Law related to Transfer of Property Act

IMPORTANT DEFINITIONS

Absolute interest
It means ownership which consists of a bundle of rights, rights to possessions, right to enjoyment etc. or any other way so that an owner can deal or dispose of.

Reversion
The residue of an original interest which is left after the granter has granted the lessee a small estate. Example if a property has given on lease for 5 years, after the period of 5 years, the ‘property which reverts back to him is called the reversion or reversionary interest.

Remainder
When the owner of the property grants a limited interest in favour of a person or persons and gives the remaining to others, it is called a "remainder". For instance, A the owner of a land transfers property to B for life and then to C absolutely. Here the interest in favour of B is a limited interest, so after B’s death the property will go to C, interest is called a remainder.

Vested Interest and Contingent Interest
Vested interest (Section -19)

- Word vest has two references here:
  - Vested in possession.
  - Vested in interest.
- Vested in possession means right to present possession of property,
- Vested in interest means present right to future possession of property,
- Vested interest means interest created in favour of person which is not subject to happening of an event or if subject to the happening of an event, then such event is bound to happen.

Example:
- Property is given to A for life with a remainder to B, A’s right is vested in possession; B’s right is vested in interest.
- Vested interest is transferable and heritable.
- If transferee dies before taking possession of property, such property passes to his legal representative.

Contingent interest

- Contingent interest means interest, created in favour of person, which will take effect on happening or non-happening of specified uncertain event
- Example A transfer property to B until B marries, and after marriage of B, to C. C has contingent interest in property.

<table>
<thead>
<tr>
<th>Basis</th>
<th>Vested interest</th>
<th>Contingent interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition</td>
<td>It does not depend on fulfillment of any condition.</td>
<td>It depends upon fulfillment of condition.</td>
</tr>
<tr>
<td>Right &amp; Enjoyment</td>
<td>It present immediate right but its enjoyment may be postponed to some future date.</td>
<td>Right of enjoyment accrues on happening of an event which is uncertain.</td>
</tr>
<tr>
<td>Transferee’s Death</td>
<td>It is not defeated by death of transferee</td>
<td>It is defeated by death of transferee</td>
</tr>
<tr>
<td>Transferability</td>
<td>It is transferable and heritable.</td>
<td>Contingent interest is non transferable</td>
</tr>
</tbody>
</table>

Movable and immovable property

Movable property
- Movable property is not defined under Transfer of Property Act.
- As per General Clauses Act, 1897 Movable property means “property of every description except immovable property”.

<table>
<thead>
<tr>
<th>Basis</th>
<th>Vested interest</th>
<th>Contingent interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition</td>
<td>It does not depend on fulfillment of any condition.</td>
<td>It depends upon fulfillment of condition.</td>
</tr>
<tr>
<td>Right &amp; Enjoyment</td>
<td>It present immediate right but its enjoyment may be postponed to some future date.</td>
<td>Right of enjoyment accrues on happening of an event which is uncertain.</td>
</tr>
<tr>
<td>Transferee’s Death</td>
<td>It is not defeated by death of transferee</td>
<td>It is defeated by death of transferee</td>
</tr>
<tr>
<td>Transferability</td>
<td>It is transferable and heritable.</td>
<td>Contingent interest is non transferable</td>
</tr>
</tbody>
</table>

Movable and immovable property

Movable property
- Movable property is not defined under Transfer of Property Act.
- As per General Clauses Act, 1897 Movable property means “property of every description except immovable property”.

<table>
<thead>
<tr>
<th>Basis</th>
<th>Vested interest</th>
<th>Contingent interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition</td>
<td>It does not depend on fulfillment of any condition.</td>
<td>It depends upon fulfillment of condition.</td>
</tr>
<tr>
<td>Right &amp; Enjoyment</td>
<td>It present immediate right but its enjoyment may be postponed to some future date.</td>
<td>Right of enjoyment accrues on happening of an event which is uncertain.</td>
</tr>
<tr>
<td>Transferee’s Death</td>
<td>It is not defeated by death of transferee</td>
<td>It is defeated by death of transferee</td>
</tr>
<tr>
<td>Transferability</td>
<td>It is transferable and heritable.</td>
<td>Contingent interest is non transferable</td>
</tr>
</tbody>
</table>

Movable and immovable property

Movable property
- Movable property is not defined under Transfer of Property Act.
- As per General Clauses Act, 1897 Movable property means “property of every description except immovable property”.

<table>
<thead>
<tr>
<th>Basis</th>
<th>Vested interest</th>
<th>Contingent interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition</td>
<td>It does not depend on fulfillment of any condition.</td>
<td>It depends upon fulfillment of condition.</td>
</tr>
<tr>
<td>Right &amp; Enjoyment</td>
<td>It present immediate right but its enjoyment may be postponed to some future date.</td>
<td>Right of enjoyment accrues on happening of an event which is uncertain.</td>
</tr>
<tr>
<td>Transferee’s Death</td>
<td>It is not defeated by death of transferee</td>
<td>It is defeated by death of transferee</td>
</tr>
<tr>
<td>Transferability</td>
<td>It is transferable and heritable.</td>
<td>Contingent interest is non transferable</td>
</tr>
</tbody>
</table>

Movable and immovable property

Movable property
- Movable property is not defined under Transfer of Property Act.
- As per General Clauses Act, 1897 Movable property means “property of every description except immovable property”.

<table>
<thead>
<tr>
<th>Basis</th>
<th>Vested interest</th>
<th>Contingent interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition</td>
<td>It does not depend on fulfillment of any condition.</td>
<td>It depends upon fulfillment of condition.</td>
</tr>
<tr>
<td>Right &amp; Enjoyment</td>
<td>It present immediate right but its enjoyment may be postponed to some future date.</td>
<td>Right of enjoyment accrues on happening of an event which is uncertain.</td>
</tr>
<tr>
<td>Transferee’s Death</td>
<td>It is not defeated by death of transferee</td>
<td>It is defeated by death of transferee</td>
</tr>
<tr>
<td>Transferability</td>
<td>It is transferable and heritable.</td>
<td>Contingent interest is non transferable</td>
</tr>
</tbody>
</table>

Movable and immovable property

Movable property
- Movable property is not defined under Transfer of Property Act.
- As per General Clauses Act, 1897 Movable property means “property of every description except immovable property”.

<table>
<thead>
<tr>
<th>Basis</th>
<th>Vested interest</th>
<th>Contingent interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition</td>
<td>It does not depend on fulfillment of any condition.</td>
<td>It depends upon fulfillment of condition.</td>
</tr>
<tr>
<td>Right &amp; Enjoyment</td>
<td>It present immediate right but its enjoyment may be postponed to some future date.</td>
<td>Right of enjoyment accrues on happening of an event which is uncertain.</td>
</tr>
<tr>
<td>Transferee’s Death</td>
<td>It is not defeated by death of transferee</td>
<td>It is defeated by death of transferee</td>
</tr>
<tr>
<td>Transferability</td>
<td>It is transferable and heritable.</td>
<td>Contingent interest is non transferable</td>
</tr>
</tbody>
</table>
As per Section 2(9) of Registration Act it include property of every description excluding immovable property but including standing timber, growing crops and grass.

**Example of movable property**
- Machinery fixed on land temporary.
- Intellectual property right.
- Standing timber and growing grass
- Right to recover maintenance allowance.
- Royalty.
- Copyright.

**Immovable Property**
- Not defined under Transfer of Property Act. As per Section 3, immovable property does not include standing timber, growing crop and grass.

  **Standing timber**s are tree fit for use for building or repairing houses. This is an exception to the general rule that growing tree are immovable property.

  (1) **Growing Grass**:- It includes all vegetables growths which have no existence apart from their produce such as pan leave, sugarcane etc

  (2) **Grass**:- Grass is an movable property, but if it is right to cut grass it would be an interest in land and hence forms immovable property.
- As per Section 3(25), General Clauses Act, 1 897 Immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth.
- The Indian Registration Act expressly includes under to immovable property the benefits to arise out of land, hereditary allowances, rights of way, lights, ferries and fisheries.
- In the case of **Sukry Kurdepa v. Goondakull** (1872) court has explained that movability may be defined to be a capacity in~ a thing of suffering alteration. On the other hand, if a thing cannot change its place without injury to the quality it is immovable.

  ➢ **Example of immovable property**
  - Chattel embedded in earth.
  - Easement.
  - Right of way.
  - Right of enjoyment of immovable property under lease.
  - A right of fishery.
  - A right to collect rent of immovable property.
  - Interest of mortgagee.

**Difference between movable and immovable property**

<table>
<thead>
<tr>
<th>Basis</th>
<th>Movable Property</th>
<th>Immovable property</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The movable property can easily be</td>
<td>The immovable property cannot easily</td>
</tr>
</tbody>
</table>
### Movement
Transported from one place to another, without changing its shape, capacity, quantity or quality.

### Transfer
Mere delivery with intention to transfer the movable property completes the transfer.

### Registration
Registration is optional under the Indian Registration Act, 1908.

### Illustration
Mango trees, if cut and sold for timber purpose, are deemed as movable property.

### Examples
- Vehicles, books, utensils, timber, etc.
- Land, houses, trees attached to the ground; so long they are so attached.

#### Rules relating to transfer of property

**Transfer may be gift, sale, mortgage, pledge, charge, lease, actionable claims.**

**Meaning of transfer (Whether movable or immovable) - Section 5**
- Transfer of property means an act by which a living person convey property in present or in future to one or more other living person, to himself, and one or more other living person.
- Living person includes a company or association or body of individuals whether incorporated or not.

**Legal rules for a valid transfer**
- Property must be transferable.
- Transferor and transferee must be competent.
- Consideration and object of transfer must be lawful.
- Transfer must take place as per method prescribed under the Act.

**Who can transfer property – Section 7**
- Every person, competent to contract and having ownership can transfer property.
- A minor can be a transferee but a minor is not competent to be a transferor.
- Persons who are authorised to transfer property can also transfer property validly.

**Subject matter of transfer – Section 6**
- Every kind of property can be transferred. But following properties cannot be transferred:
  - Chance of an heir apparent.
  - Right of re-entry.
• Transfer of easement.
• Restricted interest.
• Right to future maintenance.
• Right to sue.
• Transfer of public office, salary and pension

Formalities for transfer – Section 54

• Movable property
  ▪ Orally (by delivery of possession)
  ▪ Writing (by executing agreement)

• Immovable property
  ▪ Tangible
    o Value of 100 Rs. or above (Registration mandatory)
    o Value of less than 100 Rs. (Registration optional)
  ▪ Intangible
    o Registration compulsory

Property which cannot be transferred – Section 6

General Rule: Every kind of property can be transferred. But following properties cannot be transferred:

Chance of heir apparent (Spes successionis)

• This means an interest which has not arisen in future. It is in anticipation or hope of succeeding to an estate of a deceased person. Such a chance is not property and as such cannot be transferred, if it is transferred, the transfer is wholly void.
• Example: A is the owner of the property and B is his son. B is the heir of A. This type of property which B hopes to get after the death of the father cannot be transferred, during the life time of A.

Right of re-entry

• It means right of lessor to re-claim the leased property from lessee on breach of contract or express condition. It is personal benefit which can’t be transferred.
• Example: If A leases his property to B with a condition that if he sublets the leased land, A will have the right to reenter, i.e., the lease will terminate. This right to re-enter is personal benefit available to A, which can’t be transferred.

Transfer of easement

• An easement means an interest in land owned by another that entitled his holder to a specific limited use or enjoyment. An easement cannot be transferred.
• Example: If A, the owner of a house X, has a right of way over an adjoining plot of land belonging to B, he cannot transfer this right of way to C. But if A transfers the house itself to C, the easement is also transferred to C.
Restricted interest

- Certain rights enjoyment of which is reserved for certain person. If it is so, it is known as restricted interest. Restricted interest can’t be transferred to another person. It includes ‘religious office’.
- Example: The right of PUJARI in a temple to receive offering.
  The right of WIDOW under Hindu law to residence.

Right to future maintenance

- Right to future maintenance is personal benefit to whom it is granted. However arrears of past maintenance can be transferred.
- Example: The right of a Hindu widow to maintenance is a personal right which cannot be transferred.

Right to sue

- A mere right to sue cannot be transferred. The right refers to a right to damages arising both out of contracts as well as torts.
- Example: A commits an assault on B. B can file a suit to obtain damages; but he cannot assign the right to C and allow him to obtain damages.

Transfer of public office

- It is against public policy to transfer public offices, salary and pension. Pension and salary are given on personal basis, it can’t be transferred.

Occupancy Rights

- Transfer of occupancy rights of a tenant is prohibited.
- Example: Tenant can’t transfer his right of tenancy and farmer can’t transfer his right to land if he himself is a lease.

Restraint on transfer or rule against inalienability

**Restraint on transfer - Section 10**

- If any property is transferred subject to a condition or limitation which absolutely restrains the transferee from parting with or disposing of his interest in the property such condition or limitation and not the transfer itself is void.
- Restraint on alienation of property may be either absolute or partial.
- Absolute restraint is void and transfer is valid, while partial restraint as regard to time, place or person is valid.
- Absolute restraint: If A transfers property to B and his heirs with a condition that if the property is alienated, it should revert back to A. Such a condition, being absolute, is void.
- Partial restraint: A transfer property to B with condition that he should not alienate it in favour of D who is his trade competitor. It contains partial restraint and therefore valid.

Exceptions to rule of restraint on transfer:
• In case of lease transition, lessor can impose condition that the lessee shall not sub lease it.
• In case of married woman, a condition that she will not have right during her marriage, to transfer the property.

Restraint on enjoyment - Section 11
• When property is transferred absolutely, transferee has right to enjoy property as he likes,
• When transferor place restriction on the enjoyment of property which is transferred to transferee, restriction is treated as clog on property and such restriction is void.
• Example: A sells his house to B with condition that only B shall reside in the house. The condition is invalid.

Exception to Section 11:- If a person transfers a property to another keeping some other property for himself, he can impose certain condition which may interfere with the rights of enjoyment of the transferee.

Example:- A person has 2 adjoining houses, one of which is transferred, he may impose a condition not to construct a second floor on a property because transferor will not able to enjoy sunlight.

Condition as to insolvency - Section 12
• If person transfer property to another person with condition that property will be revert to transferor if transferee becomes insolvent, It is invalid condition.
• Exception: If lessor reserve right to get back leased property on declaration of lessee as insolvent, it is valid condition.

Illegal or impractical condition - Section 25
• Interest created in a property under transfer, which depends on a condition the performance or satisfaction of which is either impracticable or disallowed under law or fraudulent or harmful to the person or property of another, is invalid.

DOCTRINE OF ACCUMULATION OF INCOME (SEC 17)

Section 17 does not allow accumulation of income from the land for an unlimited period without the income-being enjoyed by the owner of the property. The laws allow accumulation of income for certain period only. The period for which such accumulation is valid is:-

The life of the transferor; or period of eighteen years from the date of transfer.

Any direction to accumulate the income beyond the period mentioned above is VOID.

EXCEPT MENTIONED BELOW:-
• The payment of the debts of the transferor or any other person taking any interest under the transfer, or
• The provisions of portions for children or any other person taking interest in the property under the same transfer, and
• The preservation or maintenance of the property transferred.

**Example**: A settles the sum of Rs. 5,000 for the benefit of B on 1st January, 1979 and directs the trustee to invest the money in units of the Unit trust of India and to deliver the total accumulated income and the units to B on the turn of the century. B would be entitled to the accumulated income and the units before the stipulated period, i.e. on 1st January, 1997 i.e. 18 years after 1st January, 1979. The accumulation of incomes is valid up to 31st December, 1996 and would be void beyond the period.

**Transfer for benefit of unborn person Section 13**

Generally property can only be transferred to living person, as on date of transfer, i.e property cannot be directly transferred to unborn person. However there are certain exception to this rule.

**Transfer for benefit of unborn person - Section 13**

• No direct transfer can be made to an unborn person
• Interest of the unborn person must be preceded by a prior interest.
• The prior interest must also be created by the same transfer.
• The unborn person must be exclusive owner of whole of property.

**Example**: Where A transfers property, of which he is the owner to B, in trust for A and his intended wife, successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A’s second son, the interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A’s remaining interest in the property.

**Rule against perpetuity - Section 14**

Perpetuity means continuing forever. Rule provides that no transfer of property can operate to create an interest, which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration for that period, and to whom, if he attains full age, the interest created is to belong.

**Following are elements of rule against perpetuity:**

• Property can be transferred to different living persons for their successive lives, before property is transferred to unborn person.
• Unborn person must come in to existence before expiry of existing life of transferor.
• Transfer must be absolute.

**Example 1:**

• A transfers a piece of land to his friend B for life, and
• afterwards to his friend C for life,
• then to his friend D for life, and
• then to the son that may be born to B, for his son’s life,
• then to the son that may be born to C for his life, and
• then ultimately to the son that may be born to D forever.

In case of such disposition of the land, B cannot alienate the property, because he has only a life interest therein. For the same reason, neither C nor D, nor the sons of B and C can alienate the property.

When the property finally vests in D’s son, only he will be entitled to alienate the property. This would be certainly a restraint on the free alienation of the piece of land for a considerable long period. Section 14 prevents this and lays down that one can tie up property and stop it’s free alienation only for one generation, because all friends of A, now living must die within that time, as they are all candles lighted together.

**Exampe2:-** A child is 10 year old and he will become owner of property at 18 years of age. So the perpetuity is 8 years

**Exception to Rule against perpetuity**
• When land is purchased or property is held by corporation.
• Where property is transferred by way of gift for benefit of public.
• Personal agreement.
• Agreement for perpetual lease.
• Gift to charity

### Conditional Transfer

**Meaning**
- When an interest is created on the transfer of property but is made to depend on the fulfillment of a condition by the transferee, the transfer is known as a conditional transfer.
- Such a transfer may be subject to a condition precedent or a condition subsequent.

### Difference between condition precedent and condition subsequent

<table>
<thead>
<tr>
<th>Basis</th>
<th>Condition precedent</th>
<th>Condition subsequent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Meaning</strong></td>
<td>A condition precedent is one which must happen before the estate can commence.</td>
<td>A condition subsequent is one by the happening of which an existing estate will be defeated.</td>
</tr>
<tr>
<td><strong>Vesting</strong></td>
<td>Vesting of estate is postponed till the condition is performed.</td>
<td>Vesting is immediately completed and not postponed.</td>
</tr>
<tr>
<td><strong>Divestment</strong></td>
<td>Once the interest is vested it can never be divested on the ground of non-fulfillment of the</td>
<td>Though the interest is vested it is liable to be divested on the ground of no-fulfillment of condition.</td>
</tr>
</tbody>
</table>
Rights affected | Acquisition of an estate is affected in the condition precedent. | Retention of the estate is affected in the condition subsequent.
---|---|---
Validity | In condition precedent the condition must be valid in the eyes of law. | In condition subsequent the condition’s invalidity will be ignored.
Example | A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. But E dies and B marries with the consent of C and D. B is deemed to have fulfilled the condition. This condition is called a condition precedent. | A transfer his house property to B with condition that if he let it out on rent, the transfer shall cease to have any effect. B let out property on rent. He loose his interest in property.

**Doctrines of Election**

**Meaning**
- Election means “choice”. A person can’t accept part of agreement which is beneficial and reject other part which is burdensome. He can either accept agreement entirely or reject entirely.
- Person taking benefit of instrument must also bear the burden.
- The doctrine of election is based on the principle of equity.
- The principle of the doctrine of election was explained by the House of Lords in the leading case of *Cooper vs. Cooper*.
- Election may be express or implied by conduct.
- **Example**: A transfers to you his land, and in the same deed of transfer asks you to transfer your house to C. Now, if you want to have the land, you must transfer your house to C, because the transferor is transferring to you his land on the condition that you give your house to C. Here, either you take the land and part with your house or do not take it at all. This is called the doctrine of election.
- Question of election does not arise when benefit is given to a person in a different capacity.

**Doctrines of Holding out/Transfer by ostensible owner Section 41**

**Meaning**
- Doctrine is an exception to the rule that a person cannot confer a better title than what he has.
- Where owner of property permits (expressly or impliedly) another person who is not owner of the property to hold himself as owner of property and third party deal in good faith with person so permitted, such third party acquire good title as against true owner.
Example
A made a gift of property to B but continued in possession of the gifted property. He purported to exercise a power of revocation and then transferred the property to the C. The gift, however, was not revocable as it was an unconditional gift. B seeks to recover possession from the C. C can get protection under Section 41.

**Doctrines of feeding grant by estoppels - Section 43**

**Meaning**
Where person who purport to grant interest in property, which he did not at the time possess but subsequently acquires, benefit of subsequent acquisition goes automatically to earlier grantee. It is known as feeds estoppel.

**Example**
A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that he (i.e. A) is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition, but on B’s dying, A as heir obtains Z. C not having rescinded the contract of sale, may require A to deliver Z to him.

**Exceptions to doctrine of feeding grant by espoppel**
- If the transfer is invalid for being forbidden by law or contrary to public policy.
- If the contract comes to an end before acquisition of the property by the transferor.
- This section has no application to Court sales.
- The right is not available against the bona fide purchasers for value without notice.

**Doctrines of Lis Pendens - Sec-52**

**Meaning**
- Lis means ligation and pendens means pending
- Lis pendens means pending suit or petition before court.
- During the pendency of suit or petition before any court, property which is subject matter of litigation can't be transferred by any party, except with consent of court.
- If any party has transferred property under litigation in suit, transferee is bound by judgment of court.

**Example**
Specific office building is under litigation. B and C are parties to litigation. B during pendency of suit transfers property to A. The suit ends in favour of C. A is bound by order of court and C can recover property from A.

**Exception**
Doctrine of lis pendens is not applicable when the property has been transferred by stranger. (i.e. a person who is not party to litigation)
For Example:- suits is pending two brothers and father has transferred property to another person.

Doctrines of Fraudulent transfer section- 53

Doctrine of fraudulent transfer

Meaning
- When debtor transfers immovable property with intent to defeat or delay his creditors, transfer of property shall be voidable at option of any creditor so defeated or delayed.
- This doctrine discourages fraudulent transfer of property.
- This doctrine gives right to defraud creditor to challenge transfer of property in court and get order from court that transfer is invalid.

Example
A takes a loan from the C and fails to pay the loan. C sues him in a Court to get back his debt. A knows that his property will be applied by court for repayment of his loan. Meantime, he transfers his property to a friend who simply holds the property on behalf of the transferor. Here, property is transferred to his friend with fraudulent intention.

Doctrines of Part Performance Section 53 A
- Transferor cannot take back property only on ground of non – registration of documents, if the transferee has performed his part of contract and has also taken possession of property or part of it.
- Doctrine prohibit transferor from taking back property.

Conditions
- Contract for transfer of property should be for consideration.
- Terms necessary to constitute transfer must be ascertainable with reasonable certainty from contract.
- Transferee should have taken possession of property in part performance of contract.
- Transferee must have already fulfilled or ready to fulfilled his obligation under contract.

Provisions relating to sale of immovable property Section 54

Meaning
Sale means transfer of ownership in consideration of price. Price is paid or promised to be paid.

Essential of sale of immovable property
- Subject matter is transferable property.
- There must be two parties (i.e. seller and buyer).
- Parties must have capacity to enter into contract.
- There must be consideration. I Property must be transferred absolutely.
- Stamp duty and other formalities should be complied with.
Procedure
- By registered instrument if it is of value of Rs. 100 or more.
- By registered instrument or by delivery of property when it is less than Rs. 100 in value.

Example:-- A document is executed by the donor who make a gift of immovable property and the deeds are delivered to done. The done accepts the gift but the document is not registered. Will the gift be valid?

Provisions relating to exchange of immovable property Section 118

Meaning
“When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an exchange.”

Example:-- Exchange of a car for two scooters or exchange of a house for 10 hectares of land.

Essentials of exchange
- Both parties must be competent to contract.
- Exchange should be with mutual consent of parties.
- There must be mutual transfer of property.
- Neither party has paid any money.

Provision Relating to gift Section 122-129

Meaning
- Gift means transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person to another.
- Person who transfer property is known as donor. Person in whose favour property is transferred is known as donee.

Essentials of gift:
- Transfer of ownership from donor to donee.
- Transfer must be made voluntarily and without consideration.
- Transfer must be accepted by donee. Acceptance by donee should be during his lifetime.
- Subject matter should be existing property. It may be movable or immovable property.

Procedure
- A gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor,
- And attested by at least two witnesses.

Provisions relating to Lease and Licence

Meaning of Lease Section 105
• It is transaction whereby one person transfers the right to enjoy in an immovable property to another person for specific time or perpetuity for consideration.
• The person who transfer right in property is known as lessor. The person in whose favour right in property is transferred is known as lessee.

Essentials of lease:
• Transfer of a right to enjoy immovable property.
• Transfer is for specific time or for perpetuity.
• There must be consideration which is paid or promised to be paid. Here premium or rent is known as consideration.
• Transfer must be accepted by transferee.

Meaning of licence
Licence means right granted in respect of immovable property to enjoy certain benefits on land in some way or other while it remains in the possession and control of owner.

<table>
<thead>
<tr>
<th>Difference Between Lease and Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lease</strong></td>
</tr>
<tr>
<td>1 A lease is a transfer of interest in land</td>
</tr>
<tr>
<td>2 A lease involves a transfer of interest followed by possession of the property in question</td>
</tr>
<tr>
<td>3 Exclusive possession of the property in question is given to the transferee.</td>
</tr>
<tr>
<td>4 A lessee has to be served with notice to quit before eviction.</td>
</tr>
<tr>
<td>5 A lease is generally transferable</td>
</tr>
<tr>
<td>6 A lease is generally not revocable</td>
</tr>
<tr>
<td>7 A lease is unaffected if the lessor transfers the property.</td>
</tr>
<tr>
<td>8 A lease does not get terminated on account of the death of the lessor.</td>
</tr>
<tr>
<td>9 The document-creating lease generally requires registration.</td>
</tr>
</tbody>
</table>
There can be sub-lease after assigning the rights in favour of third party unless refrained in this regard.

There is no such eventuality

**Provisions relating to actionable claim Section 3**

**Meaning**
- Actionable claim means a claim to unsecured debt. Here debt is not secured by the mortgage of immovable property or by pledge of movable property.
- The debt may be existing, accruing, conditional or contingent.

<table>
<thead>
<tr>
<th>What is actionable claim</th>
<th>What is not actionable claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrears of rent.</td>
<td>Secured debenture.</td>
</tr>
<tr>
<td>Money due under insurance policy.</td>
<td>A claim which is decreed.</td>
</tr>
<tr>
<td>Claim for rent to fall due in future.</td>
<td>Relinquishment of interest of a member retiring from joint Hindu Family business</td>
</tr>
<tr>
<td>Benefit of a contract giving option to purchase the land.</td>
<td>Right to Sue</td>
</tr>
</tbody>
</table>

**Example**
A borrows Rs 5000/- from B at 12% per annum interest on 1st April, 2016 and promise to pay back the amount with interest on 1st July 2016. Till 1st July 2006 the debt is an accruing debt and is an actionable claim.

The partner’s right to sue for accounts of dissolved partnership is an actionable claims being a beneficial interest in movable property not in possession. *(Thakardas Vs Vishindas)*

**Provisions relating to mortgages - Section 58**

**Meaning**
Mortgage means transfer of an interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of loan or performance of an engagement which may give rise to pecuniary liability

**Essentials of mortgages**
- There must be transfer of an interest in immovable property.
- Property must be specific
- Transfer is for securing payment of loan or debt

**Types of Mortgage**

**Simple Mortgage Section 58 (b)**
Meaning
Mortgagor gives personal undertaking to the mortgagee to repay amount due under the mortgage, without delivering possession of mortgaged property, then it is called as simple mortgage.

**Essential elements**
- There should be a personal obligation on the part of the mortgagor to pay the debt.
- An express or implied power is given to the mortgagee to cause the Property to be sold through the intervention of the Court.
- There is no transfer of ownership.

**Mortgage by conditional sale Section 58 (c)**

**Meaning**
Where the mortgagor apparently sells the mortgaged property on any of the following conditions:
- If loan is repaid, sale becomes void.
- If loan is not repaid at specific time, sale will become absolute and binding.
- If loan or debt is paid off within specific time, mortgaged property is re-transferred to the mortgagor.

**Usufructuary mortgage Section 58 (d)**

**Meaning**
It is also known as mortgage with possession. Where mortgagor deliver possession of property to mortgagee and authorised him:
- To retain possession of property until payment of money or debt and
- To receive the rents and profits accruing from property in payment of mortgage money.

**English mortgage Section 58 (e)**

**Meaning**
When the mortgagor binds himself to repay mortgage money on certain date, and transfer the mortgage property absolutely to mortgagee but subject to condition that he will re-transfer it to mortgagor upon payment of mortgage money as agreed, mortgage is known as English mortgage.

**Essential elements**
- English mortgage is followed by delivery of possession.
- There is a personal covenant to pay the amount.
- It is effected by an absolute transfer of property, with a provision for retransfer in case of repayment of the amount due.
- Power of sale out of Court is given on certain persons under certain circumstances.

**Mortgage by deposit of title deed Section 58 (f)**

**Meaning**
It is also known as equitable mortgage. Where mortgagor delivers to mortgagee documents of title of property with intent to create security thereon, the transaction is known as mortgage by deposit of title deed.

**Essential elements**
• It is created in specific towns by deposit of title-deeds, even though the property is situated outside those towns.
• It is effected by deposit of material title-deeds. It is not necessary that all the deeds should be deposited. It is sufficient if material documents are deposited.
• Delivery of possession of property does not take place.
• This mortgage is made to secure a debt or advances made, or to cover future advances.
• This mortgage prevails against a subsequent transferee who takes under a registered instrument.
• This mortgage prevails against all who are not bonafide purchasers for value without notice.

Anomalous mortgage Section 58(g)
Meaning
A mortgage which does not belong to any of above categories is known as anomalous mortgage. It is combination of two or more mortgages. Possession may or may not be delivered in anomalous mortgage.

Right related to mortgaged property

Right of redemption Section 60
• Mortgagor has right to redeem property provided as security.
• Redemption means to take back the mortgaged property by paying the mortgage money at any time after stipulated date for repayment.
• Mortgagor can exercise this right:
  • Before right is extinguished by the act of parties or by decree of court, or I Before it is barred by Limitation Act.
  • As per Limitation Act, mortgagor can redeem the property within 60 years after the money has become due.
  • This right to redeem the property even after the time of payment has elapsed is called the Right or Equity of Redemption. But the mortgagor is not entitled to redeem before the mortgaged money becomes due on the date fixed for repayment of loan. His right to redeem arise only when mortgaged money becomes due and not before.
  • Example: A borrows money on a mortgage and agree to pay it back after 10 years. A has obtained gift of money from his relative at end of 5th year from date on which he borrowed money. Now, A wants to pay the loan and redeem his property. He can’t do so, because the right to redeem arises only when the money has become due at the end of 10 years.

