must be sufficient safety provided to the women workers, and also the holidays and working hours to be provided, and also the working of women workers during the night shifts must be reported to the government. Now women can be worked and this will facilitate some of the service sectors of the night shift for women. So, adequate safety measures to be taken by the employer.

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□ **Sec. 44: Adequate safety of employment of women in dangerous operation**

- Where the appropriate govt considers that the **employment of women is dangerous to their health and safety, in an establishment or class of establishments, due to the operation carried out therein**, such govt may require the employer to provide adequate safeguards prior to the employment of women for such operation

And also, there must be adequate safety of employment of women. So, if the government thinks that, it is dangerous to health and safety, then the establishments, such operations, can be banned by the state government. And also in certain cases, the government can require the employer to provide adequate safeguards and equipment for the employment of women for such work.

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□ **Chapter – VIII: Maintenance of Registers, Records and Returns**

- **Sec. 33: Maintenance of registers, records and filing of returns**
 - An employer of an establishment shall-
 - a) Maintain register in the prescribed form, electronically or otherwise, containing such particulars of workers, including:
 - i. **Work performed by them;**
 - ii. **Number of hours of work constituting normal working hours of work in a day;**
 - iii. **Day of rest allowed in every period of 7 days;**
 - iv. **Wage paid and receipts given thereof;**
 - v. **Leave, leave wages, overtime work, attendance and dangerous occurrences; and**
 - vi. **Employment of adolescent**

And now, we come to the maintenance of registers and records. So, every employer to keep a series of records. Now, it is going to be electronic records. So, the prescribed firms, it may be through electronically or through another way around, the particulates about workers and also

safety health and also, the work performed by them, the working hours, normal working hours, overtime workers, and the day of rest allowed with wages and also leave wages, overtime work, attendance, and any occurrence of dangerous activities or incidents, and employment of adolescents to be recorded.

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❑ Chapter – VIII: Maintenance of Registers, Records and Returns

➤ Sec. 33: Maintenance of registers, records and filing of returns

- b) **Display notices** at the workplace of the workers in such a manner and form as may be prescribed by the appropriate govt.
- c) Issue **wage slips** to the workers, in electronic forms or otherwise; and
- d) File such **return electronically** or otherwise to the Inspector-cum-Facilitator in such manner and during such period as prescribed by the appropriate govt.

And there must be sufficient display notices about safety, sufficient notices about the worker's overtime, working hours etc. And every week, every month, every worker is to be paid wage slips in electronic format or other formats. And also sufficient returns are to be filed electronically with the Inspector cum-Facilitator every year, by the employer, with regard to the employment.

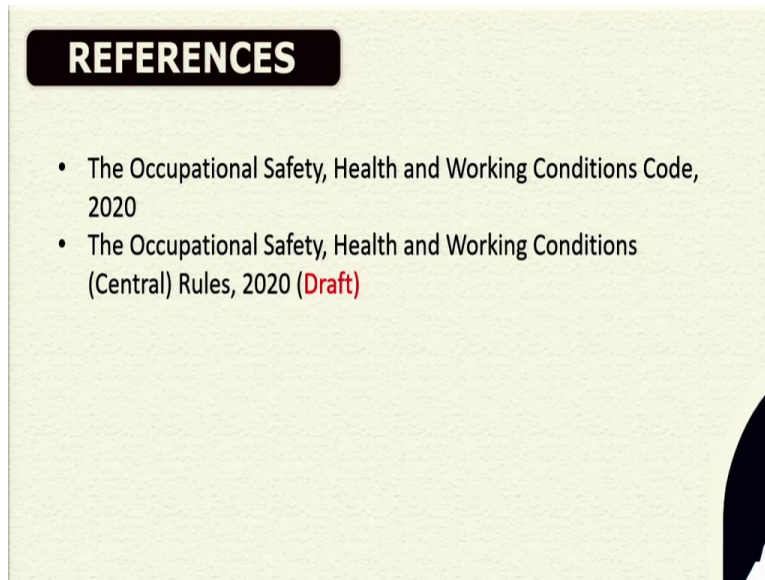
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CONCLUSIONS

- The Occupational Safety, health, and Working Condition Code, 2020 has elaborately mentioned the relevant procedures for maintaining registers, records and filing returns in due time.
- It comprehensively covered the rights, duties and responsibilities of employer and employee in case of a factory, mines, plantations, buildings and other construction work

So, we can see that, there is a series of improvements, a series of additions are made to the duties of employees as well as we can see that, especially focus on safety and health. And certain duties of employees are also clearly mentioned in the code. And certain rights of the employees are also clearly enumerated in the Occupational Safety, Health and Working Conditions Code. So, we can say that these provisions comprehensively cover the rights, duties, and responsibilities of the employer, and employees, those who are working in factories, mines, plantations, buildings, and other construction works, and other establishments are covered under the new code.

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So, this is going to change the Indian working environment safety standards and health standards in the factories and other establishments in the coming years. So, the rules are also going to be notified very soon to this extent. Thank you.