Doctrine on clog of equity redemption
• Mortgagor has right of redemption by virtue of mortgage deed.
• This right is considered to be inalienable, and cannot be taken away from a mortgagor by means of any contract to the contrary.
• Redemption means the act of the vendor of property in buying it back again from the purchaser at the same or an enhanced price.
Section 60 of the Transfer of Property Act, 1882 authorise mortgagor to get his property back from the mortgagee on paying the amount borrowed from him.

Clog on a right means the insertion of any clause or any provision under the mortgaged deed which would alienate mortgagor of his property under certain circumstances.

As per Act, such provisions would not be able to alienate a mortgagor of his “Right of Redemption”, and such provisions would be void-ab initio.

Right of redemption shall remain effective unless the property has been sold off or under any statutory provision.

Even if mortgagee has went to the court for the foreclosure of the property mortgaged, mortgagor can redeem his property by paying off the full amount in the court.

Doctrine of marshalling - Section 81
If the owner of two or more properties mortgaged them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of the contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee. This is known as the Doctrine of Marshalling.

Provisions relating to charge - Section 100

 meaning

Where immovable property of one person is by act of parties or by operation of law made security for repayment of money of other and transaction is not mortgage it is called charge.

All provision which are applicable to simple mortgage are applicable to such charge. Charge can be either fixed or floating charge

Fixed Charge

- When charge is created on Specific property, it is known as fixed charge.
- Example: Charge created on office building situated in particular locality.
- Fixed charge can't be converted into floating charge.

Floating Charge

- When charge is created not on specific property but class of property, it is known as floating charge.
- Floating charge is charge on class of assets both present and future. In ordinary course of business, it is changing from time to time.
- In case of floating charge, person can deal with property in ordinary course of business. Here, deal with property means, person may use its assets charged.
- Floating charge can be converted into fixed charge.
- Example: Charge created on plant and machinery of factory.

A floating charge was created by a mortgage of book and other debts which shall become due during the continuance of this security. (Reyork shive Wool Combers Association, Supra).
**Crystallisation of floating Charge.**

A floating charge become fixed or crystallizes in the following cases:

(a) When the money become payable under a condition in the debenture and the debenture holder take some steps to enforce the security.
(b) When the company ceases to carry on business.
(c) When the company is being wound-up.

**Difference between mortgage and charge**

<table>
<thead>
<tr>
<th>Mortgage</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. It is transfer of an interest in specific immovable property made by a mortgagor as a security for the loan.</td>
<td>1. It does not involve transfer of any interest in the property although it serves as a security for the payment of the loan.</td>
</tr>
<tr>
<td>2. It is created by act of parties.</td>
<td>2. It may be created by act of parties or by operation of law</td>
</tr>
<tr>
<td>3. It can be enforced against any transferee whether he takes it with or without notice or mortgage.</td>
<td>3. It cannot be enforced against bone fide transferee for consideration having no notice of charge.</td>
</tr>
<tr>
<td>4. In a mortgage the mortgage can foreclose the mortgaged property.</td>
<td>4. A charge –holder cannot foreclose the property on which he has a charge .He can however get the property sold as in a simple mortgage.</td>
</tr>
<tr>
<td>5. In a mortgage ,there can be security as well as personal liability</td>
<td>5. In a charge created by act of the parties when a particular property is specified the remedy of the charge-holder is against the property only.</td>
</tr>
</tbody>
</table>
Prevention of Money Laundering

Conversion of black money / Tainted money into white money/ untainted money

Meaning

A person commits the offence of money laundering who:

→ acquires, owns, possesses or transfers any {proceeds of crime}

→ Knowingly enters into transaction which is related to {proceeds of crime} directly / indirectly.

→ Conceals (or) aids/helps in concealment of {proceeds of crime}

Proceeds of crime

Any property derived/obtained Directly (or) indirectly by any Person as a result of criminal activity relating to a Scheduled offence

Offence specified in PART "A" of schedule of this Act

→ Waging a war against the GOI

→ Offence related to narcotics etc.

Offence specified in PART "B" of schedule of this Act

→ Murder

→ Kidnapping for ransom

→ Offences relating to arms

→ Wildlife

→ Offence in which total value involved ≥ 1Cr

Objectives of the Act

• To prevent money laundering
• To prevent channelizing money into illegal activities and economic crime
• To provide for confiscation of property derived from or involved in money laundering
• To punish those who commit the offence of money laundering
Important Definitions

Property
Any property or assets of every description, whether movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Scheduled Offence - Section 2(1)(y) means
- The offences specified under Part A of the Schedule or
- the offences specified under Part B of the Schedule, if the total value involved in such offence is Rs. 1 crore or more, or

The offences specified under Part C of Schedule.

Offence of Cross Border Implication
"Offence of Cross Border Implication" includes:
- Any activity of person resident outside India which constitute an:
  - Offence at that place and
  - Which would have been constituted offence under Part A, B or C, had it been committed in India and
  - Such person remit proceed of conduct to India; or
- Any offence committed under Part A, B or C of schedule :
  - Which has been committed in India and
  - Proceed has been transferred out of India or attempt has been made to transfer proceed of crime out of India.

Persons carrying on Designated Business or Profession means
- A person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino.
- Real estate agent, as may be notified by the Central Government.
- Dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government.
- Person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons.
- Person carrying on such other activities as the Central Government may, by notification, so designate, from time to time. (For example : Insurance broker).

Adverse effect of money laundering
- Economic Distortion and Instability. Economic growth can suffer because of this.
- Increase corruption and crime.
- Criminals acquire control over market and financial institutions by investment.
- It distorts capital, trade flows and reduces the revenue in terms of tax
- Weaken social and ethical standards prevailing in society.
- Increase in Criminal Activities.
Process of Money Laundering

Stage (1) Placement
Money launderer invest his illegal profit into financial system by breaking up large amount into smaller amount.

Stage (2) Layering
Rotates his investment in series of transaction to create distance from their source.

Stage (3) Integration
Now money launderer collect such small amount into larger amount and enters the legitimate economy by moving into
- Real estate
- Business ventures
- Film Industries
- Share market etc.

Fine / penalty for Money Laundering

Fine ➔ ? Or/and
Imprisonment ➔ Minimum (3) years
Maximum (7) years

Where proceeds of crime involved in money laundering is related to the crime other than specified under paragraph 2 of Part A of the Schedule.

Fine ➔ ? Or/and
Imprisonment ➔ Minimum (3) years
Maximum (10) years

Where proceeds of crime involved in money laundering is related to crime specified under paragraph 2 of Part A of the Schedule.

Provisional attachment and confiscation of property up to 180 days
Appellant Tribunal (Section 26)

Establishment
- Central Government has authority to establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority.
- Tribunal consists of a Chairperson and two other Members.

Appeal to Tribunal
- Any person aggrieved by an order made by the Adjudicating Authority under this Act may prefer an appeal to the Appellate Tribunal within a period of 45 days.
- Tribunal may accept the appeal even after 45 days, if it is satisfied about delay after giving an opportunity of being heard to the party.

Procedure and power
- Appellant may either appear in person or take assistance of authorized representative to present before Appellant Tribunal.
- On receipt of an appeal, Tribunal may pass such orders after giving the parties to the appeal an opportunity of being heard thereon as it thinks fit.
- Tribunal should dispose of appeal within 6 months.
- Tribunal should send copy of order to every party to the appeal.
- Tribunal has same power as vested in Code of Civil Procedure.
- Tribunal has powers to regulate its own procedure based upon principle of natural justice.

Appeal against order of tribunal
- Any person aggrieved by order of the Appellate Tribunal may file an appeal to the High Court within 60 days. High court may extend further 60 days on being satisfied.

Special Court

CG in consultation with the Chief Justice of high court designated one or more Court of Session for trial of offence of money laundering.
The Prevention of Money Laundering Act, 2002 (PMLA) introduced. PMLA defines Money Laundering offence and provides for the freezing, seizure and confiscation of the proceeds of crime.

RBI, SEBI and IRDA have been brought under the PMLA, and therefore the provisions of this Act are applicable to all financial institutions, banks, mutual funds, insurance companies and their financial intermediaries.

Introduction of the Financial Intelligence Unit (FIU-IND) for monitoring the Anti-Money Laundering activities in India.

**KYC (know your client) Guidelines**

**Issued by RBI → 29th Nov 2004**

**Objective of KYC guidelines**

- Safeguard banks from acting as a chain in money laundering
- Helps banks to know more about the client and keep a check

**Elements of KYC guidelines**

- Customer acceptance policy
- Customer identification procedures
- Monitoring transactions
- Management of risk

**Obligation of Banks, Financial Institution, Intermediaries**

Every banking company, financial institutions and intermediaries requires maintaining a record of all transaction.

- The nature and value
- Whether such transaction comprises single (or) series of transaction connected to each other.
- Whether such transactions take place within a month.
- Verify and maintain the records of identity of all its clients.
- Record maintained above shall be kept for a period of (10) years at least from the date of cessation of account/services.
Global initiative in prevention of Money Laundering

FATF (financial Action Task Force) → established in 1989
And recognised as international body in 1998

It is an international body which promotes measures take-up to counter Money Laundering.

Main functions/tasks

→ Review the techniques adopted for money laundering.
→ Checks the initiatives made by the countries to counter money laundering
→ Spread awareness among non-member countries also.
→ FATF study, examine and evaluate the current situation, defines the policy and provide solution to this problem of money laundering

FATF has suggested following recommendation to counteract money laundering:

✿ Declare money laundering as criminal offence
✿ Confiscation of proceeds of crime
✿ Extradition of person involved in money laundering offence
✿ International co-operation in preventing money laundering
The Indian Stamp Act, 1899 is the law relating to stamps which consolidates and amends the law relating to stamp duty.

It is a fiscal legislation envisaging levy of stamp duty on certain instruments.

The Act is divided into eight Chapters and there is a schedule which contains the rates of stamp duties on various instruments.

(a) Union List
- Power of the Union Legislature to levy stamp duty with regard to certain instruments (mostly of a commercial character).
- They are bill of exchange, cheques, promissory notes, bill of lading, letters of credit, and policies of insurance, transfer of shares, debentures, proxies and receipt.

(b) The State Legislature
- Power of State to prescribe the rates of stamp duties on other instruments.

<table>
<thead>
<tr>
<th>Important Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bill of Lading [Section 2(4)]</strong></td>
</tr>
</tbody>
</table>
- A bill of lading is a receipt by the master of a ship for goods delivered to him for delivery to X or his assigns.
- When goods are delivered on board a ship, the receipt is given by the person in charge at that time. This receipt is known as the mate’s receipt.
- The shipper of the goods returns this receipt to the master before the ship leaves and receives from him bill of lading for the goods, signed by the master.
- Three copies are made, each signed by the master. One is kept by the consignor of the goods, one by the master of the ship and one is forwarded to X, the consignee, who, on receipt of it, acquires property in the goods. It is a written evidence of a contract for the carriage and delivery of goods by sea.
- “Bill of Lading does not include a mate’s receipt.

| **Conveyance [Section 2(10)]** |
- The term “conveyance” includes a conveyance on sale and every instrument by which property (whether movable or immovable) is transferred during lifetime.
- It does not include a will.
- Thus, all transfers of property whether movable or immovable, on sale, are chargeable as conveyances.

| Examples:-- |
Composition Deed, Exchange of Property, Gift, Lease, Mortgage, Settlement, Transfer, Transfer of Lease and

Instrument {Section 2(14)}

- “Instrument” includes every document by which any right or liability is, created, transferred, limited, extended, extinguished or recorded.
- An instrument includes conveyances, leases, mortgages, promissory notes and wills, but not ordinary letters or memoranda or accounts.
- An unsigned draft document is not an “instrument” (because it does not create any right, etc).
- A letter which acknowledges receipt of a certain sum borrowed at a particular rate of interest and for a particular period and that it will be repaid with interest on the due date is an “instrument”.


In this case it was held that Photocopy of an agreement is not an instrument.

Executed / Execution

- The words “executed” used with reference to instruments, means “signed” and “execution” “means “signature”.
- Signature includes mark by an illiterate person.
- An instrument which is chargeable with stamp duty only on being “executed” is not liable to stamp duty until it is signed.

Impressed Stamp (Section 2(13))

“Impressed stamp” includes:

(a) labels affixed and impressed by the proper officer; and
(b) stamps embossed or engraved on stamp paper.

Case: Mewa Kunwari v. Bourey

In this case it was held that the instrument is duly stamped if it has been duly stamped at the time of execution and is admissible in evidence, though the stamp is subsequently removed or lost.

Bill of Exchange (Section 2(2))

“Bill of exchange” is an instrument in writing, containing an unconditional order signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.
Bill of exchange payable on demand

“Bill of exchange on demand” includes:

- an order for the payment of any sum of money by a bill of exchange or promissory note out of any particular fund which may or may not be available, or upon any condition which may or may not be happen;
- an order for the payment of any sum of money weekly, monthly or at any other said period; and
- a letter of credit, any instrument by which one person authorises any other person to give credit to the person in whose favour it is drawn.

Cheque (Section 2(7))

- “cheque” means a bill of exchange drawn on specified banker, not expressed to be payable otherwise than on demand.
- In India, cheques are no longer subject to stamp duty.

Bond (Section 2(5))

“bond” includes –

- any instrument by which a person obliges himself to pay money to another on condition that the obligation shall be void if a specified act is performed, or is not performed;
- any instrument attested by a witness not payable to order or bearer, whereby a person obliges himself to pay money to another; and
- any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.
- no document can be a bond unless it is one which, by itself, creates the obligation to pay the money..

Promissory Note [Section 2(22)]

Requisities of a promissory note as per the Negotiable Instruments Act, 1881 are the following:

- the document must contain an unconditional undertaking to pay;
- the undertaking must be to pay money only;
- the money to be paid must be certain;
- it must be payable to or to the order of a certain person or to bearer;
- the document must be signed by the maker.

Illustrations

1. “I do acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand for value received” is a promissory note.
2. “I have received a sum of Rs 20 which I borrowed from you and I have to be accountable for the sum with interest” held not to be a promissory note.

**Receipt [Section 2(23)]**

“Receipt” includes any note, memorandum or writing:
- Whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received; or
- Whereby any other movable property is acknowledged to have been received in satisfaction of a debt; or
- Whereby any debt or demand, is acknowledged to have been satisfied.

**Example:** letter acknowledging the receipt of money or cheque is a receipt. A document merely saying that the signatory has received a sum of Rs. 500 is a receipt.

**Settlement [Section 2(24)]**

“Settlement” means any non-testamentary disposition, in writing, of movable or immovable property made:
- in consideration of marriage;
- for the purpose of distributing property of the settler among his family dependent on him; or
- for any religious or charitable purpose;
- The definition of “settlement” excludes a will.
- A will is intended to operate only on death, while a settlement operates immediately.

**Stamp**

“Stamp” means any mark, seal or endorsement by any agency or person duly authorized by the State Government and includes an adhesive or impressed stamp for the purposes of duty chargeable under this Act.

**Instruments chargeable with duty (Section 3)**

- every instrument mentioned in the Schedule is executed in India on or after the first day of July, 1899;
- every bill of exchange payable otherwise than on demand;
- promissory note drawn or made out of India, presented for acceptance or payment, in India; and
- every instrument (other than a bill of exchange or promissory note) mentioned in that Schedule, is executed out of India and relates to any property situate, or to any matter done in India and is received in India.
No duty shall be chargeable in respect of:

- Any instrument executed by or on behalf of or in favour of CG/SG.
- Any instrument for the sale/transfer/disposition, either absolutely (or) by way of mortgage of any ship/vessel/any part in any ship registered under Merchant Shipping Act, 1894 (or) Registration of Ship Act, 1841.
- Any instrument executed by/on behalf of/in favour of, the developer (or) unit (or) in connection with the carrying out of purpose of the SEZ.
- Only the principal instrument shall be chargeable with a duty prescribed for.
- A lease to joint tenants requires only one stamp.
- A conveyance by several persons jointly relating to their separate interest in certain shares requires only one stamp.
- If an instrument taken with reference to its primary object is exempted then stamp duty can not be charged only because matter ancillary to its is included and that matter is chargeable to stamp duty.

**Example** → Sale of goods, which also contains an arbitration clause.
- Securities dealt in depository not liable to stamp duty.

### Receipts (Section 30)

Any person receiving

- any money exceeding 20 rupees in amount or
- any bill of exchange, cheque or promissory note for an amount exceeding 500 rupees or
- receiving in satisfaction of a debt any movable property exceeding 500 rupees in value,

shall on demand by the person paying such money, bill, cheque, note, or property, give a duly stamped receipt for the same.

### Methods of stamping

There are two types of stamping:

- Adhesive stamping, and
- Impressed stamping.

### Use of adhesive stamps (Section 11)

Following instruments may be stamped with adhesive stamps –

- instruments chargeable with a duty not exceeding 10 naya paisa except parts of bills of exchange payable otherwise than on demand and drawn in sets;
bills of exchange and promissory notes drawn or made out of India;
- entry as an advocate, vakil or attorney on the roll of a High Court;
- notarial acts; and
- transfers by endorsement of shares in any incorporated company or other body corporate.

Cancellation of adhesive stamps

Any instrument bearing an adhesive stamp which has not been cancelled is deemed to be unstamped.

Mode of cancellation of Adhesive Stamps

- By writing on or across the stamp his name or initials.
- By drawing a line across it.
- By drawing of diagonal lines right across the stamps with ends extending on to the paper of the document.
- A cross marked by an illiterate person indicating his acknowledgement.
- Putting two lines crossing each other is effective.

Instruments Stamped

- Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of instrument and can not be used for any other instrument.
- No second instrument chargeable with duty shall be written upon piece of stamp paper upon which an instrument chargeable with has already been written.

Time of stamping instruments

(a) Instruments executed inside India:

All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution.

(b) Instruments executed outside India:

Every instrument chargeable with duty executed only out of India and (not being a bill of exchange or promissory note) may be stamped within 3 months after it has been first received in India.

Adjudication as to Stamps

When the document or any draft of the document is produced to the Collector he shall determine the proper stamp duty on payment of a nominal fee.
The Collector shall not make any endorsement on any instrument under Section 32, where –

- any instrument is first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;
- any instrument is first executed out of India and brought to him after the expiration of three months after it has been first received in India;
- any instrument chargeable with a duty not exceeding 10 naya paise or any bill of exchange or promissory note, is brought to him after the drawing or execution thereof, on paper not duly stamped.

**Instruments not duly stamped – treatment and consequences (impounding)**

- where any person from whom a stamped receipt could have been demanded has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, on payment of a penalty of Re. 1/- by the person tendering it;
- where a contract or agreement of any kind is affected by the correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- Where an unstamped instrument is lost, the party relying on it is helpless and no payment of penalty can enable admission of secondary evidence.

<table>
<thead>
<tr>
<th>Power of Collector u/s 39</th>
<th>Power of Controlling Revenue Authority u/s 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power to Refund of penalty.</td>
<td>Power to Refund even duties where they have been paid in excess.</td>
</tr>
<tr>
<td>Collector’s power to refund penalty is restricted only to two cases mentioned in Section 39(3)</td>
<td>Powers under Section 45 are not subject to any such limitation.</td>
</tr>
<tr>
<td>does not lay down any time limit for the Collector to exercise his powers to refund</td>
<td>there is a time limit</td>
</tr>
<tr>
<td>it is routine function of the Collector</td>
<td>power to be exercised only when an application is made by a party</td>
</tr>
<tr>
<td>power under Section 39 is a purely mandatory one</td>
<td>power under Section 45 is a purely discretionary one and the Chief Controlling Revenue Authority cannot be compelled to exercise his power by any further proceedings</td>
</tr>
</tbody>
</table>

**RECOVERY OF DUTIES AND PENALTIES**

All duties penalties and other sums required to be paid may be recovered by the Collector by sale of the movable property of the person or by any other process used for the recovery of the arrears of land revenue.
TIME LIMITS

- In the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;
- In the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed;
- When the spoiled instrument has been for sufficient reasons sent out of India, the application may be made within six months after it has been received back in India.
- When, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

MISUSED STAMPS

- Instruments not duly stamp inadmissible in evidence.
- An insufficiently stamped instrument can be admitted in evidence on payment of penalty.
- If a person, of his own motion bring it to the collector’s notice that the instruments is not duly stamped. In such case if collector is satisfied, that the omission to pay proper duty was due to mistake, he may receive the deficit amount and certify by endorsement on the instrument that the proper duty has been levied.
  * Such instrument must be produced before the collector within (1) year of the date of its execution.
- When any person has inadvertently charged with a stamp of greater value than was, the collector may on application within (6) months of the date if instrument can allow to receive excess amount paid.

CRIMINAL OFFENCES

- Drawing, making, issuing, endorsing, transferring, any bill of exchange (payable otherwise than on demand) or promissory note without the same being duly stamped; or
- Executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
- Voting under any proxy not duly stamped shall
- If any person appointed to sell stamps who disobeys and any person not so appointed who sells any
E-STAMPING

E-Stamping is a computer based application and a secured way of paying Non-Judicial stamp duty to the Government.

**Benefits of e-Stamping**

- E-Stamp Certificate can be generated within minutes;
- E-Stamp Certificate generated is tamper proof;
- Easy accessibility and faster processing;
- Security;
- Cost savings and
- User friendly.
Special Economic Zones Act, 2005

SEZ are growth engines that can boost manufacturing, increase export and generate employment.

SEZ is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purpose of trade operations and duties.

Goods and Services going into the SEZ area from DTA (Domestic Tariff Area) treated as exports and goods coming from SEZ area in DTA treated as if these are being imported.

Import Definitions

“Developer” means

A person, or a State Government which, has been granted by the Central Government a letter of approval and includes an Authority and a Co-Developer.

“Co-Developer” means

A person or a State Government which, has been granted by the Central Government a letter of approval.

“Export” means—

- taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea, air or by any other mode, whether physical or otherwise; or
- supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone.

“Import” means—

- bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
- receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone.

“Manufacture” means

- to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include
processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.

“Offshore Banking Unit” means a branch of a bank located in a Special Economic Zone.

Establishment of SEZ

SEZ may be established by

Any person
After identifying the area make proposal to SG concern for the purpose of setting up SEZ
SG may forward this proposal to Board of Approval
SG
After identifying the area make the proposal directly to Board of Approval
CG
Has been empowered to set up and notify the SEZ without consulting the concerned SG, without referring the proposal to the Board of Approval.

Guidelines to be considered by the CG, while notifying any area as a SEZ

- generation of additional economic activity;
- promotion of exports of goods and services;
- promotion of investment from domestic and foreign sources;
- creation of employment opportunities;
- development of infrastructure facilities; and
- maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States

The Processing and Non-Processing areas
Central Government may demarcate the areas falling within the Special Economic Zones as -

- the processing area for setting up Units for activities, being the manufacture of goods, or rendering of services;
- the area exclusively for trading or warehousing purposes; or
- the non-processing areas for activities other than those specified above.

**Exemption from taxes, duties or cess**

- All goods or services exported out of, or imported into, or procured from the Domestic Tariff Area, by a Unit or Developer in a Special Economic Zone from the payment of taxes, duties or cess under all enactments specified in the First Schedule.
- The enactments specified in the First Schedule generally relate to levy and payment of cess.

---

**Board of Approval**

**Duties / powers/ function of Board of Approval**

- Granting of approval/ rejecting proposal/ modifying proposal for establishment of SEZ.
- Granting approval of authorized operations to be carried out in SEZ by the developer.
- Granting / rejecting proposal for providing infrastructure facilities in SEZ.
- Granting a license to IUT (Industrial Undertaking) as per IDRA, 1951 which falls in SEZ.
- Performing such other function as may be assigned to it by CG.
Suspension of letter of approval and transfer of Special Economic Zone in certain cases

Board of approval may suspend approval and appoint an administrator for a period maximum for 1 year to discharge the function of developer in following situations :-

- The developer is unable to discharge the function / duties imposed on him.
- The developer has persistently defaulted in complying with the directions of the Board of Approval.
- The developer has violated the terms and conditions of the letter of approval.
- The financial position of developer is such that is unable to fully and efficiently discharge his duties/ obligation imposed.

**No letter of approval can be suspended unless board of approval has given to the developer at least (3) months notice in writing with ground on which it proposes to suspend the letter of approval.**

Development commissioner

CG appoints development commissioner for one or more SEZ and other officers to assist development Commissioner.

**Functions of the Development Commissioner**

- Guide the entrepreneurs for setting up of units in SEZ.
- Ensure and take suitable steps for effective promotion of export from SEZ.
- Ensure the performance of the developer and units in SEZ.
- Discharge any other function as may assigned by CG.
- Any other function as may be delegated to him by board of approval.
Approval Committee

CG may notify a committee for every SEZ.

Powers / function of Approval Committee

- Approve the import / procurement of goods from DTA.
- Approve providing of services by a service provider from outside India/ from DTA.
- Monitor the utilization of goods services in SEZ
- Allow on receipt of approval foreign collaboration and FDI.
- Monitor and supervise compliance.
- Perform other function as may be prescribed by CG.

Setting up of units in SEZ

Proposal by the person intends to set up unit for carrying authorized operations in SEZ to concerned development commissioner

Forward to

Approval Committee

Approval committee may approve the proposal with or without modification

After approval from approval committee development commissioner grant a Letter of Approval to applicant

**Any person aggrieved from an order of the Approval Committee make an appeal to Board of Approval within prescribed time.**
Cancellation of letter of approval granted to entrepreneur (Section 16)

The Approval Committee may cancel the letter of approval of an entrepreneur after reasonable opportunity of being heard has been given to the entrepreneur.

The Approval Committee may, at any time, cancel the letter of approval if it has any reason to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligation subject to which the letter of approval was granted to the entrepreneur.

If the letter of approval has been cancelled, the Unit shall not, from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction available to it.

Any person aggrieved from an order of the Approval Committee to make an appeal to the Board of Approval.

Designated Courts to try suits and notified offences

The concerned State Government, in which SEZ is situated, with the concurrence of the Chief Justice of the High Court of that State, one or more Courts to try all suits of a civil nature arising out of offences committed in the Special Economic Zone.

No court, other than the designated court shall try any suit or conduct the trial of any notified offence.

Appeal to High Court

Any person aggrieved by any decision of the designated Court can appeal to the High Court within 60 days from the date of communication of the decision.

The High Court can allow further period of maximum 60 days if it is satisfied that the appellant was prevented by sufficient cause.

Exemptions, drawbacks and concessions to every Developer and entrepreneur

The Customs Act, 1962;
The Customs Tariff Act, 1975;
The Central Excise Act, 1944;
The Central Excise Tariff Act, 1985;
The service tax under Chapter V of the Finance Act, 1994;

***Exemption under GST shall apply for the above as per guideline when notified.***
Special Economic Zone Authority

The Central Government may constitute by notification in the Official Gazette, an Authority for every SEZ to exercise powers conferred on and discharge the functions assigned to it.

Functions of Authority

- the development of infrastructure in the Special Economic Zone;
- promoting exports from the Special Economic Zone;
- reviewing the functioning and performance of the Special Economic Zone;
- levy user, service charges, fees, rent for the use of properties belonging to the Authority;
- performing such other functions as may be prescribed.

Power of the Central Government to Supersede Authority

Central Government may supersede an Authority for a maximum period of 6 months if

- Authority is unable to perform, or
- has persistently made default in the performance of the duty or
- abused its powers etc.

***Before issuing a notification superseding an authority, the Central Government is required to give reasonable time to that Authority to make representation.

Identity Card

Every person whether

- employed or
- residing or
- required to be present

in a Special Economic Zone be provided an identity card by every Development Commissioner.

Central Government has power to modify provisions of the Act or other enactments in relation to Special Economic Zones.

Provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

. 
Foreign Contribution

- Donation
- Delivery
- Transfer

of

- Any article
  (except gift for personal use having value in India ≤ Rs. 25,000)
- Any foreign securities
- Any currency

BY

Foreign Source

- Govt of any Foreign Country
- Any International Agency (except
  Foreign company and any subsidiary of foreign company.
- MNC
- Any company in which > 50% of nominal share capital held by any of
  person mentioned below singly (or) jointly
  - Govt. Of foreign country
  - Citizen of foreign country
  - Trust / Societies etc. Registered in Foreign Country
  - Company Incorporated outside India
- A trade union of Foreign Country
- A Foreign Trust of Foreign Country
- A society, club etc. Registered in Foreign Country
- A citizen of Foreign Country

“Candidate for election” means a person who has been duly nominated as a candidate for election to any Legislature.
“Foreign hospitality” means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country with free boarding, lodging, transport or medical treatment.

“Person” includes—
- an individual;
- a Hindu undivided family;
- an association;
- a company

“Political party” means—
- an association or body of individual citizens of India—
  - to be registered with the Election Commission of India as a political party or
  - which has set up candidates for election to any Legislature, but is not so registered;
- a political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India

**Prohibition to accept foreign contribution (Section 3)**
- Candidate for election
- Correspondent, columnist, cartoonist, editor, owner etc. of registered newspaper (electronic media may also)
- Judge, government servant, employee of any corporation
- Member of any legislature
- Political party (or) office bearer.
- Any person receiving FC on behalf of above
- Any person received FC shall not make any transfer of FC to above mentioned persons.
- Any person received FC shall not make any transfer to any other person who may transfer it further to above mentioned persons.

**Exceptions - Person to whom section 3 does not apply**
- By way of salary (or) other remuneration from Foreign Source.
- By way of payment, in course of International Trade.
- As an agent of foreign source in relation to any transaction by foreign source with government.
By way of gift or presentation made to him as a member of any Indian delegation, provided such gift was accepted in accordance with law made by CG.

From any relative when such FC has been received with the permission of CG.

Any remittance (receiving / sending ) comes under FEMA, 1999.

Some more provisions in Foreign Contribution

- Organisation of political nature not to accept FC without prior permission of CG
- Any association having a definite cultural, economic, educational, religious programme shall not accept FC unless
  - Register itself with CG
  - Agrees to received such FC only through one branch of a bank as it may specified in application for registration.
  - Intimation to CG about FC and manner of expenses of FC.
- Every candidate for election who had received FC within (180) days before nomination to election shall give intimation to CG.
- Intimation to CG about FC and manner of expenses of FC.
- In case of recipients of scholarship from Foreign country intimation shall be made to CG.

Restriction on acceptance of foreign hospitality (Section 6)

Restriction on acceptance of Foreign Hospitality

- Member of legislature
- Office bearer of political party
- Judge,Govt. servant, employee of any corporation.

Prior permission of CG is required

*Exception

No prior permission is required in case of emergency medical aid / help on account of sudden illness.

Intimation of such hospitality shall be given to CG within (one) month from the date of receipt of such hospitality.

Utilization of foreign contribution (Section 8)

- Every person, who is registered and granted a certificate or given prior permission and receives any foreign contribution,
- shall utilise such contribution for the purposes for which the contribution has been received.
Any foreign contribution or any income arising out of it shall not be used for speculative business.

shall not defray more than 50% of such contribution, received in a financial year, to meet administrative expenses.

Administrative expenses exceeding 50% of such contribution may be defrayed with prior approval of the Central Government.

The Central Government prescribes the elements which shall be included in the administrative expenses and the manner in which the administrative expenses shall be calculated.

**Power of Central Government to prohibit receipt of foreign contribution (Section 9)**

The Central Government has been empowered to -

- prohibit any person or organisation from accepting any foreign contribution;
- require any person or class of persons to obtain prior permission of the Central Government before accepting any foreign hospitality;
- require any person to furnish intimation within time and the manner in which such contribution was received and the purpose for which foreign contribution was utilised;
- require any person to obtain prior permission of the Central Government before accepting any foreign contribution;
- require any person, to furnish intimation, within time of any foreign hospitality, the source from which and the manner in which such hospitality was received.

**Power to prohibit payment of currency received in contravention of the Act (Section 10)**

Where the Central Government is satisfied, after making inquiry, that any person has in his custody any article/ currency/ security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, such article or currency or security.

**Registration of certain persons with Central Government**

Conditions for granting certificate of registration:—

- the person making an application for registration or grant of prior permission:-
  - is not fictitious or benami;
  - has not been prosecuted or convicted for indulging in activities of conversion from one religious faith to another, either directly or indirectly;
  - has not been prosecuted or convicted for creating communal tension;
has not been found guilty of diversion or mis-utilisation of its funds;
- is not likely to use the foreign contribution for personal gains;
- has not been prohibited from accepting foreign contribution;

- in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for any offence is pending against him;
- the acceptance of foreign contribution is not likely to affect prejudicially—
  - the sovereignty and integrity of India; or
  - the security, strategic, scientific or economic interest of the State; or
  - the public interest; or
  - friendly relation with any foreign State; or
- harmony between religious, racial, social, linguistic, regional groups, castes or communities;

**Suspension of certificate**

- The Central Government may by order in writing, suspend the certificate for a period not exceeding 180 days.
- Every person whose certificate has been suspended shall not receive any foreign contribution during the period of suspension of certificate.
- Every person whose certificate has been suspended shall utilise, the foreign contribution in his custody with the prior approval of the Central Government.

**Cancellation of certificate (Section 14)**

The Central Government may, if it is satisfied after making inquiry, cancel the certificate if —

- the holder of the certificate has made a statement in relation to the application for the grant of registration is incorrect or false; or
- the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
- CG thinks, it is necessary in the public interest to cancel the certificate; or
- the holder of certificate has violated any of the provisions of this Act or rules or order made there under; or
- if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

Before passing an order of cancellation of certificate, the person concerned would be given a reasonable opportunity of being heard.

**Renewal of certificate**
Every person who has been granted a certificate shall have such certificate renewed within 6 months before the expiry of the period of the certificate.

Application for Renewal

- The application for renewal of the certificate shall be made to the Central Government.
- The Central Government shall renew the certificate, ordinarily within 90 days from the date of receipt of application for a period of 5 years.
- In case the Central Government does not renew the certificate within 90 days, it shall communicate the reasons.
- If no communication from CG within (90) days, shall be considered as deemed approval.
- CG may intimate about further time extension within (90) days
- If no communication in further (30) days shall be considered a deemed approval.

Foreign contribution through scheduled bank

- Every person who has been granted a certificate or given prior permission shall receive foreign contribution in a single account only through one of the branches of a bank as he may specify in his application for grant of certificate.
- Such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him.
- No funds other than foreign contribution shall be received or deposited in such account or accounts.
- Every bank or authorised person in foreign exchange shall report about amount of foreign remittance; the source and manner in which the foreign remittance was received.

Order for Audit of accounts

If any person who has been granted a certificate or given prior permission,.

- fails to furnish any intimation within the time specified or
- the intimation so furnished is not in accordance with law or
- if after inspection of such intimation,
the Central Government has any reasonable cause to believe that any provision of Act has been, contravened, the Central Government may, by general or special order, authorise such gazetted officer, to audit any books of account.
Seizure of accounts or records

If, after inspection of an account or record, the inspecting officer has any reasonable cause to believe that any provision of the Act is being contravened, he may seize such account or record and produce the same before the court, authority or tribunal in which any proceeding is brought for such contravention.

The authorised officer shall return such account or record to the person from whom it was seized if no proceeding is brought within 6 months from the date of such seizure for the contravention disclosed by such account or record.

Appeal

Any person aggrieved by any order may prefer an appeal, within one month from the date of communication of the order.

The appellate court may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within one month, allow such appeal to be preferred within a further period of one month, but not thereafter.

Penalty and Punishment

If a person deals in Foreign Contribution in contravention of this Act, he shall be liable for

- Imprisonment = maximum (3) years
- Fine = market value of the article or the amount of the currency or security

any/ both

If any person accepting/ assisting any person like political party/ organisation political in nature for any foreign contribution/ currency/ foreign security in contravention of this Act, then

- Fine = ? (on case to case basis)
- Imprisonment = maximum (5) years

any/ both
Foreign Exchange Management

**Important Definitions**

**Currency Notes** means and includes

Cash in the form of coins, bank notes, money, bank notes, other paper money as are authorised by law and circulate from hand to hand as a medium of exchange.

**Foreign Exchange** means

Foreign currency and includes deposits, credits, balance payable in foreign currency, drafts, travellers cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency. Any draft, travellers cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency.

**Foreign Security** means

Any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

**Depository Receipt (DR)** means

A negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs).

**Erstwhile Overseas Corporate Body (OCB)** means

A company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least 60% by non-resident Indians and includes overseas trust in which not less than 60% beneficial interest is held by non-resident Indians directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas
Corporate Bodies (OCBs) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.

**Foreign Currency Convertible Bond (FCCB) means**

A bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency.

FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.

**Indian Venture Capital Undertaking (IVCU) means**

An Indian company:

- whose shares are not listed in a recognised stock exchange in India;
- which is engaged in the business of providing services, production or manufacture of articles or things, but does not include such activities or sectors which are specified in the negative list by the SEBI, with approval of Central Government, by notification in the Official Gazette in this behalf.

**Transferable Development Rights (TDR) means**

Certificates issued in respect of category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.
FERA, 1973

- Criminal law
- Presumption of means-rea
  (Guilty mind)
- Penalty → fine
  → imprisonment 5 years maximum
- ED (Enforcement Directorate) was very powerful
  Can arrest any person without warrant
  And restrain any person up to (45) days
  Even without written complaint

FERA, 1973

FEMA, 1999

- Civil law
- Malafide has to be proved
  Upto (3) times of forex involved (if quantifiable)
- Penalty → only fine
  Upto (21) (if not quantifiable)
  +
  5,000/- per day in containing offence
  If defaulter refuses to pay fine then only imprisonment (upto 3 years)
  If fine paid any time during imprisonment then defaulter shall set free
- ED
  → jurisdictional scope of ED curtailed
  → Complaint must be written and can be filed only by CG.

FEMA, 1999

PRI
Person resident in India

PROI
Person resident outside India

Transaction

CAT
Capital account transaction

CuAT
Current account transaction

Forex can be withdrawn only from (AP) (Authorised person)
**PRI means → For Individual**

**Step (1)**
The person shall be residing in India > 182 days in PY.

**Step (2)**
Person resided in India for any of the following purpose only:
- For taking up employment in India (or)
- For carrying on business/vocation in India (or)
- For any other purpose, intention to stay in India for uncertain period.

**Step (3)**
Person shall not go/stay outside India for any of the following purpose:
- For taking-up employment outside India (or)
- For carrying-on business/vocation out outside India (or)
- For any other purpose, intention to stay outside India for uncertain period.

*Rule Check {step (1) → step (2) → step (3)} in PY (previous year)
[and]
Check {step (3)} in CY/FY (current year/financial year)*

***Date of coming and going In India/ outside India shall be counted as resided in India.

**Question 1.**
Mr. ‘A’ a foreign citizen comes to India on employment visa on 25th Oct 2002 and he left India permanently on 10th Aug 2003. What is his status in FY 2002-03, 2003-04, 2004-05?

**Question 2.**
Mr. ‘A’ an Indian citizen going out of India on employment on visa on 10th Nov 2004. What is his status on 2004-05, 2005-06?

**Question 3.**
Mr. ‘B’ an Indian citizen going out of India on education VISA for 2 years. He leaves India 10th Nov’ 2004 and returns on 10th Nov 2006. Find the status of Mr. ‘B’ in FY 2004-05, 2005-06, 2006-07, and 2007-08.

**Status of PRI other than Individual**

- Any person (or) Body Corporate registered /incorporated in India.
- An office/ branch / agency in India owned / controlled by PROI.
An office / branch / agency outside India owned / controlled by PRI.

**Question 4.**

- **CS Ltd** (Incorporated in India)
  - Delhi
  - Bangalore
  - New York
  - London

- **CD Inc** (Incorporated in USA)

**CAT - Capital Account Transaction**

- **Means**
  - Any transaction by which a PRI increases / decreases his assets / liabilities (contingent liabilities also)
  - Outside India

- **Includes**
  - List of transaction specified under FEMA, 1999
  - Whether those transactions increase / decrease assets / liabilities (or) not.
  - Any transaction by which a PROI increases / decreases his assets / liabilities (contingent liabilities also)
  - In India
List of transaction specified under FEMA, 1999

- Transfer or issue of any foreign security by PRI.
- Transfer or issue of any security by PROI.
- Transfer or issue of any security or foreign security by any branch in India of PROI.
- Deposited between PRI-PROI.
- Export, Import or holding of currency.
- Transfer of Immovable property in outside India by a PRI.
  (except → lease ≤ 5 years)
- Acquisition / Transfer of immovable property in outside India by a PROI.
  (except → lease ≤ 5 years)
- Giving of guarantee (or) surety in respect of any debt, obligation etc.
  - By PRI for PROI
  - By PROI for PRI

**Exception of CAT**

1. A PRI may hold / transfer / invest in foreign security / any immovable property situated outside India
   - Was acquired /held by such PRI when he was (PROI) (or)
   - Inherited from PROI

2. A PROI may hold / transfer / invest, in Indian securities / any immovable property situated in India
   - Was acquired /held by such PROI when he was (PRI) (or)
   - Inherited from PRI
Prohibited CAT for PROI

- In the business of Chit Fund
- As Nidhi company
- In Agricultural / Plantation activities
  (except → Tea plantation)
- In real estate business / construction of farm house
- In TDR (Transferable Development Right)

Permissible CAT for PRI

- Investment in foreign securities
- Foreign currency loan raised in India and abroad.
- Transfer of immovable property outside India.
- Guarantees issued by a PRI in favour of PROI.
- Export, Import and holding of currency.
- Loan and overdraft? (Borrowing) by PRI from PROI.
- Loan and overdraft by PRI to PROI.
- Maintainence of foreign currency A/c in India / outside India.
- Remittance outside India of capital asset of PRI.
- Sales / purchase of foreign exchange derivatives in India / abroad and commodity derivatives aboard by a PRI

Permissible CAT for PROI

- Investment in India securities by PROI in Indian entities.
- Investment in Firm, Proprietorship, AOP in India by PROI.
- Acquisition and transfer of Immovable Property in India.
- Guarantee by PROI in favour / on behalf of PRI.
- Export, Import, holding of currency from India by PROI.
- Deposits between a PRI-PROI.
- Foreign currency A/c in India of a PROI
- Remittance outward of capital assets in India of PROI
Prohibited CuAT (Current Account Transaction)

- Travel to Nepal / Bhutan
- Any transaction in case of export from Nepal / Bhutan.
  
  (can be received in forex if the importing country has taken permission from its Central Bank (Regulatory body) over there)
- Remittance out of lottery winning
- Remittance of income from racing / riding etc.
- Remittance for purchase of lottery ticket, banned magazines etc.
- Payment of commission on export made towards equity investment in JV/WOS aboard of Indian Companies.
- Payment of commission on export under “Rupee state credit Route”.
  
  (except commission upto 10% of invoice value of exports of tea and tobacco.)
- Payment related to “call back services” of telephones.
- Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account.
List of CuAt requiring prior approval of CG

- Forex outward remittance for cultural tours O/s India.
- Forex outward remittance for advertisement in foreign print > 10,000$ media

**Exceptions**

- Promotion of tourism by SG/CG
- Foreign investment by SG/CG
- International bidding by SG/CG

- Outward remittance of freight by vessel charted by a PSU.
- Payment in forex for import by Govt. Department / PSU on CIF basis.
- Multi model transport operators making remittance to their agent abroad.
- Forex outward remittance of container detention charge > rate prescribed by DG of shipping

- Forex outward remittance of prize money / sponsorship of sports > 1,00,000 $

**Exception**

- International sports bodies
- National level sports bodies
- State level sports bodies

- Forex outward remittance for membership of club

List of CuAt requiring prior approval of RBI

**For Individuals**

Any additional remittance in excess of **USD 2,50,000 in a year** for the following purposes shall require prior approval of the Reserve Bank of India:-

- Private visits to any country (except Nepal and Bhutan)
- Gift or donation.
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad
- Travel for business, or attending a conference or specialised training
For meeting expenses for meeting medical expenses, check-up abroad, for accompanying as attendant to a patient going abroad for medical treatment/check-up.

For persons other than individual

- Donations exceeding 1% of their foreign exchange earnings during the previous 3 financial years or USD 5,000,000, whichever is less, for-
  - creation of Chairs in reputed educational institutes,
  - contribution to funds (not being an investment fund) promoted by educational institutes; and
  - contribution to a technical institution or body or association in the field of activity of the donor Company.

- Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.

- Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

- Remittances exceeding 5% of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.”

Liberalised Remittance Scheme (LRS)

- Under Liberalised Remittance Scheme allow remittances by a resident individual up to USD 250,000 per financial year for any permitted current or capital account transaction or a combination of both.

- If an individual has already remitted any amount under the LRS, then the applicable limit for such an individual would be reduced from the present limit of USD 250,000 for the financial year by the amount already remitted.

- The permissible capital account transactions by an individual under LRS are:
  - opening of foreign currency account abroad with a bank;
  - purchase of property abroad;
  - making investments abroad;
  - setting up Wholly owned subsidiaries and Joint Ventures abroad;
extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

**Authorised Person**

No person can make any transaction in permissible CAT or CuAT unless it is acquired by an Authorised Person.
Establishment of Branch Office / Liaison Office in India by PROI

PROI can establish any branch office in India with prior permission of RBI

Intimation about the place of office and other properties acquired for this purpose

* No PROI can remit any amount (profit) from the business of India until all statutory dues are cleared.

A Liaison Office can undertake the following activities in India:

- Representing in India the parent company / group companies.
- Promoting export / import from / to India.
- Promoting technical/financial collaborations between parent/group companies and companies in India.
- Acting as a communication channel between the parent company and Indian companies.
Export of Goods or Services without Declaration

- trade samples of goods and publicity material supplied free of cost;
- personal effects of travellers, whether accompanied or unaccompanied;
- goods or software accompanied by a declaration by the exporter that they are not more than twenty five thousand rupees in value;
- by way of gift of goods accompanied by a declaration by the exporter that they are not more than one lakh rupees in value;
- aircrafts or aircraft engines and spare parts for repairs abroad subject to their reimport into India after repairs, within a period of six months from the date of their export;
- goods imported free of cost on re-export basis;
- replacement goods exported free of charge in accordance with the provisions of Exim Policy in force.
goods sent outside India for testing subject to re-import into India.
- defective goods sent outside India for repair and re-import
- export permitted by RBI.

**POSESSION AND RETENTION OF FOREIGN CURRENCY / COINS**

- possession without limit of foreign currency /coins by an authorised person
- possession without limit of foreign coins by any person;
- retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers cheques not exceeding US $ 2000 or its equivalent in aggregate.

**REALISATION, REPATRIATION AND SURRENDER OF FOREX**

- **Realisation**
  - To realise / recover forex [proceeds of export]
  - Time limit prescribed

- **Repatriation**
  - Bring it to India
  - Time limit not prescribed

- **Surrender**
  - Deposit it to authorised person
  - Time limit prescribed
## FEM (Realisation, Reparation and Surrender of Forex) Regulation, 2000

### Realisation of Forex
- Full Export value in export sale → within (6) months
- If not Export sale (i.e., to warehouse) → within (15) months
- By EOU Export → within (12) months

### Surrender of Forex
- When acquired for export of service inheritance, legitimate right → within (7) days
- Acquired for one purpose but could not use it for that → within (60) days
- Acquired for Export of Goods → within (90) days
- When come with unspent amount from travel abroad → within (90) days
- When comes from travel abroad and money is in the form of travellers cheques → within (180) days

---

*ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA BY PRI*
ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA

FEM (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA) REGULATION, 2000

- GP in few cases
- SP in most cases

1. Transfer of immovable property outside India who is a foreign citizen
2. Transfer of immovable property outside India acquired before 8th July, 1947
3. Any immovable property acquired through gift (or) inheritance
4. Any immovable property acquired outside India from RFC A/c
5. Gift (or) transfer of any immovable property mentioned in GP3 and GP4

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY PROI

- By PRI

**FEM (ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA) REGULATION, 2000**

- GP in few cases
- SP in most cases

- NRI may acquire any immovable property in India
- NRI may transfer any IMP in India to any PRI
- NRI may transfer any IMP to any NRI or PIO
- PIO may acquire IMP in India
- PIO may acquire IMP in India through inheritance from PRI
- Transfer of any IMP in India to a PRI
- Transfer of any IMP in India to a PRI(citizen of India)
- Transfer of any residential/commercial property by way of gift
- PROI may acquire IMP in India for establishment of Branch Office

* A – Agriculture  
* P – Plantation  
* F – Farm House
ACQUISITION, TRANSFER or ISSUE of any FOREIGN SECURITY by PRI

FEM (ACQUISITION, TRANSFER or ISSUE OF ANY FOREIGN SECURITY) REGULATION, 2000

GP in few cases
1. A PRI may purchase foreign security out of RFC A/c. No limit
2. A PRI may acquire bonus shares of Foreign Security.
3. A PRI (not permanently resident in India) may purchase foreign security out of his foreign currency resources.
4. PRI may sell the Gp1, GP2, GP3, securities.
5. A PRI (individual) may acquire foreign security from a PRI through gift.
6. A PRI (I) may acquire foreign security as cashless ESOP.
7. A PRI (individual) may acquire foreign security by way of inheritance from PRI or PROI.
8. PRI may hold foreign security by way of pledge.
9. A PRI (I) may acquire qualification share for the post of director.

Maximum 1 % of shares of company

Maximum 2,00,000 $ in one CY

SP in most cases
10. PRI (I) may acquire right shares of Foreign Company.
Entities into which FDI can be made

- FDI in an Indian Company
- FDI in Partnership Firm/Proprietary Concern subject to the condition that
  - Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.
  - The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
  - Amount invested shall not be eligible for repatriation outside India.
- FDI in Venture Capital Fund (VCF)
- FDI in LLPs is permitted, subject to the following conditions:
  - Through the Government approval route, only in LLPs operating in sectors/activities where 100% FDI is allowed.
LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.

Foreign Capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.

**FDI-Prohibited Sectors**

- Lottery Business including Government/private lottery, online lotteries, etc.
- Gambling and Betting including casinos etc.
- Chit funds
- Nidhi company
- Trading in Transferable Development Rights (TDRs)
- Real Estate Business or Construction of Farm Houses
- Manufacturing of cigars and cigarettes, tobacco or of tobacco substitutes
- Activities/sectors not open to private sector investment

**FDI- Permitted Sectors (Approval Route – Annexure A)**

- Development and Production of seeds and planting material;
- Services related to agro and allied sectors
- Tea sector including tea plantations
- Mining and Exploration of metal and non-metal ores
- Coal & Lignite
- Petroleum & Natural Gas
- Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)
- Defence Industry
- Broadcasting Carriage Services
- Broadcasting Content Services
- Print Media
- Civil Aviation
- Airports
- Air Transport Services
- Courier services
- Construction Development: Townships, Housing, Built-up Infrastructure
- Industrial Parks
- Satellites- establishment and operation
- Private Security Agencies
- Telecom Services
- Cash & Carry Wholesale Trading/Wholesale Trading
- E-commerce activities
- Single Brand product retail trading
- Multi Brand Retail Trading
- Railway Infrastructure
- Asset Reconstruction Companies
- Banking- Private Sector
- Banking- Public Sector
- Commodity Exchanges
- Credit Information Companies (CIC)
- Infrastructure Company in the Securities Market
- Insurance
- Non-Banking Finance Companies (NBFC)
- Pharmaceuticals
- Power Exchanges.
**Portfolio Investment by FII**

- FII shall be registered with SEBI.
- FII shall make entire investment through stock-broker/ stock exchange.
- Investment may be made by FII through their own fund (or) their sub-account.
- FII shall designate one branch of AP for this purpose.

One FII may acquire ≤ 10% shares of an Indian company.

All FII may acquire ≤ 24% shares of an Indian company.

If SR passed, All FII ≤ (sectorial cap) in an Indian Company.

**Portfolio Investment by NRI**

- → N/A
- → Same
- → own fund only
- → same

One NRI ≤ 5%

All NRI ≤ 10%

If SR passed, All NRI ≤ 24%

---

**Direct Investment Outside India in JV/WOS**

PRI can make direct investment outside India with prior approval of RBI.

{Exception} → No prior approval required if following conditions are satisfied.

i. Total financial commitment of ≤ 400% of Net Indian party in JV/WOS Worth(as per last B/S)

   - Limit of 400% is N/A if investment made is
   - out of balance of EEFC/A/c.
   - from proceeds of ADR/GDR.

ii. JV/WOS engaged in bonafide business activity.

iii. Indian party is not in RBI caution list.

iv. Indian party is not under investigation of ED.

v. Investment in one JV/WOS through one branch of an AP.

vi. Indian party shall submit Form – ODI to AP for onward transmission to RBI.

**Financial commitment includes**

1. Investment in Forex allowed in JV/WOS.
2. Investment in JV/WOS in Nepal/Bhutan.
3. Capitalization of expert proceeds.
4. 100% of value of guarantee given in favour of JV/WOS outside India.
5. Investment outside India in agriculture operation.
Investment abroad by certain firm in India

Conditions

- Indian firm registered under Partnership Act, 1932.
- Indian firm engaged in specified professional services.
- Foreign concern engaged in similar activities.
- Indian firm should be member of all India Professional Body.
- Investment should not exceed (1) million $ in one FY.
- Report to RBI within (30) days of investment.

Method of Funding

Investment in an overseas JV/WOS may be funded out of one or more of the following sources:

- drawal of foreign exchange from an AD Bank in India;
- capitalisation of exports;
- swap of shares;
- utilisation of proceeds of External Commercial Borrowings (ECBs)/Foreign Currency Convertible Bonds (FCCBs);
- in exchange of ADRs/GDRs issued in accordance with the scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993,
- balances held in EEFC account of the Indian party; and
- utilisation of proceeds of foreign currency funds raised through ADR/GDR issues

Investments by established proprietorship or unregistered partnership exporter firms

Conditions:

- The Partnership/Proprietorship firm is a DGFT recognized Star Export House (export exceeding Rs.15 crore) per annum.
- Exporter has proven track record i.e. export outstanding does not exceed 10 % of the average export realization of preceding 3 financial years.
- The exporter has not come under adverse notice of any Government agency like Enforcement Directorate, CBI and does not appear in the exporters’ caution list of the Reserve Bank or in the list of defaulters to the banking system in India.
- The amount of investment outside India does not exceed 10 % of the average of 3 financial years export realization or 200 % of the net owned funds of the firm, whichever is lower.
Overseas Investment by Registered Trust / Society
Registered Trusts and Societies engaged in manufacturing/educational sector are allowed to make investment in the same sector(s) in a Joint Venture or Wholly Owned Subsidiary outside India, with the prior approval of the Reserve Bank.

Eligibility Criteria for Trust

- The Trust should be registered under the Indian Trust Act, 1882;
- The Trust deed permits the proposed investment overseas;
- The proposed investment should be approved by the trustee/s;
- Authorised Dealer Bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- The Trust has been in existence at least for a period of three years;
- The Trust has not come under the adverse notice of any Regulatory/Enforcement agency like the Directorate of Enforcement, CBI etc.

Eligibility Criteria for Society

- The Society should be registered under the Societies Registration Act, 1860.
- The Memorandum of Association and rules and regulations permit the society to make the proposed investment which should also be approved by the governing body.
- The AD Category-I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- The Society has been in existence at least for a period of 3 years;
- The Society has not come under the adverse notice of any Regulatory/Enforcement agency like the Directorate of Enforcement, CBI etc.

Indian parties may also disinvest without prior approval of the Reserve Bank, in the following categories:
- the JV/WOS is listed in the overseas stock exchange;
- the Indian party company is listed on a stock exchange in India and has a net worth of not less than 100 crore;
- the Indian party is an unlisted company and the investment in overseas venture does not exceed USD 10 million.
- the Indian Party is a listed company with the net worth of less than 100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.
- The Indian entity is required to submit details of the disinvestment through its designated Authorised Dealer bank within 30 days from the date of investment.
Adjudicating Authority

- Director of Enforcement
- Special Director of Enforcement
- Additional Director of Enforcement
- Deputy Director of Enforcement
- Asst. Director of Enforcement
- Other officer (as CG may establish)

Adjudication Proceeding

CG officer

Complain in writing

Adjudicating Authority - ED

SCN (Show Cause Notice)

Concerned Person (against whom complaint has been made)

(10) Days max

Suitable Reply

STOP

No Suitable Reply

Commencement of Adjudication Proceeding

(1) year max. Compounding is allowed up to (180) days

Completion of Adjudication Proceeding

AA(ED) passes the suitable order

Contravention has not taken place

Contravention has taken place

STOP
Appeal

Appeal against the order of
→ Deputy director of ED
→ Asst. director of ED

(45) Days maximum
Special director (appeal)

Appellate tribunal (AT)
(60) Days maximum
High court

* No appeal to SC

Appeal against the order of
→ Director of ED
→ Special director of ED
→ Additional director of ED

(45) Days maximum
Deputy director of ED
Asst. director of ED

Contravention has taken place

If Forex is Quantifiable
If Forex is not Quantifiable
If continuing default then 5,000/- per day till default continues
Confiscation of such money and property

Fine upto (3) times of forex
Fine upto 2L

Defaulter shall pay fine within (90) days of order
Defaulter may file appeal within (45) days
Abscond
What is meant by contravention and compounding of contravention?

- Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under.
- Compounding is the process of voluntarily admitting the contravention. The Reserve Bank is empowered to compound any contraventions except few contraventions after offering an opportunity of personal hearing to the contravener.
- It provides comfort to any person who contravenes any provisions of FEMA, 1999 by minimizing transaction costs.
- Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.
Foreign Trade Policy and Procedure

India’s Foreign Trade Policy (FTP) has been formulated for 5 years at a time and reviewed annually.

The focus of the FTP has been to provide a framework of rules and procedures for exports and imports and incentives for promoting exports.

Objective/Target of FTP for 2015-2020

(i) To provide a stable and sustainable policy environment for foreign trade in merchandise and services;
(ii) To link rules, procedures and incentives for exports and imports with other initiatives such as “Make in India”, “Digital India” and “Skills India”;
(iii) To promote the diversification of India’s export to gain global competitiveness;
(iv) To expand its markets through flagship “Make in India” initiative;
(v) To rationalise imports and reduce the trade imbalance.

These objectives can be achieved by following means

- Employment creation in both manufacturing and services
- Zero defect products with a focus on quality and standards;
- A stable agricultural trade policy encouraging the import of raw material where required and export of processed products;
- Investment in agriculture overseas to produce raw material for the Indian industry;
- Focus on higher value addition and technology infusion;
- Lower tariffs on inputs and raw materials; and
- Development of trade infrastructure and provision of production and export incentives.

Important Definitions

“Actual User”

is a person (either natural or legal) who is authorized to use imported goods in his/its own premise which has a definitive postal address.

"Actual User (Industrial)"

is a person (either natural & legal) who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit which has a definitive postal address.
"Actual User (Non-Industrial)"

is a person (either natural & legal) who utilizes the imported goods for his own use in:
- any commercial establishment, carrying on any business, which has a definitive postal address; or
- (R&D) institution, university or other educational institution or hospital which has a definitive postal address; or
- any service industry which has a definitive postal address

**ITC (HS)**

Refers to Indian Trade Classification (Harmonized System) at 8 digits.

**“SCOMET”**

Is the nomenclature for dual use items of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET). Export of dual-use items and technologies under India’s Foreign Trade Policy is regulated. It is either prohibited or is permitted under an authorization.

**IMPORTER-EXPORTER CODE NUMBER/E-IEC**

- An IEC is a 10-digit number allotted to a person that is mandatory for undertaking any export/import activities.
- No export or import shall be made by any person without obtaining an IEC.
- Only one IEC is permitted against on Permanent Account Number (PAN). If any PAN card holder has more than one IEC, the extra IECs shall be disabled.

**The following categories of importers or exporters are exempted from obtaining IEC.**

- Ministries /Departments of Central or State Government
- Persons importing or exporting goods for personal use not connected with trade or manufacture or agriculture.
- Persons importing/exporting goods from/to Nepal, Myanmar through Indo-Myanmar border areas and China (through Gunji, Namgay Shipkila and Nathula ports), provided CIF value of a single consignment does not exceed Indian Rs.25,000. In case of Nathula port, the applicable value ceiling will be Rs. 1,00,000/-. For export of Special Chemicals, Organisms, Materials, Equipments and Technologies (SCOMET).
Mandatory documents required for export of goods from India

- Bill of Lading/Airway Bill
- Commercial Invoice cum Packing List
- Shipping Bill/Bill of Export

Mandatory documents required for import of goods into India

- Bill of Lading/Airway Bill
- Commercial Invoice cum Packing List*
- Bill of Entry

PRINCIPLES OF RESTRICTIONS

DGFT may, through a Notification, impose restrictions on export and import, necessary for:

- Protection of public morals;
- Protection of human, animal or plant life or health;
- Protection of patents, trademarks and copyrights;
- Protection of national treasures of artistic, historic or archaeological value;
- Conservation of exhaustible natural resources;
- Prevention of traffic in arms, ammunition and implements of war.

EXPORTS FROM INDIA SCHEMES

The objective of the Export from India Schemes is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field.

There shall be following two schemes for exports of Merchandise and Services respectively:

- Merchandise Exports from India Scheme (MEIS).
- Service Exports from India Scheme (SEIS).

Nature of Rewards

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS.

The Duty Credit Scrips can be used for:

- Payment of Customs Duties for import of inputs or goods.
- Payment of excise duties on domestic procurement of inputs or goods,
- Payment of service tax on procurement of services.
- Payment of fee as per Foreign Trade Policy.

Merchandise Exports from India Scheme (MEIS)
The objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India’s export competitiveness.

**Eligible Categories under MEIS**

- Exports of goods through courier or foreign post office using e-commerce, of FOB value up to Rs. 25000 per consignment.
- If the value of exports using e-commerce platform is more than Rs 25000 per consignment then MEIS reward would be limited to FOB value of Rs.25000 only.

**Ineligible categories under MEIS:**

- EOU/EHTPs/BTPs/ STPs who are availing direct tax benefits/exemption.
- Supplies made from DTA units to SEZ units
- Service Export.
- Export products which are subject to Minimum export price or export duty.
- Diamond, Gold, Silver, Platinum, other precious metal
- Cereals, Sugar of all types.
- Crude/petroleum oil and of all types.
- Export of milk and milk products.
- Export of Meat and Meat Products.

**Service Exports from India Scheme (SEIS)**

The objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

**Eligibility**

- Service Providers of notified services, located in India and mentioned in Aayat Niryat Forms of FTP 2015-2020.
- Service provider should have minimum net free foreign exchange earnings of US$15,000 in preceding financial year.
- For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US$10,000 in preceding financial year.
- Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange.
If the IEC holder is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses/payment/remittances shall be taken into account for service sector only.

**Ineligible categories under SEIS**

- Foreign exchange remittances other than those earned for rendering of notified services
- Foreign Exchange remittances related to Financial Services Sector
- Payments for services received from EEFC Account;
- Foreign exchange turnover by Educational Institutions like equity participation, donations etc.
- Export turnover relating to services of units operating under SEZ/EOU/EHTP/STPI/BTP Schemes;
- Exports of Goods.
- Service providers in Telecom Sector.

**STATUS HOLDER**

For granting status, export performance is necessary in at least two out of three years.

<table>
<thead>
<tr>
<th>Status Category</th>
<th>Export Performance</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOB/FOR (as converted) Value in US $ million</td>
<td></td>
</tr>
<tr>
<td>One Star Export House</td>
<td>3</td>
</tr>
<tr>
<td>Two Star Export House</td>
<td>25</td>
</tr>
<tr>
<td>Three Star Export House</td>
<td>100</td>
</tr>
<tr>
<td>Four Star Export House</td>
<td>500</td>
</tr>
<tr>
<td>Five Star Export House</td>
<td>2000</td>
</tr>
</tbody>
</table>

**Grant of double weightage**

- Following categories shall be granted double weightage for calculation of export performance for grant of status.
  - Units located in North Eastern States including Sikkim and Jammu & Kashmir.
  - Units located in Agri Export Zones.
- Double Weightage shall be available for grant of One Star Export House Status category only.
- A shipment can get double weightage only once in any one of above categories.
Privileges of Status Holders

A Status Holder shall be eligible for privileges as under:

(a) Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
(b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee;
(c) Exemption from furnishing of Bank Guarantee;
(e) Two star and above Export houses shall be permitted to establish Export Warehouses.
(g) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
(h) Manufacturers who are also status holders will be enabled to self-certify their manufactured goods (as per (IEM)/ (IL)/ (LOI).

Duty Exemption and Remission Scheme

Enable duty free import of input required for export production

Advance Authorization Scheme

Enable post export remission of duty on Input used in Export Product

Duty Free Import Authorization Scheme(DFIA)

Duty Drawback Scheme

Duty free import of input, which are physically incorporated/used in export product + Fuel, oil, energy, catalysts are consumed to obtain export product

Objection is to neutralize incidence of custom duty on import content of export product. Component of custom duty on fuel shall also be allowed in this scheme. Neutralization shall be provide by way of CENVAT credit and others.

Eligible Applicant

- Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- Advance Authorisation for pharmaceutical products manufactured
- Validity period for import of Advance Authorisation shall be 12 months from the date of issue of Authorisation.
CIF value of imports shall be upto 300% of the FOB value of physical export in preceding financial year or Rs 1 crore, whichever is higher

**Minimum Value Addition**
- Minimum value addition required to be achieved under Advance Authorisation is 15%.
- Export Products where value addition could be less than 15% are given Aayat Niryat Forms.
- In case of Tea, minimum value addition shall be 50%.

**Export Obligation**
- Period for fulfilment of export obligation under Advance Authorisation shall be 18 months from the date of issue of Authorisation or as notified by DGFT.
- Export Obligation for items falling in categories of defence, military store, aerospace and nuclear energy shall be 24 months from the date of issue of authorization.

**EPCG Scheme**
- The objective of the Export Promotion Capital Goods (EPCG) Scheme is to facilitate import of capital goods for producing quality goods and services to enhance India’s export competitiveness.
- EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty.
- Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duty saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.
- Authorisation shall be valid for import for 18 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.
- Second hand capital goods shall not be permitted to be imported under EPCG Scheme.
- Authorisation under EPCG Scheme shall not be issued for import of any Capital Goods (including Captive plants and Power Generator Sets of any kind)

- Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.
- In case of indigenous sourcing of Capital Goods, specific EO shall be 25% less than the EO stipulated in EPCG scheme.
- For unit located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Jammu & Kashmir, specific Export obligation shall be 25% of the Export Obligation.
Where Authorisation holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, upto half of the original export obligation period specified, remaining export obligation shall be condoned

**EXPORT ORIENTED UNITS (EOUs), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPs), SOFTWARE TECHNOLOGY PARKS (STPs) AND BIO-TECHNOLOGY PARKS (BTPs)**

- Objectives of these schemes are to promote exports, enhance foreign exchange earnings and attract investment for export production and employment generation.
- An EOU/EHTP/STP/BTP unit may export all kinds of goods and services except items that are prohibited in ITC (HS).
- In respect of an EOU, permission to export a prohibited item may be considered, by Board of Approval (BOA), on a case to case basis, provided such raw materials are imported and there is no procurement of such raw material from Domestic Tariff Area (DTA).
- Procurement and supply of export promotion material like brochure/literature, pamphlets, hoardings, catalogues, posters etc up to a maximum value limit of 1.5% of FOB value of previous years exports shall also be allowed.
- EOU/EHTP/STP/BTP units may import/procure from Domestic Tariff Area, without payment of duty,
- Units obtaining gold/silver/platinum from nominated agencies, either on loan basis or outright purchase basis shall within 90 days from date of release.
- EOU/EHTP/STP/BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/ Escrow Rupee Account of buyer subject to RBI clearance, if any.
- BOA may allow, EOU/EHTP/STP/ BTP units may be allowed to be imported/procured from DTA without payment of duty, to the extent of 5% FOB value of such manufactured articles exported by the unit in preceding financial year.
- Second hand capital goods, without any age limit, may also be imported duty free.
- An EOU/EHTP/BTP/STP unit may sell capital goods and lease back the same from a Non Banking Financial Company (NBFC).
- EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner.
- Net Foreign Exchange (NFE) Earnings shall be calculated cumulatively in blocks of five years, starting from commencement of production.
- Only projects having a minimum investment of Rs. 1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP/STP/BTP, and EOU in
Handicrafts/Agriculture/Floriculture/Aquaculture/Information Technology, Services, Brass Hardware and Handmade jewellery sectors.

- Export proceeds will be realized within nine months.
- Units will be allowed to retain 100% of its export earnings in the EEFC account.
- Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where the unit has turnover of Rs. 5 crore or above and the unit is in existence for at least three years.
- 100% FDI investment permitted through automatic route similar to SEZ units.
- With approval of Development Commissioner, an EOU may opt out of scheme. Such exit shall be subject to payment of Excise and Customs duties and industrial policy in force.
- If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.
- Existing DTA units may also apply for conversion into an EOU/EHTP/STP/BTP unit.

**Quality Complaints/ Trade Disputes**

The following type of complaints may be considered:

- Complaints received from foreign buyers in respect of poor quality of the products supplied by exporters from India;
- Complaints of importers against foreign suppliers in respect of quality of the products supplied; and
- Complaints of unethical commercial dealings categorized mainly as non-supply/ partial supply of goods after confirmation of order; supplying goods other than the ones as agreed upon; non-payment; non-adherence to delivery schedules, etc.

**Mechanism for handling of Complaints/ Disputes**

**Committee on Quality complaints and Trade Disputes (CQCTD)**

To deal effectively with the increasing number of complaints and disputes, a ‘Committee on Quality Complaints and Trade Disputes’ (CQCTD) will be constituted in the 22 offices of the Regional Authority(RA’s) of DGFT.

**Composition of the CQCTD**

The CQCTD would be constituted under the Chairpersonship of the Head of Office. The CQCTD may comprise of the following members:

- Additional DGFT/Joint DGFT/ (H.O.O): Chairperson
Representative of Bureau of India Standard (BIS): Member
Representative of Agricultural and Processed Food Products Export Development Authority: Member
Representative of the Branch Manager of the concerned Bank: Member
Representative of Federation of Indian Exporter Organisation/and OR Export Promotion Council: Member
Representative of Export Inspection Agency: Member
Nominee of Director of Industries of State Government: Member
Nominee of Development Commissioner of MSME: Member
Officer as nominated by Chairperson: Member Secretary
Any other agency, as co-opted by Chairperson: Member.

Functions of CQCTD

The Committee (CQCTD) will be responsible for enquiring and investigating into all Quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs.

It will take prompt and effective steps to redress the grievances of the importers, exporters and overseas buyers, within 3 months of receipt of the complaint.

Wherever required, the Committee (CQCTD) may take the assistance of the Export Promotion Councils or any other agency as considered appropriate for settlement of these disputes.

CQCTD proceedings are only reconciliatory in nature and the aggrieved party is free to pursue any legal recourse.
Intellectual Property Right

**GATT (General Agreement on Tariffs and Trade)**
- It was an international agreement setting out the rules for conducting international trade in goods among member countries. GATT, the international agency, no longer exists.
- The organization was like parliament and the courts combined in a single body. i.e. making the laws and implementing the Laws.
- The updated GATT lives alongside the new General Agreement on Trade in Services (GATS) and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- The WTO brings the three together within a single organization, a single set of rules and a single system for resolving disputes. So one could say that **the child is the father of the man.**

**GATS (General Agreement on Trade in Services)**
- GATS was the first multilateral, legally enforceable rules covering international trade in services.
- GATS containing general principles and obligations dealing with rules for specific sectors and individual countries’ specific commitments to provide access to their markets.

**Basic Principles of GATS are as follows:**
- All services are covered by GATS.
- Most-favoured-nation treatment applies to all services, except the temporary exemptions.
- National treatment applies in the areas where commitments are made
- Transparency in regulations.
- International payments normally unrestricted.
- Individual countries’ commitments negotiated and bound.
- Progressive liberalization through further negotiations.

**WIPO (The World Intellectual Property Organization)**
- WIPO mission is to promote innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system.
- WIPO is the United Nations agency, established in 1970, headquarter is in Geneva. WIPO expanded its role by entering into a cooperative agreement with the World Trade Organization in 1996.
WIPO serves as a forum for its Member States to establish and harmonize rules and practices for the protection of intellectual property rights.

WIPO also services global registration systems for trademarks, industrial designs and appellations of origin, and a global filing system for patents.

WIPO promotes the development and use of the international Intellectual Property system through Services Law, Infrastructure and Development.

### TRIPS (Trade-Related Aspects of Intellectual Property Rights)

- Ideas and knowledge are an important part of trade. Most of the value of new medicines and other high technology products lies in the amount of invention, innovation, research, design and testing involved.
- Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them.
- Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them. These are “intellectual property rights”.
- They take a number of forms. For example books, paintings and films come under copyright; inventions can be patented; brand names and product logos can be registered as trademarks; and so on.
- The extent of protection and enforcement of these rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations.
- It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members.
- When there are trade disputes over intellectual property rights, the WTO’s dispute settlement system is available.

### Types of intellectual property covered by the TRIPS Agreement

- Copyright and related rights
- Trademarks, including service marks
- Geographical indications
- Industrial designs
- Patents
- Layout-designs (topographies) of integrated circuits
Intellectual Property vs. Industrial Property

<table>
<thead>
<tr>
<th>Intellectual Property</th>
<th>Industrial Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intellectual property relates to the creations of human mind and human intellect.</td>
<td>Industrial property is a kind of intellectual property and relates to creation of human mind. e.g. Inventions and Industrial designs.</td>
</tr>
<tr>
<td>Intellectual property is mainly divided into two branches,</td>
<td>It is sometimes misunderstood as relating to movable or immovable property used for industrial production.</td>
</tr>
<tr>
<td>- Industrial property</td>
<td>Similar to property rights in movable and immovable property, intellectual property is also characterised by certain rights as well as limitations such as right to use and licence and also limited duration in the case of copyright and patents.</td>
</tr>
<tr>
<td>- Copyright</td>
<td>The inventions are exploited in industrial plants while the trademarks are concerned with both the commerce as well as industry.</td>
</tr>
<tr>
<td>Industrial property right is a collective name for rights referring to the commercial or industrial activities of a person.</td>
<td></td>
</tr>
</tbody>
</table>

Amendments to the IP legislations after India became a member of the WTO

- India became a member of the World Trade Organization in 1995, and this brought about the next round of revisions in the Indian IP system.
- As per the transitional arrangement it was required to comply with the provisions of TRIPS within a period of 5 years.
- The Patents Act, 1970 was modified in a calibrated manner in 1999, 2002 and 2005.
- India ratified the Agreement on TRIPS to make provision relating to Protection of Plant Varieties.
- The Designs Act 1911 was repealed and a new legislation was enacted in the year 2000 and the Copyright Act, 1957 was amended.
- The Trade Marks Act, 1999 was enacted incorporating the developments in trading and commercial practices e.g. the concept of well-known trade mark.
- The amendment also provided for setting up of the Intellectual Property Appellate Board (IPAB) instead of the High Courts for hearing appeals against the decision of the Registrar.
The Patent Act, 1970

Patent can be provided only on Invention

- New product/process involves
- Inventive steps
- A feature that makes the invention not obvious to a person skilled in that.
- Capable of Industrial application
- Invention is capable of being made (or) used in the industry.

Important Definitions

Assignee {Section 2(1) (a)}
Include the legal representative of a deceased assignee, and assignee of the legal representative or assignee of that person.

Budapest Treaty { Section 2(1) (aba)}
- Budapest Treaty is an international treaty signed in Budapest, Hungary, on April 28, 1977 between 80 countries.
- The applicant needs only to deposit the biological material at one recognised institution instead of every country, and this deposit will be recognised in all countries party to the Budapest Treaty.
The treaty allows deposits of microorganisms at an international depositary authority for the purposes of acquiring patent and by fulfilling the following conditions:-

1. The deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification;
2. All the available characteristics of the material required for it to be correctly identified are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution;
3. Access to the material is available in the depository institution only after the date of the application for patent in India;
4. Disclose the source and geographical origin of the biological material in the specification, when used in an invention.

**Exclusive Licence { Section 2(1) (f)}**

Means a licence from a patentee to a person which exclude all other persons (including the patentee), to perform any right in respect of the patented invention and give exclusive right in his favour.

**Invention { Section 2(1) (j)}**

Mean a new product or process involving an inventive step and capable of Industrial application.

**Inventive Step { Section 2(1) (ja)}**

Means

1. A feature of an invention that involves technical advance as compared to the existing knowledge that makes the invention not obvious to a person skilled in the art.
2. Any invention or technology which has not been anticipated or used in the country or elsewhere in the world before the date of filing of patent application with complete specification.

**What are not inventions?**

The following are not inventions within the meaning of Section 3 of the Act:

1. An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
2. If its use is contrary to law (or) morality.
3. The things which come under discovery only.
4. Mixture of two (or) more things.
5. Re-arrangement of information.
Method of agriculture.
Any process of medical, surgical, diagnostic.
Literary, dramatic, musical (or) artistic work.
A mathematical (or) computer programs.
Presentation of information.
Invention based on traditional knowledge.

Persons Entitled to make Application for Patent { Section 6}
An application for a patent for an invention may be made by any of the following persons:
- by any person claiming to be the true and first inventor of the invention;
- by any person being the assignee of the person claiming to be the true and first inventor;
- by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

<table>
<thead>
<tr>
<th>Provisional Specification</th>
<th>Complete Specification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>It is a document, which contains</strong></td>
<td><strong>It is a document which contains</strong></td>
</tr>
<tr>
<td>→ Description regarding the nature of invention.</td>
<td>→ Fully describe the invention</td>
</tr>
<tr>
<td>→ However it does not contain details regarding invention.</td>
<td>→ Its uses</td>
</tr>
<tr>
<td>→ It is useful for determining <strong>Priority date</strong></td>
<td>→ The method adopted</td>
</tr>
<tr>
<td>date of filing of application for patent</td>
<td>→ Best method of performing</td>
</tr>
<tr>
<td></td>
<td>→ Scope of invention</td>
</tr>
<tr>
<td></td>
<td>→ Technical information related to invention (if any)</td>
</tr>
</tbody>
</table>

Provisional Specification
- A provisional specification is a document, which contains the description regarding the nature of an invention.
- The description however does not contain the details regarding the invention. Also it does not contain the claims.
- The provisional specification is filed to claim the priority date of an invention. The advantages of a provisional specification is that it can be filed as soon as the patent is conceived and for the recorded of priority date. But the application is only examined after the complete specification has been filed.
Complete Specification

Complete specification is the document, which contains the detailed description of invention along with the drawings and claims.

Every complete specification is required to -

- fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
- disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection;
- end with a claim defining the scope of the invention for which protection is claimed; and
- be accompanied by an abstract to provide technical information on the invention.

Does a Patent obtained in India give protection worldwide?

- Patent protection is territorial right and therefore it is effective only within the territory of India.
- However, filing an application in India enables the applicant to file a corresponding application for same invention in convention countries, within or before expiry of 12 months from the filing date in India.
- Separate patents should be obtained in each country where the applicant requires protection of his invention in those countries.
- There is no patent valid worldwide.

Is it possible to file international application under Patent Cooperation Treaty (PCT) in India?

- It is possible to file an international application known as PCT application in India in the Patent Offices located at Kolkata, Chennai, Mumbai and Delhi.
- All these offices act as Receiving Office (RO) for International application.
- Residents not to apply for patents outside India without prior permission of CG and at least 6 weeks of application made in India.

How a Patent Specification is prepared?

- A patent specification can be prepared by the applicant himself or his registered and authorized agent.
- The patent specification generally comprises of the title of the invention indicating its technical field, sufficient description of the invention, its usefulness, and details of best method of its working.
- The complete specification must contain at least one claim or statement of claims defining the scope of the invention for which protection is sought for.
Procedure of acquiring Patent

Application + application fee+(provisional/complete) specification to controller of patent
→ Inventor
→ Person Assigned by inventor
→ Legal representative of inventor (In case of death of inventor)

Controller of patent shall publish it in official journal for any objection/ comment/ opposition
Maximum (3) months
Any person can make comment/objection/opposition to controller of patent

Patent can be granted

No objection found against application
Objection found but decided in the favour of inventor
Accepted by controller of patent by his own power

Grant of patent shall be publish by controller of patent in the official journal
Maximum (1) years
Opposition for patent by any person to controller of patent

Publication of Applications {Section 11A(1)}

- The publication of every application shall include the particulars of the date of application, number of application, name and address of the applicant identifying the application and an abstract.
- The applicant shall have no right to institute any proceedings for infringement until the patent has been granted.

Examination of Application {Section 12}

When the request for examination has been filed, the application and other documents related thereto shall be referred at the earliest by the Controller to an examiner for making a report to him in respect of the following matters:

- whether the application and other documents are in accordance with the requirements of the Act;
- whether there is any lawful ground of objection to the grant of the patent;

Power of Controller to Refuse or Require Amended Application in Certain matters {Section 15}

The Controller may refuse the application or to require the application to be amended, if he is satisfied that the application or any other document filed does not comply with the provisions of the Act.
Potential Infringement { Section 19}
- If during the investigations it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent.
- The Controller may direct that a reference to that other patent, be inserted in the applicant’s complete specification by way of notice to the public.

Substitution of applicants {Section 20}
- Where one of the two or more joint applicants for a patent dies at any time before the patent has been granted, the Controller may upon a request made by the survivor and with the consent of the legal representative of the deceased direct that the application shall proceed in the name of the survivor.
- If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Controller may upon an application made by any of the parties, and after giving an opportunity of being heard, give such directions as he thinks fit.

Ground of Opposition to the Patent { Section 25}
- Patent has been obtained by the patentee in wrongful manner.
- Some other person has claimed in respect of that invention which is prior to the claim of patentee.
- Invention claimed is publicly known invention.
- It is obvious and it is not an invention and has no inventive step.
- Invention not fully disclosed.
**Note:** Any interested person may give notice of opposition, to the Controller before the expiry of a period of one year from the date of publication of grant of a patent.

Constitution of Opposition Board and its proceeding { Section 25(3)}
- The Controller shall notify the patentee and constitute Opposition Board.
- Every Opposition Board is required to conduct the examination.
- Controller shall on receipt of the recommendation of the Opposition Board and after giving the patentee and the opponent an opportunity of being heard, confirm/amend /revoke the patent.
- The Controller while passing the order shall not take into account any personal document or secret trial.

Secrecy Directions for Defence Purposes
- If it appears to the Controller that the invention is relevant for defence purposes, he may give directions for prohibiting publication of information with respect to the invention.
- Central Government may reconsider the direction at intervals of six months from the date of issue of such directions or on a request made by the applicant which is found to
be reasonable by the Controller.

**Term of Patent (Section 53)**
- The term of every patent shall be twenty years from the date of filing of application for the patent.
- The term of patent in case of international applications designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.

**Patents of Addition (Section 54, 55 and 56)**
- It is acquired when any addition has been made in product for which patent has already been acquired.
- In case of any improvement/modification in that product, patent on this additional part shall be applicable only upto the tenure of original patent.
- In case of removal of patent from original patent, patent of addition shall be removed automatically.

**Restoration of Lapsed Patents (Section 60)**
- Patent lapsed for non-payment of renewal fee.
- It can be restored within (18) months from the date of lapse.
- In case of application made for restoration of lapsed patent opposition can be made by any person within (2) months of publication of application, by controller of Patent.

**Rights of patentees of lapsed patents which have been restored (Section 62)**
- Where a patent is restored, the rights of the patentee shall be subject to such conditions as the Controller thinks fit to impose
- No suit or other proceeding shall be commenced in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the date of the publication of the application for restoration of the patent.

**Surrender of Patents**
- A patentee can surrender his patent by giving notice to controller of patent.
- Controller of patent advertises the application and invites the objections.
- Controller of patent hears the concerned parties.
- Controller of patent accepts the surrender of patent and revokes the patent.

**Revocation of Patents**
A patent can be revoked by HC on the following grounds:
- If patentee fails to comply with the request of CG to make/use/exercise patented invention for the purpose of CG.
- If patent is not reasonably worked within 2 years after compulsory licensing.
- If it is exercised in mischievous mode to the country (or) prejudicial to public interest.
- CG can also remove the patent in the interest of security of India.
Compulsory Licences { Section 84}

At any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds:

- that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- that the patented invention is not available to the public at a reasonably affordable price, or
- that the patented invention is not worked in the territory of India.

In considering the application of compulsory licence, the Controller is required to take into account —

- the nature of the invention
- the capacity of the applicant
- Whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful.

Terms and conditions of compulsory licences { Section 90}

The Controller shall endeavour to secure that —

- the royalty is reasonable,
- the patented invention is worked to the fullest extent
- the patented articles are made available to the public at reasonably affordable
prices;
- the licence granted is a non-exclusive licence;
- the right of the licencsee is non-assignable;

Compulsory Licence for Export of Patented Pharmaceutical Products in Certain Exceptional Circumstances {Section 92A}

Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems.

International Arrangements {Section 133 to 139}
- A convention country is that country, which is a party of an international, regional or bi-lateral treaty.
- A complete specification filed with a convention application in a convention country in a separate application for a patent.
- If any such specification or other document is in a foreign language, a translation into English of the specification or document verified by affidavit or otherwise to the satisfaction of the Controller is required to be furnished.

A CS can work as Patent Agent

Qualifications for Registration as Patent Agent { Section 126}
A person shall be qualified to have his name entered in the register of patent agent,
- If he is a citizen of India,
- Completed the age of 21 years,
- Has obtained a degree in science, engineering or technology from any university or
- possesses such other equivalent qualifications as the Central Government may specify in this behalf

and
- has passed the qualifying examination or
- has 10 years of experience as an examiner or
- discharged the functions of the Controller,

Rights and Powers of the Patent Agent { Section 127,128}
- The patent agent may prepare all documents, transact all business and discharge such functions in any proceeding before the Controller.
- The patent agent may sign under authorisation on behalf of applicant.
Infringement of patent

Violating the statutory rights of patentee, his agent and his licensee. i.e. If any person other than
→ The patentee
→ his agent
→ the person acquired license producing patented products

Relief can be claimed for infringement

→ Damage and share of profit
→ Injunction on infringement
→ Court may order to seize, forfeit or destroy the product.

• But in case of innocent infringement damage and share of profit shall not be paid

Infringement without knowledge that a patent exist on that product.
Copyright law and Enforcement

Basics of Copyright Law

- Exclusive right to reproduce or authorize to reproduce the works come under this Act.
- When ideas or expressions or content are in tangible form.
- There shall be certain minimum level of creativity and originality.
- Copyright subsist on Literary (including computer programme), Dramatic, Musical, Artistic works, Cinematographic films, Sound recording etc.

Important Definitions

"Adaptation" means,-

- in relation to a dramatic work, the conversion of the work into a non-dramatic work;
- in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;
- in relation to a literary or dramatic work, any version of the work in which the story is conveyed mainly by means of pictures in a form suitable for reproduction in a book, newspaper, magazine etc;
- in relation to a musical work, any arrangement or transcription of the work; and
- in relation to any work, any use of such work involving its re-arrangement or alteration;
"Author" means,—
- in relation to a literary or dramatic work, the author of the work;
- in relation to a musical work, the composer;
- in relation to an artistic work other than a photograph, the artist;
- in relation to a photograph, the person taking the photograph;
- in relation to a cinematograph or sound recording the producer; and
- in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created.

"Broadcast" means
communication to the public—
- by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or
- by wire, and includes a re-broadcast;

“Communication to the public” means
- Making any work /performance available for being seen / heard or otherwise enjoyed by the public directly or by any means of display.
- However, communication through satellite, cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.

"Government work" means
A work which is made or published by or under the direction or control of—
- the Government or any department of the Government;
- any Legislature in India;
- any court, tribunal or other judicial authority in India;

"Indian work" means
A literary, dramatic or musical work,—
- the author of which is a citizen of India; or
- which is first published in India; or
- in the case of an unpublished work, at the time of the making of the work, author was a citizen of India.

"Infringing copy" means,—
- in relation to a literary, dramatic, musical or artistic work, a reproduction
- in relation to a cinematographic film, a copy of the film made on any medium by any means;
- in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
in relation to a programme or performance, the sound recording or a cinematographic film of such programme or performance.

"Reprography" means

The making of copies of a work, by photo-copying or similar means.

“Rights Management Information” means,—

- the title or other information identifying the work or performance;
- the name of the author or performer;
- the name and address of the owner of rights;
- terms and conditions regarding the use of the rights; and

Register of Copyrights

The Register of Copyrights is to be kept in Six parts –

- Part I - Literary works other than computer programmes;
- Part II - Musical works;
- Part III - Artistic works;
- Part IV - Cinematograph films;
- Part V - Sound Recording; and
- Part VI - Computer programmes.

---

**Registration of Copyright**

Author of the work shall make application + Application fee

To Registrar of copyright

(* for every work there shall be separate application)

Registrar of copyright publish this for any comment/objection

Maximum (30)_days

Any person may file comment/objection

If Registrar of Copyright satisfied about the particulars and objection

- Not found
- Found but decided in favour of the author

Registrar of copyright may register it

** Registration of copyright in any work is not necessary **
Term of Copyright

<table>
<thead>
<tr>
<th>Term of Copyright</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Normal term of copyright</td>
<td>Lifetime of author + (60) years thereafter</td>
</tr>
<tr>
<td>In case of joint authorship</td>
<td>(60) Years from the year of publication of work</td>
</tr>
<tr>
<td>In case of pseudonymous work (under assumed name)</td>
<td>(60) Years from the year of publication of work</td>
</tr>
<tr>
<td>In case of posthumous work (author has died)</td>
<td>(60) Years from the year of publication of the work</td>
</tr>
<tr>
<td>Broadcast reproduction right</td>
<td>(25 ) Years from broadcast is made</td>
</tr>
<tr>
<td>Performer’s right</td>
<td>(50) Years from performance is made</td>
</tr>
<tr>
<td></td>
<td>* If name is disclosed then (60) year from the date following the year in which author dies</td>
</tr>
</tbody>
</table>

Copyright Board { Section 11}

- The Central Government may constitute the Board consisting of a Chairman and two other members.
- The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of a High Court or is qualified for appointment as a Judge of a High Court.
- The Central Government may after consultation with the Chairman of the Copyrights Board, appoint a Secretary to the Copyright Board and such other officers and employees as may be considered necessary for the efficient discharge of the functions of the Copyright Board.

Functions of the Copyright Board

The main functions of the Copyright Board are as under:

- Settlement of disputes as to whether copies of any literary, dramatic or artistic work are issued to the public in sufficient numbers.
- Settlement of disputes as to whether the term of copyright for any work is shorter in any other country.
- Settlement of disputes with respect to assignment of copyright Granting of compulsory licences in respect of Indian works.
- Granting of compulsory licence to publish or unpublished Indian works.
- Granting of compulsory licence to produce and publish translation of literary and dramatic works.
- Determination of royalties payable to the owner of copyright.
Licensing/ Assignment of Copyright

Voluntary licensing of copyright

It shall be given by the copyright owner on his will to other and conditions agreed between them.

Compulsory licensing of copyright

It shall be given against the will of copyright owner to other on the terms and conditions specified by Copyright Board in public interest.

Compulsory license

In case of published work

Copyright after providing ROOBH to copyright owner. May provide compulsory license to other on the terms and conditions mentioned that time (i.e. amount of royalty, area, period etc.)

In case of unpublished work and sound recording, films, musical, artistic work

Before making an application

- The applicant shall publish his proposal in one daily English newspaper.
- Other things same

In case of literary (or) dramatic work for translation

Any person can apply to copyright board for production of any translation of work after a period of (7) years from the date of publication

License can be given only after (9) months notice to the author

*copyright board can terminate the license after giving (3) months notice, if the copyright owner is able to make/translation

Other things same
Mode of assignment { Section 19}
- An assignment of the copyright in any work should be in writing signed by the assignor or by his duly authorised agent.
- Where the work has not been started within (1) year from the date of assignment/licensing, it shall be deemed to have been lapsed after of that period, unless specified in assignment/license.
- The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member is void.

Compulsory licence in unpublished “or published works { Section 31A}
- In the case of any unpublished work or any work published, the author is dead or cannot be traced, any person may apply to the Copyright Board for a licence to publish or a translation in any language.
- Any person to apply to the Copyright Board for a licence to produce and publish a translation of a literary or dramatic work in any language after a period of 7 years from the first publication of the work.
- Before making an application to the Copyright Board, the applicant required to publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.
- The Copyright Board after holding such inquiry, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine.
- Copyright Board shall dispose of such application within a period of two months from the date of receipt of the application if the work is for the benefit of disabled.

Termination of Licence { Section 32B}
- If at any time after the granting of a licence, the owner of the copyright or any person authorised by him publishes a translation of such work in the same language and the same standard, the licence so granted shall be terminated.
- Such termination shall take effect only after the expiry of a period of three months from the date of service of a notice.

Copyright Societies { Section 33}
- To protect the work of individual owner is not always done in very effective ways.
- Then a group of copyright owner from a society can form copyright society to administer their rights more effectively.
- Registration of copyright society shall be granted by CG.
  Eg. leading music directors, Lyricists, Producers etc.
- Registration granted to a copyright society shall be for a period of five years and may be renewed from Central Government.
- Every copyright society shall have a governing body with such number of persons
elected from among the members of the society consisting of equal number of authors and owners of work for the purpose of the administration of the society.

Rights of copyright owner

- In case of literary, dramatic or musical work
- In case of computer programme
- In case of artistic work
- In case of cinematographic film and sound recording

As per nature of work

- Reproducing the work
- Storing in any medium by electronic means
- Issuing copies of work to public
- Performing any cinematographic film (or) sound recording in respect of that work
- Making any translation of work
- To sell or given on rental
- Taking photograph (or) any other sound recording etc.

Exclusive Right of Performer { Section 38A }

- to make a sound recording or a visual recording of the performance;
- storing of it in any medium by electronic or any other means;
- issuance of copies of it to the public;
- communication of it to the public;
- selling or giving it on commercial rental
- offer for sale any copy of the recording;
- to broadcast or communicate the performance to the public except where the performance is already broadcast.

Moral Right of Performer { Section 38B }

- The performer of a performance after assignment, either wholly or partially of his right, have the right to claim to be identified as the performer of his performance except where omission is dictated by the manner of the use of the performance; and claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.
- Mere removal of any portion of a performance for the purpose of editing, to fit the recording within a limited duration, or any other modification required for purely technical reasons shall not be deemed to be prejudicial to the performer’s reputation.
What are the moral rights of an author?

- The author of a work has the right to claim authorship of the work and to claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work which is done before the expiration of the term of copyright if such act would be prejudicial to his honour or reputation.
- Moral rights are available to the authors even after the economic rights are assigned.

International Copyright

Copyright Protection to Foreign Works

- The Copyright Act applies only to works first published in India, irrespective of the nationality of the author.
- The benefits granted to foreign works will not extend beyond what is available to the works in the home country i.e. the foreign country must grant similar protection to works entitled to copyright under the Act.
- The term of Copyright in India to the foreign work, will not exceed that conferred by the foreign country.

Conditions of Copyright Protection

The following are the requisites for conferring copyright protection to works of international organisations:

- The work must be made or first published by or under the direction or control of the International Organisation.
- There should be no copyright in the work in India at the time of making or on the first publication of the work.
- If the work is published in pursuance of an agreement with the author, such agreement should not reserve the author any copyright in the work or any copyright in the work should belong to the organisation.
Infringement of Copyright

When any person other than ✪ Author (copyright owner)
       ✪ License /assignee (voluntary)
       ✪ License given (compulsory)

→ Does anything for which exclusive right is conferred upon to copyright owner
→ Permits for profit any work comes under copyright in any form.
→ Makes (or) sale (or) hire any work comes under copyright.
→ Import into India any infringing copies of work

**Consequences**
Injunction, damage, share of profit

In case of innocent infringement → No damage shall be given to plaintiff (Copyright owner)

However, import of one copy of any work is allowed for private and domestic use of the importer.

**Statutory Exceptions**

- A fair dealing with any work, not being a computer programme, for the purposes of—
  - private or personal use, including research;
  - criticism or review, whether of that work or of any other work;
  - reporting of current events and current affairs, including the reporting of a lecture delivered in public.
- the reproduction of any work for the purpose of a judicial proceeding.
- the reproduction of any work—
  - by a teacher or a pupil in the course of instruction; or
  - as part of the questions to be answered in an examination; or
- the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.
- the reproduction in a newspaper, magazine or other periodical of an article, unless the author of such article has expressly reserved to himself the right of such reproduction.
- the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work.
- the making of not more than three copies of a book by a non-commercial public library for the use of the library if such book is not available for sale in India;
OFFENCES AND PENALTIES

- Imprisonment for a minimum period of six months which may extend to three years and with minimum fine of fifty thousand rupees which may extend upto rupees two lakhs.
- For second and subsequent convictions, imprisonment not less than one year extendable to three years and the fine not less than one lakh rupees, extendable to rupees two lakhs.

Power of Police to Seize Infringing Copies { Section 64}

- Any Police Officer, not below the rank of a sub-inspector, to seize without warrant, all copies of the work used for the purpose of making infringing copies of the work, wherever they are found.
- Such Police Officer has been put under obligation to produce before the Magistrate, as soon as practicable, all copies so seized.
- Any interested person may make an application to Magistrate, within 15 days of such seizure, for restoring to him such copies and plates.
A trade mark is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

A trade mark performs four functions

- It identifies the goods / or services and its origin.
- It guarantees its unchanged quality.
- It advertises the goods/services.
- It creates an image for the goods/ services.

### Important Definitions

**Trade mark (Section 2(1)(zb))**

Means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and includes a certification trade mark or collective mark.

**Certification Trade Mark { Section 2(1)(e)}**

- Certification trademark is capable of distinguishing the goods / services in a manner of their quality/ performance etc.
- Certification trademark can only be used when that particular quality/ performance carried on by that goods/services.
- It is not limited to any one, it can be used by a number of user after fulfilling that quality in their product.

  Example → ISI mark, Agmark, Stars (Power saving) etc.

**Collective Marks**

A collective trademark distinguishing the goods/services of members of an

- Association of persons from those of others.
- All members of that class / group are allowed to use that trademarks.

Example:– members of ICSI/ICAI/ICMAI /Bar council etc.

**Prerequisites for a trade mark to be registered**

- The selected mark should be capable of being represented graphically (that is in the paper form).
- It should be capable of distinguishing the goods or services of one undertaking from those of others.
It should be used or proposed to be used mark in relation to goods or services.

**Absolute and Relative Grounds for Refusal of Registration**

- Trademark is not capable of distinguishing goods/services of one person to another.
- Trademark which serve in trade to designate kind, quality, quantity, value, geographical origin etc.
- Trademark which become customary in current language (or) established practice of trade.
- Trademark which is likely to cause confusion.
- Trademark which contains any matters likely to hurt religious sentiments.
- Trademark which is necessary to obtain technical result.
- Trademark prohibited under restricted Emblems and Names.
- Trademark on different goods dissimilar to each other but one goods has a well-known trademark.

**Procedure for Registration { Section 18}**

- Any person claiming to be the Proprietor of a trademark used or proposed to be used by him, who is desirous of registering it, shall apply in writing to the Registrar for the registration of his trademark.
- Registration in several classes of goods or services can be made through single application.
- However, the fee payable is to be calculated on the basis of the number of classes in which registration is sought.
- Registration of a trademark for a period of 10 years.
- Renewal of registration for successive periods of 10 years, from the date of the original registration or the last renewal.

---

**Registration of Trademark**

{(Application + application fee) ➔ Controller General of Patent Design and Trademark}

- **Products/Goods**
  - 34 classes
  
  ➔ No two products of same class can acquire same trademark
  ➔ Two products of different class may acquire same trademark
  **Only if**
  ➔ earlier trademarks has not get reputation (well known trademark)
  (and)
  ➔ Other person is not trying to take undue advantage

- **Services**
  - 11 classes

  ➔ Same
Case: Sony Kabashiki v. Shamrao

Product = Nail polish
Product Name = Sony nail polish

The court held that name Sony in respect of nail polish was allowed as it is not likely to cause confusion (or) deception in the minds of consumer of electronic goods.

### Infringement & Passing off

- Unauthorized use of registered trademark is infringement, protection for this is available under Trademark Act, 1999.
- Protected on unauthorized use of trademark is available even if trademark is not registered.
- Infringement action can only be in respect of registered trademarks.
- But passing off action can be respect of registered as well as unregistered trademark.

### Injunction

- Either damage (or) profit earned (on the option of plaintiff)
- Order for delivery of infringing labels, marks for destructing.

### Infringement of Trademark

A registered trademark is infringed when a person other than an owner (or) person permitted by owner uses it in trade.

### Instances of infringement of trademark

- Use of deceptively similar mark.
- Use of mark likely to cause confusion because of identity.
- Use of identical (or) similar trademark even on dissimilar good, if the registered trademarks has a reputation.
- Unauthorized use of trademark on material intended/on packing.
- Use of registered trademark in an advertisement in bad light.
- If the trademark consists (or) includes words, spoken use of words as well as its virtual representation.
Activities

(1) Use of trademark in honest practice in trade

(2) Use only to indicate quality, quantity etc

(3) Use as per limitation and conditions in registered trademark

(4) Use of registered trademark for indicating services performed by owner

(5) Purchase of good bearing the registered trademark and than displayed for sale

Infringement or Not

Deceptive Similarity

Case:- Mahendra and Mahendra Paper Mills Ltd. Vs. Mahindra and Mahindra Ltd.

Supreme Court broadly stated, in an action for passing – off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered—

- The nature of the marks i.e word marks or labels marks or both.
- The degree of resembleness between the marks, phonetically similar.
- The similarity in nature, character and performance of the goods of the rival traders
- Class of purchasers who are likely to buy the goods and degree of care they are likely to exercise in purchasing.
- The mode of purchasing the goods or placing orders for the goods.
- Any other surrounding circumstances which may be relevant in the extant of dissimilarity between the competing marks.

Inherently Distinctive marks

Case:- Uniply Industries Ltd. v. Unicorn Plywood Pvt. Ltd. and Others

The Supreme Court observed that

- for inherently distinctive marks ownership is governed by priority of use for such marks. The first user of sale of goods/services is the owner who is senior to others.
- These marks are given legal protection against infringement immediately upon adoption and use in trade.
- Some courts indicate that
even prior sales of goods though small in size with the mark are sufficient to establish priority,
the test being to determine continuous prior user and the volume of sale or the degree of familiarity of the public with the mark.

Assignment and Transmission { Section 37}
- Unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.
- Restriction on assignments or transmissions of trade mark where multiple exclusive rights would be created in more than one person.
- Assignment of certification trade mark can only be done only with the consent of the Registrar.
- Associated trade marks shall be assignable and transmissible only as a whole but they will be treated as separate trade marks for all other purposes.
- Where the validity of an assignment is in dispute between the parties, the Registrar may refuse to register the assignment or transmission unless the rights of parties are determined by the competent court.

Removal of Trade Mark for Non-use { Section 47}
- A trade mark which is not used within 5 years of its registration, becomes liable for removal either completely or in respect of those goods or services for which the mark has not been used.
- However a mark can not be removed from the register on ground of non-use if such non-use is shown to have been due to special circumstances in the trade which may include restriction imposed by any law or regulation on the use of trade mark in India.

Intellectual Property Appellate Board
- The Appellate Board will have the powers of a Civil Court.
- With a view to facilitate speedy disposal of cases, this section lays down that the Board shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but be guided by the principles of natural justice.

Who benefits from a trade mark?
- Registered Proprietor: The Registered Proprietor of a trade mark can stop other traders from unlawfully using his trade mark, sue for damages and secure destruction of infringing goods and or labels.
- Government: The Trade Marks Registry is earning revenue.
- Professionals: The Trade Marks Registration system is driven by professionals like Company Secretaries who act as trademark agents for the clients in the processing of the trade marks application.
- Purchaser and ultimately Consumers of trade marks goods and services.
Offences and Penalties

The penalty for applying false trade mark or false trade description, etc. shall be imprisonment for a term which shall not be less than 6 months but which may extend to 3 years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Offences by Companies { Section 114}

- Where a person committing offence is a company, every person in charge of and responsible to the company for the conduct of its business will be liable.
- Where a person accused proves that the offence was committed without his knowledge or he has exercised all due diligence to prevent the commission of such offence, he will not be liable.
- Where it is proved that an offence has been committed with the consent or is attributable to any neglect of any Director, Manager, Secretary or any other officer of the company, he shall be deemed to be guilty of the offence.
- A company as to mean body corporate and includes a firm or other association of individuals.
- In case of a firm, partners of the firm.

Trade Mark Agent

If any act is required to be done before the Registrar by any person, this may be done by a person duly authorised who is a legal practitioner, a trade marks agent or by his employee if he is duly authorised by him.

A Company Secretary can work as Trade mark agent.
Objective of this Act

- To protect new or original designs so created to be applied to particular article to be manufactured by Industrial Process.
- To see that the artist, creator, originator of a design having aesthetic look is not deprived of his bonafide reward by others applying it to their goods.

Important Definition

Article { Section 2(a) }

Article means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

Design { Section 2(d) }

Only the feature of shape, configuration, pattern or combination of all/ any applied to any article whether two dimensional / three dimensional / in both forms, by any industrial process whether manual, mechanical, chemical or combined.

Prohibition of registration of certain designs

- is not new or original; or
- has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or
- is not significantly distinguishable from known designs or combination of known designs; or
- comprises or contains scandalous or obscene matter, shall not be registered.

Application and Registration of design

- The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality register the design under the Act.
- Every application accompanied with the fee.
- A design when registered shall be registered as of the date of the application for registration.
- Controller shall, as soon as may be after the registration of a design, published the design, be open to public inspection.
- Controller grants a certificate of registration to the proprietor of the design when it registered.
Copyright on Registration

- When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during 10 years from the date of registration.
- However, before the expiration of the said 10 years, application for the extension of the period of copyright is made to the Controller, the Controller shall, on payment of the fee, extend the period of copyright for a second period of 5 years.

Piracy of registered design (Section 22)

During the existence of copyright in any design it shall not be lawful for any person—
- for the purpose of sale to apply to any article in which the design is registered; or
- to import for the purposes of sale, without the consent of the registered proprietor, or
- any fraudulent or obvious imitation has been applied to any article in which the design is registered without the consent of the registered proprietor.

Piracy of registered design has protection in the mode of:-
- Injection
- Damage etc.
Important Definitions

Geographical indication [Section 2(e)]
In relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured good as originating / manufactured in the territory of country / region / locality, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.
Examples of Indian Geographical Indications are Darjeeling Tea, Kanchipuram Silk Saree, Alphanso Mango, Nagpur Orange, Kolhapuri Chappal etc.

Goods [Section 2(f)]
Goods mean any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff.

Indication [Section 2(g)]
Indication includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies.

Registration of geographical indication { Section 8}
A geographical indication may be registered in respect of any goods, by a region or locality in that territory.
The Registrar may also classify the goods under in accordance with the International classification of goods for the purposes of registration of geographical indications and publish it.
Any question arising as to the class within which any goods fall or the definite area in respect of which the geographical indication is to be registered shall be determined by the Registrar.

Prohibition of registration of certain geographical indications { Section 9}
They are as follows:
- the use of which would be likely to deceive or cause confusion; or
- the use of which would be contrary to any law for the time being in force; or
- which comprises or contains scandalous or obscene matter; or
- which comprises or contains any matter likely to hurt the religious sentiment; or
- which would otherwise be disentitled to protection in a court; or
- which are determined to be generic names; or
“Generic names or indications"  
- The name of a good which, although relates to the place where the good was originally produced or manufactured has lost its original meaning and has become the common name and serves as the kind or characteristic of the goods.
- In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

Application for registration { Section 11 } 
Any association of persons / producers / any organisation /authority representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar with fees.

Registration { Section 16 }  
- On the registration of a geographical indication, the Registrar shall issue each to the applicant and the authorised users, a certificate.
- If registration of a geographical indication is not completed within 12 months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant treat the application as abandoned.

Duration of registration { Section 18 }  
- The registration of a geographical indication shall be for a period of 10 years, but may be renewed from time to time.
- The registration of an authorised user shall be for a period of 10 years or for the period till the date the authorised user is registered expires, whichever is earlier.
- The Registrar shall, on application made, by the registered proprietor on payment of fee, renew the registration of the geographical indication, for a period of 10 years.

Infringement of unregistered geographical indication { Section 20 }  
A person shall not be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.

Infringement of registered geographical indications { Section 22 }  
A registered geographical indication is infringed by a person who, not being an authorised user uses it.

"Act of unfair competition"  
- all acts of such a nature as to create confusion by any means
- geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.
Can a registered geographical indication be assigned, transmitted, etc?

No. A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement. However, when an authorised user dies, his right devolves on his successor in title.

Prohibition of registration of geographical indication as trade mark (Section 25)

The Registrar of Trade Marks shall, suo-motu or at the request of an interested party, refuse or invalidate the registration of a trade mark which contains or consists of a geographical indication, if use of such geographical indications in the trade mark, is as to confuse or mislead the persons.
Consumer Protection Act, 1986

Scope of the Act
The Act extends to the whole of India except the State of Jammu and Kashmir and applies to all goods and services unless otherwise notified by the Central Government.

Basic Rights of Consumers
- the right to be protected against marketing of goods and services which are hazardous to life and property;
- the right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices;
- the right to be assured, wherever possible, access to variety of goods and services at competitive prices;
- the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- right to consumer education.

This is based on the basic rights of consumers as defined by the International Organisation of Consumers (IOCU).

Important Definitions {Section 2(1)}

Complainant [Section 2(1)(b)] Means
- a consumer, or
- any voluntary consumer association registered under the Companies Act, or under any other law for the time being in force; or
- the Central Government or any State Government, who or which makes a complaint; or
- one or more consumers where there are numerous consumers having the same interest; and
- in case of death of a consumer, his legal heir or representative; who or which makes a complaint

Complaint [Section 2(1)(c)] Means

Any allegation in writing made, with a view to obtaining any relief, by a complainant that
- an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- the goods bought by him or agreed to be bought by him suffer from one or more defects;
- the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—
fixed by or under any law for the time being in force;
displayed on the goods or any package containing such goods;
displayed on the price list exhibited by him by or under any law for the time
being in force
agreed between the parties.
goods which will be hazardous to life and safety when used are being offered for sale to the public,—
in contravention of any standards relating to safety;
if the trader could have known that the goods so offered are unsafe to the public.
goods which are hazardous or likely to be hazardous to life and safety of the public when used.

Consumer [Section 2(1)(d)]
Means any person who
buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.
Commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment.
A purchase of goods can be said to be for a 'commercial purpose only if the goods have been purchased for being used in some profit making activity on a large-scale, and there is close and direct nexus between the purchase of goods and the profit-making activity.

Case: Laxmi Engineering Works v. P.S.G. Industrial Institute
The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.
Case:- Bhupendra Jang Bahadur Guna v. Regional Manager and Others,
The National Commission held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.

Case:- A Narasamma v. LIC of India.
The State Commission held that as the term ‘consumer’ includes any beneficiary of service other than the person who hires the services for consideration, the widow being the beneficiary of services is a ‘consumer’ under the Act entitled to be compensated for the loss suffered by her due to negligence of the LIC.

Case:- Laxmiben Laxmichand Shah v. Sakerben Kanji Chandan and others
The Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under Section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

Goods {Section 2(1)(i)}

As per Section 2(7) of the Sale of Goods Act, 1930
Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. Therefore, most consumer products come under the purview of this definition.

Case:- Morgan Stanley Mutual Fund v. Kartik Das
The Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment, rights may arise as per the articles of association of the company. At the stage of application there is no purchase of goods for consideration and again the purchaser cannot be called the hirer of services for consideration.

Service {Section 2(1)(o)}
Means

- Service of any description which is made available to potential users and includes, but not limited
- to the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information,

but does not include

- the rendering of any service free of charge or under a contract of personal service.

Contract of Service and Contract for Service

Case: - Indian Merchants Association v. V P Santha
The Supreme Court observed that

A contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion.

A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance.

**Service Rendered under Medicare Insurance Scheme:**

Service rendered by a medical practitioner or hospital/nursing home can not be regarded as service rendered free of charge, if the person availing the service has taken an insurance policy for medical care where under the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of ‘service’ as defined in Section 2(1)(o).

Similarly, where as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, service rendered to such an employee and his family members would not be free of charge and would constitute ‘service’ under Section 2(1)(o) of the Act.

**Case:- State of Haryana v. Santra**

The Supreme Court held that in a country where the population has been increasing rapidly and the Government has taken up the family planning as an important programme, the medical officer as also the State Government must be held responsible in damages if the family planning operation is a failure on account of the medical officers negligence because this has created additional burden on the parents of the child.

**Case:- Alex J. Rebello v. Vice Chancellor, Banglore University and others,**

(NCDRC) the National Commission has held that the University in conducting examination, evaluating answer sheets and publishing the result was not performing any service for consideration and a candidate who appeared for the examination cannot be regared as a consumer.

**Consumer Dispute [Section 2(1)(e)] Means**

A dispute where the person against whom a complaint has been made, denies or disputes the allegation contained in the complaint.

**Restrictive Trade Practice [Section 2(1)(nn)]**

Means

- a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions
and shall include—

- delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
- any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services.

Defect [Section 2(1)(f)] Means

- Any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods
- Non-fulfilment of any of the standards or requirements laid down under any law for the time being in force or as claimed by the trader in relation to any goods fall under the ambit of defect.

Deficiency [Section 2(1)(g)] Means

- Any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.
- Failure to maintain the quality of performance required by the law or failure to provide services as per warranties given, by the provider of the service would amount to ‘deficiency’.

Case:- Divisional Manager, LIC of India v. Bhavanam Srinivas Reddy, The National Commission observed that default or negligence in regard to settlement of an insurance claim (on allegation of suppression of material facts, in this particular case) would constitute a deficiency in service on the part of the insurance company and it will be perfectly open for the aggrieved consumer to approach the Redressal Forums to seek appropriate relief.

Case:- Jaipur Metals and Electrical Ltd. v. Laxmi Industries

The National Commission held that a reading of Section 2(1)(g) of the Act shows that deficiency must pertain to the ‘performance’ in terms of quality, nature and manner to be maintained or had been undertaken to be performed in pursuance of a contract.

Case:- Punjab National Bank v. K.B. Shetty

Ornaments kept in the banks locker were found lost though the certificate recorded by the custodian of the bank on the day the customer operated the locker stated that all lockers operated during the day have been checked and found properly locked. The National Commission unholding the decision of the State Commission, held the bank guilty of negligence and therefore, liable to make good the loss.
Case:- Special Machines v. Punjab National Bank

Failure to provide nursing and financing facilities to a small scale industry which consequently became sick cannot be said to constitute ‘deficiency in service’ as in matters of grant or withholding of further advances and insisting on margin money, banks may exercise their discretion and act in accordance with their best judgement after taking into account various relevant factors. Therefore, the proper forum to agitate such grievances is a civil court.

Case:- Mrs. Anumati v. Punjab National Bank

It has also been held by National Commission that the financial institutions have every right to protect their interests by taking conscious decisions. There shall be no deficiency in service where the bank takes conscious decision to adjust the fixed deposit of the joint holders against the loan taken by a third party when the FDR has been mortgaged as guarantee for loan.

Case:- Lucknow Development Authority v. Roop Kishore Tandon

Failure of a Housing Board to give possession of the flat after receiving the price and after registering it in favour of the allottee was held to be ‘deficiency in service’.

Case:- Dainik Rail Yatri Sangh (Regd.) v. The General Manager, Northern Railway

Cancellation of train services by the railways due to disturbance involving violence so as to safeguard the passengers as well as its own property was held by the National Commission as not constituting ‘deficiency in service’ on the part of the Railway.

Case:- N. Prabhakaran v. General Manager, Southern Railway, Madras

Failure of the Railways to provide cushioned seats in the first class compartments as per specifications laid down by the Railway Board and to check unauthorised persons from entering and occupying first class compartments was held to be ‘deficiency’.

Case:- Union Bank of India v. Seppo Rally

The Supreme Court held that delay in payment of an unconditionally guaranteed amount by a bank in India to a non-resident in Finland in foreign currency can not be attributed to any deficiency in the service of the bank when the banks stand is that the delay is caused by the failure of a bank in Finland, to which the remittance was to have been made under the non residents instructions to reply to the Indian Banks valid query in this connection and the RBI took time to grant the necessary permission to make the remittance.

Consumer Protection Councils

The interests of consumers are sought to be promoted and protected under the Act by establishment of Consumer Protection Councils at the Central, State and District Levels.
Central Consumer Protection Council (Section 4)

The Central Government can establish a Council to be known as the Central Consumer Protection Council consisting of

- the Minister in charge of Consumer Affairs in the Central Government, as its Chairman,
- and such number of other official or nonofficial members representing such interests as may be prescribed.

The Consumer Protection Rules, 1987 restrict the number of members of the Central Council to 150 members.

Section 5 of the Act requires the Central Council to meet as and when necessary, but at least once in every year.

State Consumer Protection Council (Section 7)

Any State Government can establish State Consumer Protection Councils by (by notification) to be known as Consumer Protection Council for that State.

The State Council shall consist of

- a Minister in charge of Consumer Affairs in the State Government as its Chairman and
- such number of other official or non-official members representing such interests as may be prescribed by the State Government and
- such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

District Consumer Protection Council (section 8A)

In order to promote and protect the rights of the consumers within the district in every district a council shall be established, to be known as the District Consumer Protection Council.

It shall consist of

- the Collector of the district, who shall be its Chairman and
- such number of other official and non-official members representing such interests as may be prescribed by the State Government.

The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

Redressal Machinery under the Act

The Act provides for a three-tier quasi-judicial redressal machinery at the District, State and National level for redressal of consumer disputes and grievances.

- The District Forum has jurisdiction to entertain complaints where the value of goods/services complained against and the compensation, if any claimed, does not exceed Rs. 20 lakhs,
- the State Commission for claims exceeding Rs. 20 lakhs but not exceeding Rs. 1 crore; and
- the National Commission for claims exceeding Rs. 1 crore.
District Forum { Section 9}

Each District Forum shall consist of:
- a person who is, or who has been, or is qualified to be, a District Judge, who shall be its President;
- two other members one of whom shall be a woman, who shall have the following qualifications:
  - be not less than thirty-five years of age,
  - possess a bachelor’s degree from a recognised university,
  - be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

A person shall be disqualified for appointment as a member if he—
- has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government involves moral turpitude; or
- is an undischarged insolvent; or
- is of unsound mind and stands so declared by a competent court; or
- has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or
- has such other disqualification as may be prescribed by the State Government.

Every member of the District Forum shall hold office for a term of 5 years or upto the age of 65 years, whichever is earlier, and shall be eligible for reappointment.

Jurisdiction of District Forum { Section 11}

The jurisdiction of the District Forum under two criteria pecuniary and territorial.

- Pecuniary limits { Section 11(1)}
The District Forum can entertain complaints where the value of goods or services and the compensation, if any, claimed does not exceed rupees 20 lakhs.

- Territorial limits { Section 11(2)}
A complaint to be instituted in the District Forum within the local limits of whose jurisdiction the opposite party or the defendant
  - actually and voluntarily resides or
  - carries on business or
  - has a branch office or
  - personally works for gain,
at the time of institution of the complaint; or
any one of the opposite parties (where there are more than one)
  - actually and voluntarily resides or carries on business or
  - has a branch office or
  - personally works for gain,
at the time of institution of the complaint.

Case:- Dynavox Electronic Pvt. Ltd. v. B.J.S. Rampuria Jain College, Bikaner

In this case it was held that where in a contract, the machinery was supplied and installed at a particular place, a part of cause of action would be deemed to have arisen at that place, therefore, the complaint could be instituted in the District Forum within whose jurisdiction that place falls.

**State Commission { Section 16}**

The State Government can establish the State Consumer Disputes Redressal Commission consisting of:

- a person who is or has been a judge of a High Court appointed by the State Government (in consultation with the Chief Justice of the High Court) who shall be its President.
- not less than two and not more than such number of members, as may be prescribed, one of whom shall be a woman,

Every member of the State Commission shall hold office for a term of 5 years or upto the age of 67 years, whichever is earlier and shall be eligible for reappointment.

**Jurisdiction of State Commission { Section 17}**

The jurisdiction of the Commission as follows:

- The State Commission can entertain complaints where the value of the goods or services and the compensation, if any claimed exceed rupees twenty lakhs but does not exceed rupees one crore;
- The State Commission also has the jurisdiction to entertain appeals against the orders of any District Forum within the State.

However, no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner 50% of the amount or rupees 25000, whichever is less;

The State Commission’s jurisdiction may be original, appellate or revisional.

The State Commission may reverse the orders passed by the District Forum on any question of fact or law or correct any error of fact or of law made by the Forum.

**Transfer of Cases { Section 17A})**

The State Commission on the application of the complainant or of its own motion can transfer, at any stage of the proceeding any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

**National Commission { Section 9}**

National Commission shall consist of—
Every member of the National Commission shall hold office for a term of 5 years or up to 70 years of age, whichever is earlier and shall be eligible for reappointment.

**Jurisdiction of National Commission** {Section 21}

The National Commission shall have jurisdiction:

- to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crore;
- to entertain appeals against the orders of any State Commission.

However no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty percent of the amount or rupees thirty-five thousands, whichever is less; and
- to call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

---

<table>
<thead>
<tr>
<th>President</th>
<th>District judge (or) qualified to be appointed as district judge</th>
<th>Judge of HC (or) qualified to be appointed as judge of HC</th>
<th>Judge of SC (or) qualified to be appointed as judge of SC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member</td>
<td>Minimum (2), in which at least (1) woman</td>
<td>Minimum (2), in which at least (1) woman</td>
<td>Minimum (4), in which at least (1) woman</td>
</tr>
<tr>
<td>Term</td>
<td>5 years/65 years of age (whichever is earlier)</td>
<td>5 years/67 years of age (whichever is earlier)</td>
<td>5 years/70 years of age (whichever is earlier)</td>
</tr>
<tr>
<td>Pecuniary limit</td>
<td>Value of goods/services + compensation ≤ 20L</td>
<td>Value of G/S + compensation ≤ 1Cr</td>
<td>Value of G/s + compensation ≤ 1Cr</td>
</tr>
<tr>
<td>Territorial limit</td>
<td>Any party to dispute, reside, carries business, branch office, cause of action arises</td>
<td>same</td>
<td>N/A</td>
</tr>
<tr>
<td>Appellate jurisdiction</td>
<td>N/A</td>
<td>Against the order of district forum</td>
<td>Against the order of state commission</td>
</tr>
<tr>
<td>Revisionary jurisdiction</td>
<td>N/A</td>
<td>Over district forum</td>
<td>Over state commission</td>
</tr>
</tbody>
</table>
Limitation Period for Filing of Complaint (Section 24A)

The District Forum, the State Commission, or the National Commission shall not admit a complaint unless it is filed within 2 years from the date on which the cause of action has arisen. However, where the complainant satisfies the Forum/Commission as the case may be, that he had sufficient cause for not filing the complaint within two years, such complaint may be entertained by it after recording the reasons for condoning the delay.

Powers of the Redressal Agencies

- the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;
- the discovery and production of any document or other material object producible as evidence;
- the reception of evidence on affidavits;
- the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- issuing of any commission for the examination of any witness; and
- any other matter which may be prescribed.

Nature and Scope of Remedies under the Act (Section 14(1))

- to remove the defects pointed out by the appropriate laboratory from the goods in question;
- to replace the goods with new goods of similar description which shall be free from any defect;
- to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- to remove the defects in goods or deficiencies in the services in question;
- to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
- not to offer the hazardous goods for sale;
- to withdraw the hazardous goods from being offered for sale;
- to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently.
- to issue corrective advertisement to neutralize the effect of misleading advertisement to provide for adequate costs to parties.

The redressal agency may order payment of compensation only in the event of negligence of the opposite party which resulted in loss or damage and not otherwise, i.e. even though the complainant has suffered loss or damage, he may not be entitled for compensation if he cannot prove negligence.
Appeal

A person aggrieved by an order of the District Forum can prefer an appeal to the State Commission.

Any person aggrieved by any original order of the State Commission may prefer an appeal to the National Commission.

Any person aggrieved by any original order of the National Commission may prefer an appeal to the Supreme Court.

All such appeals are to be made within 30 days from the date of the receipt of the order.

However, the concerned Appellate authority may entertain an appeal after the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within the prescribed period.

Penalties { Section 27}

Failure or omission by a trader or other person against whom a complaint is made or the complainant to comply with any order of the District Forum, State Commission or the National Commission shall be punishable

with imprisonment for a term which shall not be less than one month but which may extend to three years, or

with fine of not less than Rs. 2,000 but which may extend to Rs. 10,000, or with both.

However, on being satisfied that the circumstances of any case so require, the District Forum or the State Commission or the National Commission may impose a lesser fine or a shorter term of imprisonment.

Important Cases

Case:- Sashikant Krishnaji Dole v. Shitshan Prasarak Mandali

Conclusion:- Failure to provide basic safeguards in the swimming pool held deficiency in service.

Facts:-

The school owned a swimming pool and offered swimming facilities to the public on payment of a fee.

The school conducted winter and summer training camps to train boys in swimming and for this purpose engaged a trainer/coach.

The complainants had enrolled their son for learning swimming under the guidance of the coach.

It was alleged that due to the negligence of the coach the boy was drowned and met with his death. The school denied that it had engaged the services of a coach and also denied any responsibility on its part.
Case:- Indian Airlines v. Dr. Jiteswar Ahir

**Conclusion:-** Removal of ladder of an aircraft while disembarking by the passenger held deficiency in service

**Facts:-**

- When the complainant-passenger occupied his seat in the aircraft, an announcement was made that his luggage was lying on the ground unidentified and that he should disembark to identify his luggage.
- According to the complainant he moved towards the rear door, and finding that the step ladder was attached to the aircraft door, he stepped out on to the staircase but before he could actually put his entire body weight on the staircase the ladder was suddenly removed as a result of which he fell down on the ground and sustained bodily injuries which was reported to be about 10 percent.
- As against the complainant’s claim of Rs. 10 lakhs the airlines was willing to pay Rs. 40,000 as compensation which according to them was the maximum statutory liability of the Corporation under the Carriage by Air Act, 1972.

Case:- Ravneet Singh Bagga v. KLM Royal Dutch Fintimes

**Conclusion:-**

- Deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service.
- The burden of proving deficiency in service is upon the person who alleged it. When the complainant has not established any willful fault, imperfection, shortcoming or inadequacy in the service of the respondent, there can be no deficiency in service.

**Facts:-**

- The complainant booked a ticket from Delhi to New York by a KLM plane. The airport authorities in New Delhi did not find any fault in his visa and other documents. However at Amsterdam, the airport authorities instigated proceedings of verification because of which the appellant missed his flight to New York. After reaching New York, the airlines tendered apology to the appellant for the inconvenience and paid as a goodwill gesture a sum of Rs. 2,500.
- The appellant made a complaint to the National Commission under the Consumer Protection Act which was rejected.
- The Supreme Court held that the respondent could not be held to be guilty of deficiency in service. The staff of the airline acted fairly and in a bona fide manner, keeping in mind security and safety of passengers and the Aircraft.
- The photograph on visa documents was a photo copy and not the original which was unusual. In the circumstances, the staff took some time to ascertain the truth and helped the appellant to reach New York the same day.
Case:- Indian Poonam Verma v. Ashwin Patel

Conclusion:- A doctor qualified to practice homoeopathic system of medicines treating a patient with allopathic medicines and patient dies held guilty of negligence.

Facts:-

- The respondent was a qualified medical practitioner in homoeopathic system of medicine.
- The appellant was the widow of a person who, it was alleged, had died because of the negligence of the respondent in administering allopathic medicines in which he was not qualified to practise.
- It was alleged that the deceased was treated to begin with, for viral fever on allopathic medicines and since his condition had not improved antibiotics were used without conducting proper tests.
- When his condition further deteriorated he was removed to a hospital in an unconscious state. Within a few hours thereafter he died.
- Her complaint to the National Consumer Disputes Redressal Commission for damages for the negligence and carelessness of respondent in treating her husband was dismissed.
- Allowing the appeal the Supreme Court held that the respondent who had practised in allopathy without being qualified in that system was guilty of negligence per se. A person is liable at law for the consequences of his negligence.
- Jurisdiction of the Commission: The Supreme Court observed that it is beyond doubt now that disputes regarding applicability of the Act to persons engaged in medical profession either as private practitioners or as Government doctors working in hospitals or Government dispensaries come within the purview of the Consumer Protection Act, 1986.
- It is also settled that a patient who is a consumer has to be awarded compensation for loss or injury suffered by him due to negligence of the doctor by applying the same tests as are applied in an action for damages for negligence.

Case:- Gopi Ram Goyal and others v. National Heart Institute and others

- The National Commission held that where the record and evidence shows that the conduct of the opposite parties i.e. doctors was more than reasonable and the level of care was as could be expected from professional in exercising reasonable degree of skill and knowledge.
- The complainant however failed to prove any case of negligence on the part of doctors, therefore the doctor cannot be held liable for death of patient.

Case:- Union of India v. Nathmal Hansaria

Conclusion:- Fall from a running train while passing through vestibule passage held deficiency in service.

Facts:-

- The daughter of the respondent, travelling by a train, fell down from the running train while she was passing through the inter-connecting passage between two compartments and died as a result of crush injuries on her head.
In the respondents petition for compensation, the Railways contended that the Consumer Redressal agencies had no jurisdiction to consider a complaint of this nature in view of Section 15 of the Railway Claims Tribunal Act read with Section 13 of that Act.

The State Commission held that a railway passenger travelling in a train on payment of consideration was a consumer within the meaning of the Consumer Protection Act, 1986.

Section 82A of the Railways Act referred to in Section 13 of the Railway Claims Tribunal Act, 1987 and the rules made thereunder provided compensation for railway accidents and not for accidental death of this nature.

Dismissing the appeal the National Commission held that the death of the passenger could not be described as resulting from railway accident but an accidental death caused by the absence of safety devices in the vestibule passage way.

Although the railway administration had claimed that the coach was a new coach and that all coaches had been thoroughly checked at the starting point of the train and that no defect was reported, the railways had not contended that this particular coach was checked at the time of commencement of the journey.

The general statement of practice and procedure was not conclusive proof that this particular coach was checked and no evidence had been produced in support of their contention.

Thus, the State Commission was right in holding that the deceased passenger was a consumer.

On the basis of similar facts, the MRTP Commission has awarded a compensation of Rs. 18 lakhs with 9% interest to the parents of deceased.

The above compensation appears to be the highest award in commission’s history.

Case:- Jitendra Kumar v. Oriental Insurance Company Ltd. and another

Conclusion:- Repudiation of Insurance claim because the driver did not have a valid license held deficiency in service.

Facts:-

The Supreme Court has held that where the fire has occurred due to mechanical failure and not due to any act or omission of the driver, the insurance company cannot repudiate the claim because of lack of valid driving license.

Case:- Harshad J. Shah v. Life Insurance Corporation of India

Conclusion:- Premium paid to the agent of the LIC but the agent did not deposit the premium, death of the insured - No deficiency of service on the part of the LIC

Facts:-

- The insured (since deceased) took out four life policies with double accident benefits, premium payable half-yearly.
- When the third premium fell due, the general agent of the Corporation met the person and took a bearer cheque towards the premium payable by him in respect of the policies.
- Although the cheque was encashed immediately thereafter, it was not deposited with the Corporation for another three months.
In the meantime, the insured met with a fatal accident and died.

The Corporation rejected the widows claim for payment of the sum assured on the ground that the policies had lapsed for non-payment of premium within the grace period.

In the widows complaint to the State Commission under the Consumer Protection Act the Corporation pleaded that the amount of premium allegedly collected by the general agent could not be said to have been received by the Corporation, that the agent was not authorised to collect the premium amount.

Supreme Court held that the agent had no express authority to receive the premium on behalf of the Corporation. In his letter of appointment there was a condition expressly prohibiting him from collecting the premium. Nor could it be said that he had an implied authority to collect the premium.

Case:- In National Insurance Co. Ltd. v. Seema Malhotra

A cheque was issued under a contract of insurance of motor car by the insured for payment of premium to the policy.

However, cheque was dishonoured for want of funds in the account.

Meanwhile, the car met an accident and badly damaged, killing the insured owner.

The claim for insured amount was repudiated by the company.

The Supreme Court held that applying the principles envisaged under Section 51, 52 and 54 of Indian Contract Act, relating to reciprocal promises, insurer need not to perform his part of promise when the other party fails to perform his part and thus not liable to pay the insured amount.

Case:- In Sreedharan Nair N. v. Registrar, University of Kerala

The University refused to provide LL.B. degree certificate on completion of course on the ground that the qualifying examination on the basis of which student was admitted in LL.B. course in Kerala law college has not been recognised by it.

The National Commission held that this is a clear case of deficiency on part of University.

A compensation of Rs. 50,000 was awarded to complainant.

Case:- Isabella Thoburn College v. Ms. Fatima Effendi

The State Commission held that non-refund of admission fee is not a deficiency of service on the part of the university because admission fee is consideration for admission and respondent herself voluntarily withdrawing admission from one university to join another institute cannot claim refund of admission fee.

Case:- Kusum Sharma & Others Versus Batra Hospital & Medical Research Centre & Others

Supreme Court (CP) Supreme Court held that while deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:-

Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.
Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

A medical practitioner would be liable only where his conduct fell below that of the standards of a reasonably competent practitioner in his field.

The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals.

The aforementioned principles must be kept in view while deciding the cases of medical negligence. We should not be understood to have held that doctors can never be prosecuted for medical negligence. As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. It is imperative that the doctors must be able to perform their professional duties with free mind.
The Competition Act, 2002

Competition in the market
A buyer prefers to buy a product at a price that maximizes his benefits whereas the seller prefers to sell the product at a price that maximizes his profit.

Competition Law—Evolution and Development

The first Indian competition law was enacted in 1969 and was the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act).

Direct its policy towards securing:

- that the ownership and control of material resources of the community are so distributed as best to sub serve the common good; and
- that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

MRTP Act, 1969

The principal objectives of the Act, as were:

- prevention of concentration of economic power to the common detriment;
- control of monopolies;
- prohibition of monopolistic trade practice;
- prohibition of restrictive trade practices.

Scheme of the MRTP Act

Prevention of undesirable concentration of economic power was sought to be achieved essentially through the regulation of growth of undertakings of particular size, viz. undertakings having assets of the value of Rs. 100 crores.

These business houses were officially designated as large business houses. Undertakings having a sizable share of the market, or licensed production capacity of more than 1/4th of the total production or installed capacity in India were described as dominant undertakings.

These companies were declared large business houses if their assets were of the value of Rs. 1 crore or more.

Restrictive Trade Practices

- horizontal fixation of price
- vertical fixation of price and re-sale price maintenance;
- allocation of markets between purchasers;
- discrimination between purchasers;
- boycott;
exclusive dealing contracts; and

tie-up arrangements.

Unfair Trade Practices

- misleading advertisements and false representations
- bargain sale, bait and witch selling;
- offering gifts or prizes with the intention of not providing them and conducting promotional contests;
- supplying goods not conforming to safety standards; and
- hoarding and destruction of goods.

Competition Act, 2002

The scope of the Act extends to whole of India except the State of Jammu and Kashmir.

Important Definitions

**Acquisition [(Section 2(a)]**

It means – directly or indirectly, acquiring or agreeing to acquire:

- shares, voting rights or assets of any enterprise;
- control over management or control over assets of any enterprise.

**Agreement [Section 2(b)]**

The term includes any arrangement or understanding or action in concert

- whether or not, such arrangement, understanding or concert is in formal or in writing; or
- whether or not such arrangement, understanding or concert is intended to be enforceable by legal proceedings.

It implies that an arrangement need not necessarily be in writing.

The term “Competition” is not defined in the Act. However, in the corporate world, the term is generally understood as a process whereby the economic enterprises compete with each other to secure customers for their product. In the process, the enterprises compete to outsmart their competitors, sometimes to eliminate their rivals. Competition in the sense of economic rivalry is unstable and has a natural tendency to give way to a monopoly. Thus, competition kills competition.

**Cartel [Section 2(c)]**

“Cartel” includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.
Some of the conditions that are conducive to cartelization are:

- high concentration - few competitors
- high entry and exit barriers
- homogeneity of the products (similar products)
- similar production costs
- excess capacity
- high dependence of the consumers on the product
- history of collusion

**Chairperson [Section 2(d)]**

Chairperson means the Chairperson of Competition Commission of India appointed under Sub-section (1) of Section 8.

**Commission [Section 2(e)]**

Commission means Competition Commission of India established under Section 7(1).

**Consumer [Section 2(f)]**

Consumer means any person who

- buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

- hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment when such services are availed of with the approval of the first mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use.

Under the Competition Act even if a person purchases goods or avails of services for commercial purpose, he will be a Consumer, whereas for purposes of Consumer Protection Act, a person purchasing goods/availing services for commercial purposes is not a “Consumer” and can not seek relief under that Act.

**Enterprise [Section 2(h)]**

Enterprise means a person or a department of the Government, who or which is, engaged in any activity, relating to production, control of goods or articles or provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities whether such unit or division or subsidiary is located at the same place where the enterprise is located or at different place(s).
However, it does not include any activity of the Central Government relating to sovereign functions of Government including all activities carried on by the Government Departments dealing with atomic energy, currency, defence and space.

**Goods [Section 2(i)]**

Goods means goods as defined in Sale of Goods Act, 1930 and includes:
- products manufactured, processed or mined;
- debentures, shares and stocks after allotment;
- in relation to ‘goods supplied’, goods imported into India.

**Person [Section 2(p)]**

Person includes:
- an individual;
- a Hindu undivided family;
- a company;
- a firm;
- an association of persons;
- a corporation established under Central, State Act or a Government Company
- a body corporate incorporated by or under a law of a foreign country;
- a co-operative society registered under any Law
- local authority
- every artificial juridical person.

**Price [Section 2(o)]**

Price, in relation to sale of goods or supply of services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration, which relates to sale of any goods or to performance of any services although ostensibly relating to any other matter or thing.

**Relevant Market [Section 2(r)]**

Relevant market means the market, which may be determined by the Commission with reference to ‘relevant product market’ or ‘relevant geographic market’ or with reference to both the markets.

**Relevant Geographic Market [Section 2(s)]**

Relevant Geographic Market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from conditions prevailing in neighbouring areas.

**Relevant Product Market [Section 2(t)]**

Relevant Product Market means a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reasons of characteristics of products or services, their prices and intended use.
Service [Section 2(u)]

Service means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

The services of industrial or commercial nature also fall within the scope of the Act.

Shares [Section 2(v)]

Shares means shares in the share capital of a company carrying voting rights and includes, –

1. any security which entitles the holder to receive shares with voting rights;
2. stock except where a distinction between stock and share is expressed or implied.

Equity or preference shares are included in the definition of shares but ‘debentures convertible into shares with voting rights’ are also included.

Statutory Authority [Section 2(w)] Means

Any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets there for or any matter connected therewith or incidental thereto.

Trade [Section 2(x)]

Trade means any ‘trade’, business, industry, profession or occupation relating to production, supplies, distribution, storage or control of goods and includes the provision of any services.

Turnover [Section 2(y)]

Turnover includes value of sale of goods or services.

Anti Competitive Agreements { Section 3(1)}

No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition.

Any anti competitive agreement shall be void.

Bid rigging

Bidding, as a practice, is intended to enable the procurement of goods or services on the most favourable terms and conditions.
Most commonly adopted ways in which collusive bidding or bid rigging may occur are:

- agreements to submit identical bids
- agreements as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids)
- agreements not to bid against each other,
- agreements on common norms to calculate prices or terms of bids
- agreements to squeeze out outside bidders
- agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis

If bid rigging takes place in Government tenders, it is likely to have severe adverse effects on its purchases and on public spending. Following shall be an agreement in contravention, if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

- tie-in agreement;
- exclusive supply agreement;
- exclusive distribution agreement;
- refusal to deal;
- resale price maintenance;

**Tie-in agreement**

Includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.

**Case:- Chanakaya and Siddharth Gas company, decided by (MRTP Commission)**

A good example of tie-in agreement is where a gas distributor requires a consumer to buy a gas stove as a pre condition to obtain connection of domestic cooking gas.

**“Exclusive supply agreement”**

Includes any agreement restricting in any manner from acquiring or otherwise dealing in any goods other than those of the seller or any other person. Thus, where a manufacturer asks a dealer not to deal in similar products of its competitor directly or indirectly and discontinues the supply on the ground that dealer also deals in product of suppliers’ competitor’s goods is an illustration of exclusive dealing agreement.

**“Exclusive distribution agreement”**

Includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

Requiring a distributor not to sell the goods of the manufacturer beyond the prescribed territory is a good example of exclusive distribution agreement.

**Case:- Vadilal Enterprise Ltd**
“Refusal to deal”
Includes any agreement, which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.

Case: DGIR v. Titan industries

“Resale price maintenance”
Includes any agreement to sell goods on condition that the prices to be charged on resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

Case: In re-India Cement Ltd.

What is an anti-competitive agreement?
An anti-competitive agreement is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:-

- agreement to limit production and/or supply;
- agreement to allocate markets;
- agreement to fix price;
- bid rigging or collusive bidding;
- conditional purchase/sale (tie-in arrangement);
- exclusive supply/distribution arrangement;
- resale price maintenance; and
- refusal to deal.

“Predatory price”
has been defined as the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of goods or provision of services, with a view to reduce competition or eliminate the competitors. Thus, the two conditions precedent to bring a case with the ambit of predatory pricing are:

- selling goods or provision of service at a price which is below its cost of production and
- that practice is resorted to eliminate the competitors or to reduce competition.

What constitutes abuse of dominance?

Abuse of dominant position includes:

- imposing unfair conditions or price,
- predatory pricing,
- limiting production/market or technical development,
- creating barriers to entry,
- applying dissimilar conditions to similar transactions,
- denying market access, and
- using dominant position in one market to gain advantages in another market.
Combinations

Combination has broad coverage and includes acquisition of control, shares, voting rights, assets, merger or amalgamation. The acquisition of one or more enterprises by one or more person or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if –

(a) any acquisition where

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have, -

either, in India, the assets of the value of more than rupees 2000 crores or turnover more than rupees 6000 crores; or

in India or outside India, in aggregate, the assets of the value of more than 1bn US dollars, including at least rupees 1000 crores in India or turnover more than 3bn US dollars, including at least rupees 3000 crores in India; or

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have, -

either in India, the assets of the value of more than rupees 8000 crores or turnover more than rupees 24000 crores; or

in India or outside India, in aggregate, the assets of the value of more than 4 billion US dollars, including at least rupees 1000 crores in India or turnover more than 12 billion US dollars, including at least rupees 3000 crores in India; or

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if -

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,

(A either, in India, the assets of the value of more than rupees 2000 crores or turnover more than rupees 6000 crores; or

in India or outside India, in aggregate, the assets of the value of more than 1bn US dollars, including at least rupees 1000 crores in India or turnover more than 3bn US dollars, including at least rupees 3000 crores in India; or

(ii) the group, to which enterprise whose control has been acquired, or is being acquired would belong after the acquisition, jointly have would jointly have,

either in India, the assets of the value of more than rupees 8000 crores or turnover more than rupees 24000 crores; or
(c) any merger or amalgamation in which

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have, -

### Either, in India, the assets of the value of more than rupees 2000 crores or turnover more than rupees 6000 crores; or

### In India or outside India, in aggregate, the assets of the value of more than 1bn US dollars, including at least rupees 1000 crores in India or turnover more than 3bn US dollars, including at least rupees 3000 crores in India; or

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have, -

### Either in India, the assets of the value of more than rupees 8000 crores or turnover more than rupees 24000 crores; or

### In India or outside India, in aggregate, the assets of the value of more than 4 billion US dollars, including at least rupees 1000 crores in India or turnover more than 12 billion US dollars, including at least rupees 3000 crores in India; or

### “Control”

Includes controlling the affairs or management by

- one or more enterprises, either jointly or singly, over another enterprise or group;
- one or more groups, either jointly or singly, over another group or enterprise.

### “Group”

Means two or more enterprises, which, directly or indirectly, are in a position to

- exercise less than fifty percent of voting rights in other enterprise; or
- appoint more than fifty per cent of the members of the board of directors in other enterprise; or
- control the management or affairs of the other enterprise.

Such intimation should be submitted within 30 days

No combination shall come into effect until 210 days have passed from the day of notice or the Commission has passed orders, whichever is earlier.

The provisions of Section 6 do not apply to share subscription or financing facility or any acquisition, by

- a public financial institution,
- foreign institutional investor,
bank or venture capital fund,
Pursuant to any covenant of a loan agreement or investment agreement.

This exemption appears to have been provided in the Act to facilitate raising of funds by an enterprise in the course of its normal business. Under Section 6(5), the public financial institution, foreign institutional investor, bank or venture capital fund, are required to file in prescribed form, details of the control, the circumstances for exercise of such control and the consequences of default arising out of loan agreement or investment agreement, within seven days from the date of such acquisition or entering into such agreement, as the case may be.

The combinations are only regulated whereas anti-competitive agreements and abuse of dominance are prohibited.

**Competition Commission of India (CCI)**

**Composition of Commission { Section 8 }**

- a Chairperson and
- not less than two and not more than six other Members.
- The Chairperson and other Members are to be appointed on whole time basis.

**Term of office of Chairperson and other Members**

- Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment.
- However, the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.

**Resignation of Chairperson { Section 11 }**

- Chairperson or any other Member may resign his office by notice in writing under his hand addressed to the Central Government.
- However, until the Chairperson or a Member is permitted by the Central Government to relinquish his office, he will continue to hold his office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as a successor enters into his office or until the expiry of his term, which ever is the earliest.

Central Government may, by order, remove the Chairperson or any Member from his office if such Chairman or Member as the case may be, -

- is, or at any time has been, adjudged as an insolvent; or
- has engaged at any time, during his term of office, in any paid employment; or
- has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- has acquired such financial or other interest as it likely to affect prejudicially his functions as a Member; or
has so abused his position as to render his continuance in office prejudicial to the public interest; or
has become physically or mentally incapable of acting as a Member.

Appointment of Director General

- Director General is an important functionary under the Act.
- He is to assist the Commission in conducting inquiry into contravention of any of the provisions of the Act and for performing such other functions as are, or may be, provided by or under the Act.
- Central Government may appoint a Director General and such number of additional, joint, deputy or assistant Director Generals or other advisers, consultants or officers for the purposes of assisting the Commission in conducting inquiry into the contravention of any provision of the Act.

Duties of the CCI (Section 18)

- to eliminate practices having adverse effect on competition;
- to promote and sustain competition;
- to protect interests of consumers and
- to ensure freedom of trade carried on by other participants, in markets in India.

While determining whether an agreement has appreciable adverse effect on competition, the Commission shall give due regard to all or any of the following factors—

- creation of barriers to new entrants in the market;
- driving existing competitors out of the market;
- foreclosure of competition by hindering entry into the market;
- accrual of benefits to consumers;
- improvements in production or distribution of goods or provision of services;
- promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

For the purpose of determining whether an enterprise enjoys dominant position or not the Commission shall have due regard to all or any of the following factors—

- market share of the enterprise;
- size and resources of the enterprise;
- size and importance of the competitors;
- economic power of the enterprise including commercial advantages over competitors;
- vertical integration of the enterprises or sale or service network of such enterprises;
- dependence of consumers on the enterprise;
- market structure and size of market;
- social obligations and social costs;
- any other factor which the Commission may consider relevant for the inquiry.
For determining the “relevant geographic market”, the Commission shall have due regard to all or any of the following factors;

- regulatory trade barriers;
- local specification requirements;
- national procurement policies;
- adequate distribution facilities;
- transport costs;
- language;
- consumer preferences;
- need for secure, regular supplies or rapid after-sales service.

While determining ‘relevant product market’ the Commission shall have due regard to all or any of the following factors;

- physical characteristics or end-use of goods;
- price of goods or service;
- consumer preferences;
- exclusion of in-house production;
- existence of specialized producers;
- classification of industrial products.

Meetings of Commission {Section 22}

- Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations.
- The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.
- All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote.
- However, the quorum for such meeting shall be three Members.

Procedure for inquiry on complaints under Section 19

- If the Commission is of the opinion that there exists a prima facie case, on receipt of an information from any person, it shall direct the Director General to cause an investigation to be made into the matter.
- The Director General shall investigate into the matter and submit a report of its findings within the period as may be specified by the Commission. It is, however, not binding on the Commission to accept the report of the Director General.
- Where upon receipt of a reference or information, the Commission is of the opinion that there is no prima-facie case, it shall pass an order dismissing the reference/information, as it deems fit and necessary.
Upon receipt of a report from the Director General, the Commission shall forward a copy thereof to

- the parties concerned or
- Central Government or
- State Government or
- statutory authority as the case may be.

If the Director General, in relation to a matter referred to it, recommends that there is no contravention of any of the provisions of the Act, the Commission shall give an opportunity of hearing to the informant and after hearing, if the Commission agrees with the recommendation of the Director General, it shall dismiss the information.

**Procedure for investigation of combination (Section 29)**

It involves following stages -

(i) The Commission first has to form a prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition;

(ii) After receipt of the response of the parties to the combination may call for the report of the Director General.

(iii) The Commission prima-facie is of the opinion that the Combination is likely to cause an appreciable adverse effect on competition in relevant market, it shall, within seven days direct the parties to the combination to publish within ten working days, the details of the combination, in such manner as it thinks appropriate so as, to bring to the information of public and persons likely to be affected by such combination.

(iv) The Commission may invite any person affected or likely to be affected by the said combination, to file his written objections within fifteen working days of the publishing of the public notice, with the Commission for its consideration.

(v) The Commission may, within fifteen working days of the filing of written objections, call for such additional or other information as it deem fit from the parties to the said combination and the information shall be furnished by the parties above referred within fifteen days from the expiry of the period notified by the Commission.

(vi) After receipt of all the information and within forty-five days from expiry of period for filing further information, the Commission shall proceed to deal with the case, in accordance with provisions contained in Section 31 of the Act.

**Acts taking place outside India but having an effect on Competition in India (Section 32)**

- an agreement has been entered into outside India; or
- any party to such agreement is outside India; or
- any enterprise abusing the dominant position is outside India; or
- a combination has taken place outside India; or
- any party to combination is outside India; or
- any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.
Appearance before Commission {Section 35}

Following persons are entitled to appear before the Commission

- a complainant; or
- a defendant; or
- the Director General

They may either appear in person or authorise any of the following:

- a chartered accountant who has obtained a certificate of practice; or
- a company secretary who has obtained a certificate of practice;
- a cost accountant who has obtained a certificate of practice;
- a legal practitioner that is an advocate.

Power of Commission to regulate its own procedure

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavit;
- issuing commissions for the examination of witnesses or documents;

Execution of Orders of the Commission Imposing Monetary penalty {Section 39}

- If a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.
- In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.
- Commission may by its Regulations has been empowered to evolve procedure of recovering monetary penalty. It may also make reference to Income Tax Authority for recovering of penalty as tax due under the said Act.
- Every order passed by the Commission under this Act shall be executed in the same manner as if it were a decree or order made by the High Court or the Principal Civil Court in any suit pending therein.

Duties of Director General

- The Act provides that the Director General when so directed by the Commission, is to assist the Commission in investigation into any contravention of the provisions of this Act.

- The Director General is bound to comply with such a direction to render requisite assistance to the Commission.

- The Director General, in order to effectively discharge his functions, has been given the same powers as are conferred upon the Commission as are vested in Civil Court in respect of the following matters;
  - summoning and enforcing the attendance of any person and examining him on oath;
requiring the discovery and production of documents;
receiving evidence on affidavits;
issuing commissions for the examination of witnesses or documents;

Penalties { Section 42 }

The Commission may cause an inquiry to be made into compliance of its orders or directions and

if any person, without any reasonable cause, fails to comply with any order of the Commission, or condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act; or

if any person fails to pay the penalty imposed under the Act, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to rupees twenty five crores or with both.

Penalty for failure to comply with directions of Commission and Director General { Section 43 }

If any person fails to comply, without reasonable cause, with a direction given by the Commission or the Director General, such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

Power to impose penalty for non-furnishing of information on combination { Section 43A }

If any person or enterprise who fails to give notice to the Commission, the Commission shall impose on such person or enterprise a penalty which may extend to 1% of the total turnover or the assets, whichever is higher, of such a combination.

Penalty for making false statement { Section 44 }

If any person, being a party to a combination, makes a statement which is false in any material particular, or knowing it to be false; or omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

Competition Advocacy { Section 49 }

Central Government/State Government may seek the opinion of the CCI on the possible effects of the policy on competition or any other matter.

While formulating a policy on the competition, the Government may make a reference to the Commission for its opinion on possible effect of such a policy on the competition, or any other matter.

On receipt of such a reference, the Commission shall, give its opinion on it to the Central Government/State Government, within sixty days of making such a reference and the latter may formulate the policy as it deems fit.
The role of the Commission is advisory and the opinion given by the Commission shall not be binding upon the Central Government/State Government in formulating such a policy.

The Commission is also empowered to take suitable measures for the
- promotion of competition advocacy;
- creating awareness about the competition; and
- imparting training about competition issues.

Accounts and Audit

- Proper accounts and other relevant records shall be maintained by the Commission and an annual statement of accounts shall be prepared by it in prescribed form in consultation with the Comptroller and Auditor General of India (CAG).
- The CAG shall specify the intervals within which the accounts of the Commission shall be audited by him.
- Orders passed by the Commission, being matters appealable to the Supreme Court, shall not be subject to audit by the CAG.
- The expenses, if any, incurred in connection with such audit shall be payable by the Commission to the CAG.
- The CAG or any person appointed by him in connection with the audit of the accounts of the Commission shall have same rights, privileges and authority in connection with such audit as CAG has in connection with the audit of Government accounts and, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.
- Only accounts as certified by the CAG and any other person authorised by him in this behalf together with the audit report thereon shall be forwarded to the Central Government and the Government shall cause it to be laid before each House of Parliament.

Appeal to Appellate Tribunal

- The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order may prefer an appeal to the Appellate Tribunal.
- Every appeal shall be filed within a period of 60 days.
- However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.
- Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
- The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- The appeal filed before the Appellate Tribunal shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.
Composition of Appellate Tribunal

The Appellate Tribunal shall consist of
- a Chairperson and
- not more than two other members
to be appointed by the Central Government.

Qualifications for appointment of Chairperson and Members of Appellate Tribunal {Section 53D}

- Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.
- A member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty five years in, competition matters including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

Term of office of Chairperson and Members of Appellate Tribunal

- in the case of the Chairperson, the age of sixty-eight years;
- in the case of any other member of the Appellate Tribunal, the age of sixty-five years.

Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases

- The Chairperson and other members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under the Act.
- However, nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company.

Procedures and powers of Appellate Tribunal {Section 53O}

The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court in respect of the following matters:
- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavit;
- issuing commissions for the examination of witnesses or documents;
- reviewing its decisions;
- dismissing a representation for default or deciding it ex parte;
setting aside any order of dismissal of any representation for default or any order passed by it ex parte;
any other matter which may be prescribed.

Contravention of orders of Appellate Tribunal

If any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both.

Appeal to Supreme Court

The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them.

The Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

Power to exempt

The Central Government may, by notification exempt from the application of the Act, or any provision thereof—

any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;
any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;
any enterprise, which performs a sovereign function on behalf of the Central Government or a State Government.

Power of Central Government to supersede Commission

It is stipulated under section 56 of the Act that if at any time the Central Government is of the opinion -

that the Commission, on account of circumstances beyond its control is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the Act; or
that the commission has persistently made default in complying with any direction given by the Central Government under this Act or in discharge of functions or performance of duties imposed on it by or under the provisions of the Act and as a result of such default the financial position or the administration of the Commission has suffered; or
that the circumstances exist which render it necessary in the public interest to do so, the Central Government may, by notification and for the reasons stated therein,
supersede the Commission for such period, not exceeding six months, as may be specified in the notification.

Thus, power to supersede CCI vests in the Central Government. However before issuing any such notification, the Central Government shall give to the Commission a reasonable opportunity to make representations against the proposed supersession for its consideration.

Upon publication of a notification superseding the Commission

- the Chairperson and other members shall vacate the office from the date of suppression;
- until Commission is reconstituted, all powers, functions and duties of the Commission shall be discharged by the Central Government or by an authority specified by the Central Government in this behalf;
- until the Commission is reconstituted all of its properties shall vest in the Central Government.

**Exclusion of jurisdiction of Civil Courts**

A civil court is precluded to exercise Jurisdiction in respect of any matter, which the Commission is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.
Indian Contract Act, 1872

CONTRACT

A contract is a combination of the two elements: (1) an agreement and
(2) an obligation.

Agreement

Characteristics of an agreement:

- Plurality of persons: There must be two or more persons to make an agreement because one person cannot enter into an agreement with himself.
- Consensus ad idem: The meeting of the minds is called consensus-ad-idem. It means both the parties to an agreement must agree about the subject matter of the agreement in the same sense and at the same time.

Agreements which are not Contracts

Agreements in which the idea of bargain is absent and there is no intention to create legal relations are not contracts. These are:

- Agreements relating to social matters: An agreement between two persons to go together to the cinema, or for a walk, does not create a legal obligation on their part to abide by it.
- Domestic arrangements between husband and wife:

  Case:- In Balfour v. Balfour

  In this case it was held that, a husband working in Ceylone, had agreed in writing to pay a housekeeping allowance to his wife living in England. On receiving information that she was unfaithful to him, he stopped the allowance: Held, he was entitled to do so. This was a mere domestic arrangement with no intention to create legally binding relations. Therefore, there was no contract.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

(i) An offer or proposal by one party and acceptance of that offer by another party resulting in an Agreement—consensus-ad-idem.

(ii) An intention to create legal relations or intent to have legal consequences.

(iii) The agreement is supported by a lawful consideration.

(iv) The parties to the contract are legally capable of contracting.
Lapse of Offer (Section 6)

An offer lapses if—
1. it is not accepted within the specified time (if any) or after a reasonable time, if none is specified.
2. it is not accepted in the mode prescribed or if no mode is prescribed in some usual and reasonable manner, e.g., by sending a letter by mail when early reply was requested;
3. the offeree rejects it by distinct refusal to accept it;
4. either the offeror or the offeree dies before acceptance;
5. the acceptor fails to fulfill a condition precedent to an acceptance.

Revocation of Offer by the Offeror

An offer may be revoked by the offeror at any time before acceptance.
Like any offer, revocation must be communicated to the offeree, as it does not take effect until it is actually communicated to the offeree.
Before its actual communication, the offeree, may accept the offer and create a binding contract. The revocation must reach the offeree before he sends out the acceptance.
An offer to keep open for a specified time (option) is not binding unless it is supported by consideration.

Acceptance

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. Under Section 2(b) of the Contract Act when a person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.

Rules Governing Acceptance

Acceptance may be express i.e. by words spoken or written or implied from the conduct of the parties.
If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner.
Acceptance must be unqualified and absolute and must correspond with all the terms of the offer.
A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse, e.g., where a horse is offered for Rs. 1,000 and the offeree counter-offers Rs. 990, the offer lapses by rejection.
Acceptance must be communicated to the offeror, for acceptance is complete the moment it is communicated. Where the offeree merely intended to accept but does not communicate his intention to the offeror, there is no contract. Mere mental acceptance is not enough.

Mere silence on the part of the offeree does not amount to acceptance. Acceptance must be given within a reasonable time and before the offer lapses or is revoked. An offer becomes irrevocable by acceptance.

An acceptance never precedes an offer. There can be no acceptance of an offer which is not communicated. Similarly, performance of conditions of an offer without the knowledge of the other party unless and until such orders are given.

Case:- Lalman Shukla v. Gauri Dutt

In this case it was held that where a servant brought the boy without knowing of the reward, he was held not entitled to reward because he did not know about the offer.

Standing Offers

A tender to supply goods as and when required, amounts to a standing offer.

A standing offer or a tender is of the nature of a continuing offer. An acceptance of such an offer merely amounts to intimation that the offer will be considered to remain open during the period specified and that it will be accepted from time to time by placing order for specified quantities. Each successive order given, while the offer remains in force, is an acceptance of the standing offer as to the quantity ordered, and creates a separate contract. It does not bind either party unless and until such orders are given.

Contracts by Post

Contracts by post are subject to the same rules as others, but because of their importance, these are stated below separately:

- An offer by post may be accepted by post, unless the offeror indicates anything to the contrary.
- An offer is made only when it actually reaches the offeree and not before, i.e., when the letter containing the offer is delivered to the offeree.
- An acceptance is made as far as the offeror is concerned, as soon as the letter containing the acceptance is posted, to offerors correct address; it binds the offeror, but not the acceptor.
- An acceptance binds the acceptor only when the letter containing the acceptance reaches the offeror. The result is that the acceptor can revoke his acceptance before it reaches the offeror.
- An offer may be revoked before the letter containing the acceptance is posted. An acceptance can be revoked before it reaches the offeror.
Contracts over the Telephone
Contracts over the telephone are regarded the same in principle as those negotiated by the parties in the actual presence of each other. In both cases an oral offer is made and an oral acceptance is expected.

The acceptance must be audible, heard and understood by the offeror.

Case:- Kanhaiyalal v. Dineshwar Chandra

In this case it was held that if during the conversation the telephone lines go “dead” and the offeror does not hear the offeree’s word of acceptance, there is no contract at the moment. If the whole conversation is repeated and the offeror hears and understands the words of acceptance, the contract is complete.

Rules Governing Consideration

- Every simple contact must be supported by valuable consideration otherwise it is formally void subject to some exceptions.
- Consideration may be an act of abstinence or promise.
- There must be mutuality i.e., each party must do or agree to do something. A gratuitous promise as in the case of subscription for charity, is not enforceable. For example, where A promises to subscribe Rs. 5,000 for the repair of a temple, and then refuses to pay, no action can be taken against him.
- Consideration must be real, and not vague, indefinite, or illusory, e.g., a son’s promise to “stop being a nuisance” to his father, being vague, is no consideration.
- Although consideration must have some value, it need not be adequate
- Consideration must be lawful, e.g., it must not be some illegal act such as paying someone to commit a crime. If the consideration is unlawful, the agreement is void.
- Consideration must be something more than the promisee is already bound to do for the promisor.

Thus, an agreement to perform an existing obligation made with the person to whom the obligation is already owed, is not made for consideration.

Case:- Stilk v. Myrick

For example, if a seaman deserts his ship so breaking his contract of service and is induced to return to his duty by the promise for extra wages, he cannot later sue for the extra wages since he has only done what he had already contracted for:

When Consideration not Necessary

- If it is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation to each other; or
- If it is made to compensate a person who has already done something voluntarily for the promisor, or done something which the promisor was legally compellable to do; or
- If it is a promise in writing and signed by the person to be charged therewith, or by his agent, to pay a debt barred by the law of limitation.
Besides, according to Section 185 of the Indian Contract Act, consideration is not required to create an agency.

In the case of gift actually made, no consideration is necessary. There need not be nearness of relation and even if it is, there need not be any natural love and affection between them.

**FLAWS IN CONTRACT**
The chief flaws in contract are:

- Incapacity
- Mistake
- Misrepresentation
- Fraud
- Undue Influence
- Coercion
- Illegality
- Impossibility.

Where there is no real agreement, the law has three remedies:

Firstly: The agreement may be treated as of no effect and it will then be known as void agreement.

Secondly: The law may give the party aggrieved the option of getting out of his bargain, and the contract is then known as voidable.

Thirdly: The party at fault may be compelled to pay damages to the other party.

**Mistake of Law and Mistake of Fact**

Mistakes are of two kinds: (i) mistake of law, and (ii) mistake of fact. If there is a mistake of law of the land, the contract is binding because everyone is deemed to have knowledge of law of the land and ignorance of law is no excuse (ignorantia juris non-excusat).

But mistake of foreign law and mistake of private rights are treated as mistakes of fact and are excusable.

The law of a foreign country is to be proved in Indian Courts as ordinary facts. So mistake of foreign law makes the contract void. Similarly, if a contract is made in ignorance of private right of a party, it would be void, e.g., where A buys property which already belongs to him.
**Void Agreement**

- A void agreement is one which is destitute of all legal effects.
- It cannot be enforced and confers no right on either party e.g., a minor’s contract.
- **Example**
  
  ‘A’ borrows from ‘B’ 1000/- for lending to ‘C’ (a minor) contract between A and C is void, but ‘B’ can recover the money from ‘A’.

**Voidable Agreement**

- A voidable contract is one which a party can put to an end.
- He can exercise his option, if his consent was not free, however the contract shall be binding if he does not exercise his options within reasonable time.

**Illegal Agreement**

- An illegal agreement is one which like a void agreement has no legal effects.
- Further transaction collateral to it also become tainted with illegality.
- **Example**
  
  “A” had borrowed 1,000/- from ‘B’ to buy a pistol to shoot ‘C’ ‘B’ can not recover money from ‘A’ if he had knowledge of the purpose of ‘A’.

*All illegal agreements are void but all void agreement are not necessarily illegal*

Contracts Uberrimae Fidei

There are contracts in which the law imposes a special duty to act with the utmost good faith i.e., to disclose all material information. Failure to disclose such information will render the contract voidable at the option of the other party.

Contracts uberrimae fidei are:

(a) Contract of insurance of all kinds:

(b) Company prospectus:

(c) Contract for the sale of land: The vendor is under a duty to the purchaser to show good title to the land he has contracted to sell.

(d) Contracts of family arrangements: When the members of a family make agreements or arrangements for the settlement of family property, each member of the family must make full disclosure of every material fact within his knowledge.

Difference between Fraud and Innocent Misrepresentation

- Fraud implies an intent to deceive, which is lacking if it is innocent misrepresentation.
In case of misrepresentation and fraudulent silence, the defendant can take a good plea that the plaintiff had the means of discovering the truth with ordinary diligence. This argument is not available if there is fraud (Section 19- exception).

In misrepresentation the plaintiff can avoid or rescind the contract. In fraud, the plaintiff can claim damages as well.

If there is fraud, it may lead to prosecution for an offence of cheating under the Indian Penal Code.

Coercion

Means “the committing or threatening to commit any act forbidden by the Indian Penal Code, or unlawful detaining or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement”.

The doing of any act forbidden by the Indian Penal Code is coercion even though such an act is done in a place where the Indian Penal Code is not in force. If A at the point of a pistol asks B to execute a promissory note in his favour and B to save his life does so he can avoid this agreement as his consent was not free. Even a threat to third-party, e.g., where A compels B to sign a document threatening to harm C, in case B does not sign would also amount to coercion.

Case:- Ramchandra v. Bank of Kohlapur

It has been held that mere threat by one person to another to prosecute him does not amount to coercion. There must be a contract made under the threat and that contract should be one sought to be avoided because of coercion.

Undue Influence

A contract is said to be produced by undue influence “where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other”.

The elements of undue influence are

- a dominant position, and
- the use of it to obtain an unfair advantage.

Where there is a presumption of undue influence, the presumption can be rebutted by showing that

- full disclosure of all material facts was made,
- the consideration was adequate, and
- the weaker party was in receipt of independent legal advice.
Transaction with parda-nishin women
The expression ‘parda-nishin denotes complete seclusion.

Case:- Ismail Musafee v. Hafiz Boo
In this case it was held that a woman who goes to a Court and gives evidence, who fixes rents with tenants and collects rents, who communicates when necessary, in matters of business, with men other than members of her own family, could not be regarded as a parda-nishin woman.

Unconscionable transactions
An unconscionable transaction is one which makes an exorbitant profit of the others distress by a person who is in a dominant position.

Only the fact that the rate of interest is very high in a money lending transaction shall not make it unconscionable. But if the rate of interest is very exorbitant and the Court regards the transaction unconscionable, the burden of proving that no undue influence was exercised lies on the creditor.

Case:- Sunder Koer v. Rai Sham Krishen
It has been held that urgent need of money on the part of the borrower does not itself place the lender in a position to dominate his will.

AGREEMENTS IN RESTRAINT OF TRADE VOID (Section 27)
Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is, to that extent, void.

If a restraint is reasonable, it will be valid. Whether a restraint is reasonable or not depends upon the facts of each case.

Case:- Nordenfelt v. Maxim Nordenfelt Guns Co.
N was an inventor and a manufacturer of guns and ammunition. He sold his world-wide business to M and promised not to manufacture guns anywhere in the world for 25 years. The House of Lords held that the restraint was reasonable as it was no more than is necessary for the protection of the company, the contract was binding. Whether a restraint is reasonable or not depends upon the facts of each case.

Case:- Niranjan Shanker Golikari v. The Century Spinning and Manufacturing Co. Ltd.
In this case N entered into a bond with the company to serve for a period of five years. In case, N leaves his job earlier and joins elsewhere with companys competitor within five years, he was liable for damages. N was imparted the necessary training but he left the job and joined another company. The former employer instituted a suit against N. The Supreme Court, held that the restraint was necessary for the protection of the companys interests and not such as the Court would refuse to enforce.
WAGERING AGREEMENTS

Wagering agreements are nothing but ordinary betting agreements. For example, A and B enter into an agreement that if England’s Cricket Team wins the test match, A will pay B Rs. 100 and if it loses B will pay Rs. 100 to A. This is a wagering agreement and nothing can be recovered by winning party under the agreement.

In India except Mumbai, wagering agreements are void. In Mumbai, wagering agreements have been declared illegal by the Avoiding Wagers (Amendment) Act, 1865. Therefore, in Mumbai a wagering agreement being illegal, is void not only between the immediate parties, but taints and renders void all collateral agreements to it.

RESTITUTION

When a contract becomes void, it is not to be performed by either party. But if any party has received any benefit under such a contract from the other party he must restore it or make compensation for it to the other party.

A agrees to sell to B after 6 months a certain quantity of gold and receives Rs 500 as advance. Soon after the agreement, private sales of gold are prohibited by law. The contract becomes void and A must return the sum of Rs. 500 to B.

Where an agreement is discovered to be void, A pays Rs. 500 in consideration of B’s promising to marry, C, A’s daughter C is dead at the time of the promise. The agreement is discovered to be void and B must pay back Rs. 500.

But there is no resolution where the parties are wholly incompetent to contract, e.g., where one of the parties is a minor. The minor cannot be asked to restore the benefit, e.g., a minor borrowed Rs. 1,000 from B, he cannot be asked to pay back Rs. 1,000 to B because the contract is.

CONTINGENT CONTRACT (Section 31)

A contingent contract is a contract to do or not to do something, if some event collateral to such contract, does or does not happen. For example, A contracts to sell B 10 bales of cotton for Rs. 20,000, if the ship by which they are coming returns safely. This is a contingent contract.

Contract of insurance and contracts of indemnity and guarantee are popular instances of contingent contracts.

Quasi-Contracts or Implied Contracts under the Indian Contract Act

The following types of quasi-contracts have been dealt within the Indian Contract Act—
(a) Necessaries supplied to person incapable of contracting or to anyone whom he is illegitimately bound to support - Contracts by minors and persons of unsound mind are void. Indian Contract Act provides that their estates are liable to reimburse the trader, who supplies them with necessaries of life.

(b) Suit for money had and received

(i) A debtor may recover, from a creditor the amount of an over-payment made to him by mistake. The mistake may be mistake of fact or a mistake of law.

(ii) Payment to third-party of money which another is bound to pay. For example, where A’s goods are wrongfully attached in order to realise arrears of Government revenue due by B, and A pays the amount to save his goods from being sold, he is entitled to recover the amount from B.

(iii) Money obtained by defendant from third-parties. For example, where an agent has obtained a secret commission or a fraudulent payment from a third-party, the principle can recover the amount from the agent.

(c) Quantum Meruit

“Quantum Meruit” literally means “as much as earned” or reasonable remuneration. It is used where a person claims reasonable remuneration for the services rendered by him when there was no express promise to pay the definite remuneration, Thus, the law implies reasonable compensation for the services rendered by a party if there are circumstances showing that these are to be paid for.

(d) Obligations/Position of a finder of goods

The position of a finder of lost goods is exactly that of a bailee. The rights of a finder are that he can sue the owner for any reward that might have been offered, and may retain the goods until he receives the reward. But where the owner has offered no reward, the finder has only a particular lien and can detain the goods until he receives compensation for the troubles and expenses incurred in preserving the property for finding out the true owner. But he cannot file a suit for the recovery of the compensation.

Thus, as against the true owner, the finder of goods in a public or quasi public place is only a bailee; he keeps the article in trust for the real owner. As against every-one else, the property in the goods vests in the finder on his taking possession of it.

The finder has a right to sell the property—

- where the owner cannot with reasonable diligence be found, or
- when found, he refuses to pay the lawful charges of the finder and—
  (i) if the thing is in danger of perishing or losing greater part of its value, or
(ii) when the lawful charges of the finder for the preservation of goods and the finding out of the owner amounts to two-thirds of the value of the thing.

(e) Obligation of person enjoying benefit of a non-gratuitous act

Where a person lawfully does something for another person or delivers anything to him without any intention of doing so gratuitously and the other person accepts and enjoys the benefit thereof, the latter must compensate the former or restore to him the thing so delivered. For example, when one of the two joint tenants pays the whole rent to the landlord, he is entitled to compensation from his co-tenant, or if A, a tradesmen, leaves goods at B’s house by mistake and B treats the goods as his own, he is bound to pay A for them.

DISCHARGE OR TERMINATION OF CONTRACTS

Contracts may be discharged or terminated by any of the following modes:

(a) performance, i.e., by fulfilment of the duties undertaken by parties or, by tender;
(b) mutual consent or agreement.
(c) lapse of time;
(d) operation of law;
(e) impossibility of performance; and
(f) breach of contract.

REMEDIES FOR BREACH

In case of breach of contract, the injured party may:

(a) rescind the contract and refuse further performance of the contract;
(b) sue for damages;
   Liquidated damages: Where the contracting parties agree in advance the amount payable in the event of breach, the sum payable is called liquidated damages.
   Unliquidated damages: Where the amount of compensation claimed for a breach of contract is left to be assessed by the Court, damages claimed are called unliquidated damages.
(c) sue for specific performance;
(d) sue for an injunction to restrain the breach of a negative term; and
(e) sue on quantum meruit

CONTRACT OF INDEMNITY AND GUARANTEE
Meaning of Indemnity

A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

The contract of indemnity may be express or implied.

The person who promises to indemnify or make good the loss is called the indemnifier and the person whose loss is made good is called the indemnified or the indemnity holder.

A contract of insurance is an example of a contract of indemnity.

Meaning of Contract of Guarantee

A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default.

The person who gives the guarantee is called the Surety, the person for whom the guarantee is given is called the Principal Debtor, and the person to whom the guarantee is given is called the Creditor.

A guarantee may be either oral or written, although in the English law, it must be in writing.

Example - A advances a loan of Rs. 5,000 to B and C promises to A that if B does not repay the loan, C will do so. This is a contract of guarantee. Here B is the principal debtor, A is the creditor and C is the surety or guarantor.

Distinction between Indemnity and Guarantee

₁ In a contract of indemnity there are only two parties: the indemnifier and the indemnified. In a contract of guarantee, there are three parties; the surety, the principal debtor and the creditor.

₂ In a contract of indemnity, the liability of the indemnifier is primary. In a contract of guarantee, the liability of the surety is secondary. The surety is liable only if the principal debtor makes a default, the primary liability being that of the principal debtor.

₃ The indemnifier need not necessarily act at the request of the debtor; the surety gives guarantee only at the request of the principal debtor.

₄ In the case of a guarantee, there is an existing debt or duty, the performance of which is guaranteed by the surety, whereas in the case of indemnity, the possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.

₅ The surety, on payment of the debt when the principal debtor has failed to pay is entitled to proceed against the principal debtor in his own right, but the indemnifier cannot sue third-parties in his own name, unless there be assignment. He must sue in the name of the indemnified.

Extent of Surety’s Liability
The liability of the surety is co-extensive with that of the principal debtor unless the contract otherwise provides. A creditor is not bound to proceed against the principal debtor. He can sue the surety without suing the principal debtor. As soon as the debtor has made default in payment of the debt, the surety is immediately liable. But until default, the creditor cannot call upon the surety to pay. In this sense, the nature of the surety’s liability is secondary.

Rights of Surety

Surety’s rights against the creditor - A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into whether the surety knows of the existence of such security or not; and, if the creditor losses or, without the consent of the surety parts with such security, the surety is discharged to the extent of the value of the security.

Rights against the principal debtor: After discharging the debt, the surety steps into the shoes of the creditor or is subrogated to all the rights of the creditor against the principal debtor. He can then sue the principal debtor for the amount paid by him to the creditor on the debtors default; he becomes a creditor of the principal debtor for what he has paid.

Surety’s rights gains co-sureties: When a surety has paid more than his share of debt to the creditor, he has a right of contribution from the co-securities who are equally bound to pay with him. A, B and C are sureties to D for the sum of Rs. 3,000 lent to E who makes default in payment. A, B and C are liable, as between themselves to pay Rs. 1,000 each. If any one of them has to pay more than Rs.1,000 he can claim contribution from the other two to reduce his payment to only Rs. 1,000. If one of them becomes insolvent, the other two shall have to contribute the unpaid amount equally.

Discharge of Surety

A surety may be discharged from liability under the following circumstances:

- By notice of revocation in case of a continuing guarantee as regards future transaction
- By the death of the surety.
- Any variation in the terms of the contract between the creditor and the principal debtor, without the consent of the surety, discharges the surety as regards all transactions taking place after the variation.
- A surety will be discharged if the creditor releases the principal debtor, or acts or makes an omission which results in the discharge of the principal debtor.
- But where the creditor fails to sue the principal debtor within the limitation period, the surety is not discharged.
- Where the creditor, without the consent of the surety, makes an arrangement with the principal debtor for composition, or promises to give time or not to sue him, the surety will be discharged.
If the creditor does any act which is against the rights of the surety, or omits to do an act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

If the creditor loses or parts with any security which at the time of the contract the debtor had given in favour of the creditor, the surety is discharged to the extent of the value of the security, unless the surety consented to the release of such security by creditor in favour of the debtor. It is immaterial whether the surety was or is aware of such security or not.

**CONTRACT OF BAILMENT AND PLEDGE**

**Bailment**

A bailment is a transaction whereby one person delivers goods to another person for some purpose, upon a contract that they are, when the purpose is accomplished to be returned or otherwise disposed of according to the directions of the person delivering them.

The person who delivers the goods is called the bailor and the person to whom they are delivered is called the bailee.

Bailment is a voluntary delivery of goods for a temporary purpose on the understanding that they are to be returned in specie in the same or altered form. The ownership of the goods remains with the bailor, the bailee getting only the possession.

**Gratuitous Bailment**

A gratuitous bailment is one in which neither the bailor nor the bailee is entitled to any remuneration. Such a bailment may be for the exclusive benefit of the bailor, e.g., when A leaves his dog with a neighbour to be looked after in A’s absence on a holiday. It may again be for exclusive benefit of the bailee, e.g., where you lend your book to a friend of yours for a week. In neither case any charge is made.

A gratuitous bailment terminates by the death of either the bailor or the bailee.

**Bailment for Reward**

This is for the mutual benefit of both the bailor and the bailee.

For example, A lets out a motor-car for hire to B. A is the bailor and receives the hire charges and B is the bailee and gets the use of the car. Where, A hands over his goods to B, a carrier for carriage at a price, A is the bailor who enjoys the benefit of carriage and B is the bailee who receives a remuneration for carrying the goods.

**Duties of Bailee**

The bailee must take as much care of the goods bailed to him as a man of ordinary prudence would take under similar circumstances of his own goods of the same bulk, quality and value as the goods bailed.
The bailee is under a duty not to use the goods in an unauthorised manner or for unauthorised purpose. If the does so, the bailor can terminate the bailment and claim damages for any loss or damage caused by the unauthorised used.

He must keep the goods bailed to him separate from his own goods.

He must not set up an adverse title to the goods.

It is the duty of the bailee to return the goods without demand on the expiry of the time fixed or when the purpose is accomplished. If he fails to return them, he shall be liable for any loss, destruction or deterioration of the goods even without negligence on his part.

In the absence of any contract to the contrary, the bailee must return to the bailor any increase, or profits which may have accrued from the goods bailed; for example, when A leaves a cow in the custody of B to be taken care of and the cow gets a calf, B is bound is deliver the cow as well as the calf to A.

Types of Lien

Lien is of two kinds: Particular lien and General lien.

A particular lien is one which is available only against that property of which the skill and labour have been exercised. A bailee’s lien is a particular lien.

A general lien is a right to detain any property belonging to the other and in the possession of the person trying to exercise the lien in respect of any payment lawfully due to him.

Thus, a general lien is the right to retain the property of another for a general balance of accounts but a particular lien is a right to retain only for a charge on account of labour employed or expenses bestowed upon the identical property detainted.

Duties of bailor

The bailor must disclose all the known faults in the goods; and if he fails to do that, he will be liable for any damage resulting directly from the faults.

It is the duty of the bailor to pay any extraordinary expenses incurred by the bailee. For example, if a horse is lent for a journey, the expense of feeding the house would, of course, subject to any special agreement be borne by the bailee. If however the horse becomes ill and expenses have been incurred on its treatment, the bailor shall have to pay these expenses.

The bailor is bound to indemnify the bailee for any cost or costs which the bailee may incur because of the defective title of the bailor of the goods bailed.

Termination of bailment

Where the bailee wrongfully uses or dispose of the goods bailed, the bailor may determine the bailment.

As soon as the period of bailment expires or the object of the bailment has been achieved, the bailment comes to an end, and the bailee must return the goods to the bailor.
Bailment is terminated when the subject matter of bailment is destroyed or by reason of change in its nature, becomes incapable of use for the purpose of bailment.

A gratuitous bailment can be terminated by the bailor at any time, even before the agreed time, subject to the limitation that where termination before the agreed period causes loss in excess of benefit, the bailor must compensate the bailee.

A gratuitous bailment terminates by the death of either the bailor or the bailee.

Pledge

Pledge or pawn is a contract whereby an article is deposited with a lender of money or promisee as security for the repayment of a loan or performance of a promise. The bailor or depositor is called the Pawnor and the bailee or depositee the “Pawnee”.

Since pledge is a branch of bailment, the pawness is bound to take reasonable care of the goods pledged with him. Any kind of goods, valuables, documents or securities may be pledged. The Government securities, e.g., promissory notes must, however, be pledged by endorsement and delivery.

The following are the essential ingredients of a pledge:

(i) The property pledged should be delivered to the pawnee.
(j) Delivery should be in pursuance of a contract.
(iii) Delivery should be for the purpose of security.
(iv) Delivery should be upon a condition to return.

LAW OF AGENCY

An agent is a person who is employed to bring his principal into contractual relations with third-parties. But during the period that an agent is acting for his principal, he is clothed with the capacity of his principal.

A contract of agency may be express or implied, but consideration is not an essential element in this contract.

(a) Express Agency: A contract of agency may be made orally or in writing. The usual form of written contract of agency is the Power of Attorney, which gives him the authority to act on behalf of his principal in accordance with the terms and conditions therein.

In an agency created to transfer immovable property, the power of attorney must be registered. A power of attorney may be general, giving several powers to the agent, or special, giving authority to the agent for transacting a single act.

(b) Implied Agency: Implied agency may arise by conduct, situation of parties or necessity of the case.

(i) Agency by Estoppel
(ii) Wife as agent
(iii) Agency of Necessity
Classes of Agents
Agents may be special or general or, they may be mercantile agents:

- **Special Agent**: A special agent is one who is appointed to do a specified act, or to perform a specified function. He has no authority outside this special task. The third-party has no right to assume that the agent has unlimited authority. Any act of the agent beyond that authority will not bind the principal.

- **General Agent**: A general agent is appointed to do anything within the authority given to him by the principal in all transactions, or in all transactions relating to a specified trade or matter. The third-party may assume that such an agent has power to do all that is usual for a general agent to do in the business involved. The third party is not affected by any private restrictions on the agents authority.

Sub-Agent
A person who is appointed by the agent and to whom the principal’s work is delegated to known as sub-agent.

Mercantile Agents
“A mercantile agent having in the customary course of business as such agent authority either to sell goods or consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods”. This definition covers factors, brokers, auctioneers, commission agents etc.

Factors
A factor is a mercantile agent employed to sell goods which have been placed in his possession or contract to buy goods for his principal. He is the apparent owner of the goods in his custody and can sell them in his own name and receive payment for the goods. He has an insurable interest in the goods and also a general lien in respect of any claim he may have arising out of the agency.

Brokers
A broker is a mercantile agent whose ordinary course of business is to make contracts with other parties for the sale and purchase of goods and securities of which he is not entrusted with the possession for a commission called brokerage. He acts in the name of principal. He has no lien over the goods as he is not in possession of them.

Del Credere Agent
A del credere agent is a mercantile agent, who is consideration of an extra remuneration guarantees to his principal that the purchasers who buy on credit will pay for the goods they take. In the event of a third-party failing to pay, the del credere agent is bound to pay his principal the sum owned by third-party.
Auctioneers

An auctioneer is an agent who sells goods by auction, i.e., to the highest bidder in public competition. He has no authority to warrant his principals title to the goods. He is an agent for the seller but after the goods have been knocked down he is agent for the buyer also for the purpose of evidence that the sale has taken place.

Partners

In a partnership firm, every partner is an agent of the firm and of his co-partners for the purpose of evidence that the sale has taken place.

Bankers

The relationship between a banker and his customer is primarily that of debtor and creditor. In addition, a banker is an agent of his customer when he buys or sells securities, collects cheques dividends, bills or promissory notes on behalf of his customer. He has a general lien on all securities and goods in his possession in respect of the general balance due to him by the customer.

Duties of the Agent

- An agent must act within the scope of the authority conferred upon him and carry out strictly the instructions of the principal.
- In the absence of express instructions, he must follow the custom prevailing in the same kind of business at the place where the agent conducts the business.
- He must do the work with reasonable skill and diligence whereby the nature of his profession, the agent purports to have special skill, he must exercise the skill which is expected from the members of the profession.
- He must disclose promptly any material information coming to his knowledge which is likely to influence the principal in the making of the contract.
- He must not disclose confidential information entrusted to him by his principal.
- He must not allow his interest to conflict with his duty, e.g., he must not compete with his principal.
- The agent must keep true accounts and must be prepared on reasonable notice to render an account.
- He must not make any secret profit; he must disclose any extra profit that he may make.
- An agent must not delegate his authority to sub-agent. A sub-agent is a person employed by and acting under the control of the original agent in the business of agency.

Rights of Agents

- Where the services rendered by the agent are not gratuitous or voluntary, the agent is entitled to receive the agreed remuneration, or if none was agreed, a reasonable remuneration. The agent becomes entitled to receive remuneration as soon as he has done what he had undertaken to do.
Certain classes of agents, e.g., factors who have goods and property of their principal in their possession, have a lien on the goods or property in respect of their remuneration and expense and liabilities incurred. He has a right to stop the goods in transit where he is an unpaid seller.

As the agent represents the principal, the agent has a right to be indemnified by the principal against all charges, expenses and liabilities properly incurred by him in the course of the agency.

**Principal Liable for Agent’s Torts (Section 238)**

If an agent commits a tort or other wrong (e.g., misrepresentation or fraud) during his agency, whilst acting within the scope of his actual or apparent authority, the principal is liable. But the agent is also personally liable, and he may be sued also. The principal is liable even if the tort is committed exclusively for the benefit of the agent and against the interests of the principal.

**Personal Liability of Agent to Third-party**

An agent is personally liable in the following cases:

- Where the agent has agreed to be personally liable to the third-party.
- Where an agent acts for a principal residing abroad.
- When the agent signs a negotiable instrument in his own name without making it clear that he is signing it only as agent.
- When an agent acts for a principal who cannot be sued (e.g., he is minor), the agent is personally liable.
- An agent is liable for breach of warranty of authority. Where a person contracts as agent without any authority there is a breach of warranty of authority. He is liable to the person who has relied on the warranty of authority and has suffered loss.
- Where authority is one coupled with interest or where trade, usage or custom makes the agent personally liable, he will be liable to the third-party.
- He is also liable for his torts committed in the course of agency.

**Termination of Agency**

An agency comes to an end or terminates—

- By the performance of the contract of agency;
- By an agreement between the principal and the agent;
- By expiration of the period fixed for the contract of agency;
- By the death of the principal or the agency;
- By the insanity of either the principal or the agent;
- By the insolvency of the principal, and in some cases that of the agent;
Where the principal or agent is an incorporated company, by its dissolution;
By the destruction of the subject-matter;
By the renunciation of his authority by the agent;
By the revocation of authority by the principal.

**When Agency is Irrevocable**
Revocation of an agency by the principal is not possible in the following cases:

- Where the authority of agency is one coupled with an interest, even the death or insanity of the principal does not terminate the authority in this case.
- When agent has incurred personal liability, the agency becomes irrevocable.
- When the authority has been partly exercised by the agent, it is irrevocable in particular with regard to obligations which arise from acts already done.

**JOINT VENTURE/ FOREIGN COLLABORATION/MULTINATIONAL AGREEMENTS**

The conditions may differ according to the requirements. While drafting a foreign collaboration agreement, the following factors should be kept in mind:

- Capability of the collaborator and the requirements of the party are clearly indicated.
- Clear definitions of technical terms are given.
- Specify if the product shall be manufactured/sold on exclusive or non-exclusive basis.
- Provisions for making available the engineers and/or skilled workers of the collaborator on payment of expenses relating to their stay per diem etc. are given.
- Details regarding specification and quality of the product to be manufactured are given.
- Quality control and trademarks to be used are also specified.
- Responsibility of the collaborator in establishing or maintaining assembly plants should be clearly determined and provided for.
- If sub-contracting of the work is involved, clarify if there would be any restrictions.
- The rate of royalty, mode of calculation and payment etc. Also, make provision as to who will bear the taxes/cess on such payments.
- Use of information and industrial property rights should also be provided for in the agreement.
- A clause on force majeure should be included.
- A comprehensive clause on arbitration containing a clear provision as to the kind of arbitrator and place of arbitration should be included.
- There should be provision in the agreement for payment of interest on delayed payments.

**E-CONTRACT**

Electronic contracts are not paper based but rather in electronic form are born out of the need for speed, convenience and efficiency. The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts. The Information
Technology Act, 2000 solves some of the peculiar issues that arise in the formation and authentication of electronic contracts

As in every other contract, an electronic contract also requires the following necessary ingredients:

- An offer needs to be made
- The offer needs to be accepted
- There has to be lawful consideration
- There has to be an intention to create legal relations
- The parties must be competent to contract
- There must be free and genuine consent
- The object of the contract must be lawful
- There must be certainty and possibility of performance.
Law Relating to Arbitration and Conciliation

**ADR (Alternative Dispute Resolution)**

- Court will not be in a position to bear the entire burden of justice system.
- Quick decision of any commercial dispute is necessary for business and industry.
- Resolutions of disputes through judicial process is very time consuming and costly in terms of time, money and energy.
- ADR processes provide procedural flexibility, save valuable time money and avoid the stress of a conventional trial.
- ICADR (International centre for alternative dispute resolution) is a unique centre that make provision for promoting, teaching, research in the field of ADR to parties all over the world.
- ADR works in the areas of

  | Commercial | Civil | Labour and family dispute |
  | Joint venture | IPR | Partnership etc |

**Method of ADR**

There are four methods of ADR:
- Negotiation
- Mediation
- Conciliation
- Arbitration

**Arbitration and Conciliation Act, 1996**

- Arbitration can be defined as the means by which the parties to dispute consent to get the same settled through the intervention of a third person called arbitrator, but without having recourse to a court of law.
- The person who is appointed to determine the dispute is called the `Arbitrator' or `Arbitral Tribunal'. The proceeding before him is called `Arbitration proceeding' and his decision is called `Award'.
- An Arbitrator is a judge of the party's own choice.
Objective of the Act
The Act has following objectives:-
- To minimise the supervisory role of court in arbitral process.
- To encourage settlement of dispute.
- To provide for enforcement of foreign award.

Important Definitions

Arbitrator

- Arbritrator is a person who is appointed to determine differences and disputes between two or more parties by their mutual consent.
- The person who is appointed as arbitrator shall give the consent to Act as arbitrator.
- The arbitrator must be absolutely disinterested and impartial
- He is an extra-judicial tribunal whose decision is binding on the parties.
- Any interest of the arbitrator either in one of the parties (or) in the subject matter is a disqualification for the arbitrator.
- The parties may appoint whomsoever they please to arbitrate on their dispute.
- In certain cases, the court can appoint an arbitrator

Arbitral Tribunal

“Arbitral tribunal” means a sole arbitrator or a panel of arbitrators.

Arbitration Agreement - Section 7

- An agreement by parties to submit the arbitration or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship
- An arbitration agreement shall be in writing
- All the aspects relate to
  - Person appointed as arbitrator
  - Number of arbitrator
  - Made of appointment of arbitrator
  - Consideration (cost)of arbitrator etc

Shall be mentioned in arbitration agreement.

Case: - Mahesh Kumar v. Rajasthan State Road Corporation

The Rajasthan High Court has held that mere existence of arbitration clause in agreement does not bar jurisdiction of Civil Court automatically.

Court

- “Court“ means the Principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration,
- but does not include any Civil Court of a grade inferior to principal Civil Court.
Matters which “CAN/CANNOT” be referred to arbitration

<table>
<thead>
<tr>
<th>Matters which can be referred to arbitration</th>
<th>Matters which cannot be referred to arbitration</th>
</tr>
</thead>
<tbody>
<tr>
<td>all civil and quasi civil matters can be referred to arbitration</td>
<td>Matrimonial matters</td>
</tr>
<tr>
<td>Disputes involving joint ventures, construction projects, partnership differences, fall within the jurisdiction of Arbitration.</td>
<td>Industrial Disputes and Revenue matters (Income Tax &amp; other Tax matters).</td>
</tr>
<tr>
<td>Matters of personal or private rights of parties.</td>
<td>Motor Vehicle Accident conversation</td>
</tr>
<tr>
<td>Time barred debts.</td>
<td>Matters under Indian Trust Act,</td>
</tr>
<tr>
<td></td>
<td>Determination of guardianship or wards</td>
</tr>
</tbody>
</table>

**APPOINTMENT OF ARBITRATORS**

- If parties have mentioned in agreement the procedure of appointment of arbitrator otherwise
  - Arbitrator could be of any nationality
  - In case of arbitration with (3) arbitrators, each party shall appoint its own arbitrator, and the (2) appointed arbitrator shall appoint a third arbitrator
  - If parties fail to appoint their arbitrator within (30) days, arbitrators shall be appointed by SC or HC.
  - The parties are free to determine the number of arbitrators, but such number shall not be an even number.
  - If they fail to determine the number of arbitrator, the Arbitral Tribunal consist of a sole arbitrator.
  - Language of arbitration shall be subject to arbitration agreement –otherwise in English

**Grounds for challenge – Section 12**

- Circumstances exist that give rise to justifiable doubts as to his independence or impartiality.
- He does not possess the qualifications agreed to by the parties.
- Arbitrator, while giving declaration has to state that whether he has sufficient time to complete assignment within 12 months.
- Appointment of arbitrator cannot be challenged on any other ground.

**Termination of arbitrator**

**Termination of mandate – Section 14**

Mandate means an authorisation to act given to an arbitrator. Mandate of an arbitrator shall terminate if:
He becomes by law or by fact unable to perform his functions and he withdraws from his office.
The parties agree to the termination of mandate.
He withdraws from his office.
Arbitrator can withdraw, if his appointment is challenged by one party and the challenge is accepted by him or other party agrees to challenge.

**Substitution of arbitrator – Section 15**
If appointment of arbitrator is terminated, another arbitrator should be appointed following procedure similar to appointment of initial arbitrators.

**Conduct or procedure of Arbitral Proceeding**
The Arbitral Tribunal should treat the parties equally and each party should be given full opportunity to present his case.
The parties to arbitration are free to agree on the procedure to be followed by the Arbitral Tribunal.
If the parties do not agree to the procedure, the procedure will be as determined by the Arbitral Tribunal.
Arbitral proceedings in respect of a particular dispute commences on the date on which a request from one party to refer the dispute to arbitration is received by other party.

**Power of judicial authority to refer parties to arbitration - Section 8**
If a party approaches court despite the arbitration agreement, the other party can raise objection.
Such objection must be accompanied by the original arbitration agreement
On such application, the judicial authority shall refer the parties to arbitration.
Authority shall refer the parties to arbitration, if following conditions are satisfied:
- There must be valid arbitration agreement in existence.
- Subject matter in question is within scope of arbitration.
- Application is made by party to arbitration agreement.
- Application is made to authority before which proceedings are pending.
- Application should be made at early stage i.e. before first statement is submitted by party to dispute.
- Authority must be satisfied.

Place and language of arbitration will be decided by mutual agreement; if nothing is decided then arbitral tribunal will decide.

**Arbitral award :-Section 31**
- An arbitration Agreement is required to be in writing
- An arbitral award is required to be made on stamp paper
- An oral decision is not an award under the law
- The award is to be signed by the members of (Arbitral Tribunal)
The award shall contain reasons.
The award shall be dated and place of arbitration shall be mentioned.
The arbitral tribunal may include the sum and interest in case of non-payment as per award.
The award may also include cost of arbitration.
After the award is made, a signed copy should be delivered to each party for implementation of arbitral award.

**Time limit for making award**
- The Arbitral Tribunal shall make arbitration award within 12 months from date of reference.
- The period can be extended by the parties up to 6 months by mutual consent.
- Fees payable to Tribunal can be reduced up to 5% for each month of delay.

**Fast track procedure**
- If both parties agree in writing, the Arbitral Tribunal can follow fast track procedure.
- Here, decision will be on basis of written pleadings, documents and submissions.
- Oral hearing will be only to clarify certain points.
- Technical formalities for oral hearing may be dispensed with by Arbitral Tribunal.
- The award shall be made within 6 months.

**Termination of arbitral proceedings**
Arbitral Tribunal can pass an order for termination of arbitral proceedings:
- When the claimant withdraws his claim,
- When the parties to the reference agree on such termination,
- When the arbitral tribunal finds that the continuation of arbitral proceedings has become either unnecessary or impossible.

**Additional award**
- The Tribunal can also make additional award, if one party makes application with notice to other party.
- Request should be made within 30 days of receipt of award.
- Tribunal can make additional award within 60 days from receipt of request.

**Grounds for setting aside the award: Section 34**
- Incapacity of party;
- Invalidity of Arbitration Agreement;
Violation of the principles of natural justice;
Award beyond the scope of submission;
Improper composition of Arbitral Tribunal;
Disputes not arbitral under the law;
Award being in conflict with public policy

The period of limitation for setting aside the award is 3 months from the date of receipt of award.

However, this period can be extended for further a period of 30 days on sufficient cause

**International Commercial Arbitration**

International commercial arbitration means an arbitration relating to disputes arising out of legal relationship where at least one of the parties is:-

- An individual who is a national of any country other than India
- A body corporate which is incorporated in any country other than India (or)
- A company / an association etc. whose central management and control is exercised in any country other than India.

**Provisions applicable on Foreign award**

- Party which intends to enforce a foreign award has to produce the arbitral award and agreement of arbitration to the High Court having jurisdiction over the subject matter of the award.
- The enforcement of award can be refused by court only in cases specified below; otherwise, the foreign award is enforceable.
  - It is in contravention with the fundamental policy of Indian law; or
  - It is in conflict with the most basic notions of morality or justice.

**United Nations Commission on International Trade Law (UNCITRAL), model law on International Commercial Arbitration**

The UNCITRAL model law has been passed to consolidate and amend the law relating to domestic arbitration ,international commercial arbitration ,enforcement of foreign arbitral awards and also to provide for a law relating to conciliation and related matters. Its aims at streamlining the process of arbitration and facilitating conciliation in business matters

**Ad hoc arbitration**

- An ad hoc arbitration is one where parties have to determine all aspects of the arbitration themselves - for example, the number of arbitrators, appointing those arbitrators, the applicable law and the procedure for conducting the arbitration.
- Ad hoc proceedings have the potential to be more flexible, faster and cheaper than institutional proceedings.
- Only National law is applicable.
- No need to place the agreement to any institution.
- It takes place when the parties of agreement are of same nation.
Conciliation

- Conciliation is the amicable settlement of disputes between the parties.
- One of the objects of Arbitration and Conciliation Act, 1996 is to encourage settlement of dispute by means of conciliation i.e. settlement of disputes in a friendly manner.
- The conciliator brings parties together and tries to solve the dispute using his good offices.
- The conciliator thereby helps parties in arriving at a mutually accepted settlement by drawing and signing a written settlement / agreement.
- The settlement agreement is signed by both the parties and the conciliator has the same status and effect as if it is an arbitral award.

Settlement agreement

The settlement agreement, it reached between the parties, shall be final and binding on the parties.

The conciliation proceedings shall be terminated:
- On the date of signing the agreement of settlement.
- On the date of declaration by conciliator that further efforts are no longer justified.
- On the date of declaration by the parties addressed to the conciliator that conciliation proceedings are terminated.
- On the date of a written declaration addressed by one party to other and the conciliator that the proceedings are terminated.

<table>
<thead>
<tr>
<th>Basis</th>
<th>Arbitration</th>
<th>Conciliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td>Arbitration is a dispute settlement process in which a impartial third party is appointed to study the dispute and hear both the party to arrive at a decision binding on both the parties.</td>
<td>Conciliation is a method of resolving dispute, wherein an independent person helps the parties to arrive at negotiated settlement.</td>
</tr>
<tr>
<td>Enforcement</td>
<td>An arbitrator has the power to enforce his decision.</td>
<td>A conciliator does not have the power to enforce his decision.</td>
</tr>
<tr>
<td>Prior Agreement</td>
<td>Required</td>
<td>Not Required</td>
</tr>
<tr>
<td>Disputes</td>
<td>Available for existing and future disputes.</td>
<td>Existing disputes.</td>
</tr>
<tr>
<td>Legal proceeding</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Number</td>
<td>Only Odd number of Arbitrator</td>
<td>Any number, even or odd Conciliator</td>
</tr>
</tbody>
</table>
Law Relating to Pollution

Water (Prevention and Control of Pollution) Act, 1974

MEANING

Water (prevention and Control of Pollution) Act, 1974 has been enacted to provide for the prevention and control of water pollution and maintaining or restoring wholesomeness of water, for the establishment of Boards.

To carrying out these purposes, for the prevention and control of water pollution, for conferring on and assigning to such boards powers and functions relating thereto and for matters connected therewith.

OBJECTIVE

1. Abatement of pollution.
2. To establish wholesomeness of water.
3. To establish state pollution control board (SPCB) to achieve the objective.

DEFINITIONS

Occuper in relation to any factory or premises, means the person who has control over the affairs of the factor or the premises, and includes, in relation to any substance, the person in possession of the substance.

POLLUTION MEANS

- Contamination into water
- Alteration of the physical, chemical or biological properties of water
- Any discharge of any sewage or trade effluent into water
- Any other liquid, gaseous or solid substance into water Whether directly or indirectly and cause
- a nuisance
- water harmful
- injurious to public health and safety,
- injuries to life and safety of animal, plants, Organisms

Outlets includes any conduit pipe or channel, open or closed carrying sewage or trade effluent

Sewage effluent means effluent from any sewage system or sewage disposal works and includes sullage from open drains.

Trade effluent includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any Industry/operation / process. (I/O/P)
Sewer means any conduit pipe or channel, open or closed, carrying sewage or trade effluent.

STREAM INCLUDES

i. River;
ii. Water course (whether flowing or for the time being dry);
iii. Inland water (whether natural or artificial);
iv. Subterranean waters;
v. Sea or tidal waters to such extent as SG may, by notify in the OG, specify in this behalf.

AUTHORITIES UNDER THE ACT

CPCB (Central Pollution Control Board)

CONSTITUTION OF CPCB (SEC-3)

(1) CG shall by NIOG, constitute Central Pollution Control Board to exercise the powers conferred on and to perform the functions assigned to that Board under this Act.

(2) CPCB shall consist of the following members, namely:
   • A full-time Chairman, being a person having special knowledge to be nominated by CG.
   • such number of officials, not exceeding 5 to be nominated by CG to represent it;
   • Such number of persons, not exceeding 5 to be nominated by CG, from amongst the members of SPCBs.
   • Such number of officials, not exceeding 3 to be nominated by CG, to represent the interest of agriculture, fishery.
   • 2 persons to represent the companies or corporations owned, controlled or managed by CG, to be nominated by it;
   • a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by CG.

SPCB (State Pollution Control Board)

CONSTITUTION OF SPCB (SEC-4)

(1) SG shall by NIOG, appoint, constitute a SPCB, to exercise the powers conferred on, or to perform the functions assigned to that Board under this Act.

(2) A SPCB constituted under this Act shall consist the following members, namely:
   • a chairman, being a person, having special knowledge to be nominate by SG; Provided that the Chairman may be either whole-time or part-time as SG may think fit.
   • such number of officials, not exceeding 5, as SG may think fit, to be nominated by SG to represent the Government;
such number of persons, not exceeding 5, to be nominated by SG from amongst the members of the local authorities functioning within the State;

such number of officials, not exceeding 3, to be nominated by SG to represent the interest of agriculture, fishery

2 persons to represent the companies or corporations owned, controlled or managed by SG, to be nominated by it.

full-time member-secretary, to be appointed by SGs.

**NOTE:** SG shall ensure that not less than 2 of the members are persons having special knowledge or practical experience in, respect of matters relating to the improvement of the quality of water or the prevention, control of abatement of water pollution.

**Note:**

- Every SPCB / CPCB is a body corporate having perpetual succession and a common seal
- CPCB/SPCB can also acquire and dispose of property and to contract, and may be the said name sue or be sued.

**TERM OF OFFICE, COMMITTEES, VACATION, ASSOCIATES Etc. (Section 5)**

1. A member of a SPCB constituted under this Act, other than the member-secretary, shall hold office for a term of 3 years from the date on which his nomination is notified in OG: **Provided that** a member shall, continue to hold office until his successor enters upon his Office

   **Member term of office will also cease, if he ceases to hold in company, by virtue of which he was nominated in SPCB**

2. CG or, SG may, if it thinks fit, remove any member of a Board before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same.

3. A member of a SPCB constituted under this Act, other than the member-secretary, may at any time resign his office by writing under his hand addressed:
   (a) in the case of a Chairman, to SG; and
   (b) in any other case, to the Chairman of SPCB.

4. A member of a Board, other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board.

5. A casual vacancy in a SPCB constituted under this Act shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of term for which the member whose place lie takes was nominated.

**CONSTITUTION OF JOINT BOARD (SEC. 13)**

**OBJECTIVE:** To prevent, control, abatement of pollution in states & UT by joint effort.
An agreement may be entered into:
(a) by two or more Governments of contiguous States, or
(b) by CG (in respect of one or more UTs) and 1 or more SGs of the states contiguous to such UTs; To provide for the constitution of a Joint board:
(i) in a case referred to in clause (a), for all the participating States, and
(ii) in a case referred to in clause (b), for the participating UT(s) and the State(s)-

COMPOSITION OF JOINT BOARDS (SECTION 14)
- Full time Chairman
- Member Secretary
- Other officers etc

POWERS AND FUNCTIONS OF BOARDS

SEC. 16 – FUNCTIONS OF CPCB
(1) The main function of CPCB shall be promote cleanliness of streams and wells in different areas of the States.
(2) CPCB may perform all or any of the following functions namely:-
(a) advise CG on any matter concerning the improvement of the quality of water and the prevention, control or abatement of water pollution;
(b) plan and cause to be executed a nationwide programme for the prevention, control or abatement of water pollution;
(c) co-ordinate with activities of the State and resolve disputes among them;
(d) provide technical assistance and guidance to SPCBs
(e) perform function of SPCB
(f) lay down standards for the quality of water;
(g) collect and disseminate information in respect of matters relating to water pollution;
(h) perform such other functions as may be prescribed;

SEC. 17 – FUNCTIONS OF SPCB
The functions of a SPCB shall be:
(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the state and to secure the execution thereof;
(b) to advice SG on any matter concerning the prevention, control or abatement of water pollution;
(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;
(d) to collaborate with CPCB in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organize mass education programmes relating thereto;
(e) to evolve methods of utilization of sewage in agriculture;
(f) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream
to perform such other functions as may be prescribed or as may, from time to time be entrusted to it by CPCB or SG;

The CPCB / SPCB may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water. taken for analysis the person taking the sample shall:

POWER TO TAKE SAMPLES

Section 21 empowers the State Board (SPCB) to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel into any such stream or well.

Note: The result of any analysis of a sample of any sewage or trade effluent shall not be admissible in evidence in any legal proceedings unless the following provisions are complied with.

When a sample of any sewage or trade effluent is taken for analysis the person taking the sample shall:

(a) serve a notice to occupier or any agent of his intention to have it so analysis.
(b) in the presence of occupier or his agent divide the samples into two parts;
(c) cause each part to be placed in a container which shall be marked, sealed and signed by both the person taking the samples and the occupier or his agent;
(d) Send one container forthwith to the laboratory established or recognized by the Central board (where the case is union territory) and State board in any other case.
(e) on the request of the occupier or his agent, send the second container to CENTRAL WATER LABORATORY (in case of UT) and STATE WATER LABORATORY (in any other case).

NOTE: If the occupier or his agent willfully absent himself the sample so taken shall be placed in one container which shall be marked, sealed and signed by the person taking the sample and such person shall inform the Government analyst in writing about the willful absence of the occupier of his agent. AND If occupier or agent who is present at the time of taking sample does not make a request for dividing as sample into two parts, then the sample so taken shall be placed in a container which shall be marked, sealed and signed by the person taking the sample.

Sec. 23 – POWER OF ENTRY AND INSPECTION

SPCB and its officer shall have a right at any time to enter at any place:-
(a) for the purpose of performing any of the functions of the Board entrusted to him;
(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed
(c) For the purpose of examining and seizing any plant, record, register, document or any other material object.
NOTE: the right to enter for the inspection of a well shall be exercised only at reasonable hours in a case where such well is situated at any premises used for residential purposes and the water thereof is used exclusively for domestic purposes.

SEC. 24 – RESTRICTION ON USE OF SEWER, LAND, STREAM OR WELL

Sec.24 imposes following two prohibitions:
(1) No person shall allow any poisonous, noxious or polluting matter to enter into any sewer, land, stream or well, or
(2) No person shall allow the discharge of any other matter into the stream, which may obstruct the flow of stream causing substantial aggravation of the pollution in the stream.

Exceptions to 2nd case:
(1) Where a person has got the right of constructing any dam, bridge or any other permanent structure on the bank or in the bed or across the bed of the stream.
(2) Where the person deposits anything on the bank of the stream for the purpose of supporting the bank
(3) Putting back the gravel deposited on the banks of stream by the stream itself.
(4) Where a person shifts the matter deposited in the ponds or well to the stream with the permission of SPCB.

Sec 25(1) – restrictions on new outlets and new discharges – (3 situations)

A person shall obtain the PRIOR permission of SPCB for following three activities:
 i. To establish any new industry, operation or process (I/O/P) or any treatment disposal system or any addition or extension thereto, or
 ii. To make use of new or altered outlet, or
 iii. To make any new discharge;

Procedure for obtaining permission of SPCB:
• Application in prescribed form to SPCB, along with fee
• SPCB will appoint Inspector to inspect the premises.
• Advance notice is served on the owner in prescribed form, before inspection.
• Inspector may issue summons to the applicant to cause personal appearance & furnish information required.
• Inspector will submit report to SPCB after inspection. SPCB gives approval.
• The above procedure must be completed within 4 months from the date of filing the application; if the SPCB approval is not communicated within 4 months then it is deemed approval.

Sec. 28 Appeals–appeal has to be filed within 30 days to he appellate authority appointed by the state government against the order of SPCB> it is discretion of appellate authority to hear the appeals even after 30 days.
Sec. 31 Intimation to the SPCB in certain circumstances

The occupier of any I/O/P shall intimate the SPCB if because of any accident or unforeseen act or event here is a discharge or apprehension of discharge of any poisonous, noxious or polluting matter into any stream, river, well, sewer or land. Thereafter, SPCB can pass any suitable order to the occupier, and the occupier shall comply with such order.

Sec. 33 where the SPCB is of the opinion that there is a discharge of any polluting matter or there is a likelihood of any such discharge into any stream, well, sewer or land it may file any application to the Court. On receiving such an application court may pass the order directing the occupier to desist from making any such discharge and to remove the polluting matter from the stream, sewer, well or land. If the order of court is not complied by the occupier, the court may issue directions to SPCB to remove the polluting matter from the stream, well, sewer, land and in that case expenses borne by SPCB shall be recovered by sale of such matter in first instance and balance expenses may be recovered as Arrears of land revenue.

SPCB may order for:-
(1) Closure or prohibition or restriction of any I,
(2) For stoppage or regulation of electricity or water supply or any other services to any industry, operation or process.

Procedure in case of 1st Order:
Step 1: SPCB shall send a notice of the intended order to the occupier of industry, operation of Process.
Step 2: occupier can file objections to SPCB within max. 15 days
Step 3: SPCB shall either confirm the order or vary the order or revoke the order within 45 days from the date of receipt of the objections or from the last date of receiving objections whichever is earlier.

Procedure in case of 2nd Order:
(a) A copy of proposed direction shall be given to appropriate authority.
(b) A copy of the proposed direction shall also be forwarded to the occupier of the I/O/P.
(c) Remaining procedure is same above.

Method of service of notice:

(1) To company – Mode of giving order is either by registered post or delivery by hand to company
   - At registered office, or
   - At principal office, or
   - At any place of business.
(2) To the individual – Registered post or by tendering to him, place of residence/business.
(3) To Govt. Officer – By registered post or tendered to him. (A copy thereof is endorsed to the H.O.D.)
Air (Prevention and Control of Pollution) Act 1981

INTRODUCTION

Air (Prevention & Control of Pollution) Act to provide for the prevention, control and abatement of air pollution, & for the establishment of Boards with a view to carrying our aforesaid purposes, & for conferring on & assigning to such Boards powers & functions relating thereto & for matters connected therewith.

DEFINITIONS

(a) **Air Pollutant** means any solid, liquid or gaseous substance including noise present in the atmosphere in *such concentration as may be or tend to be injurious* to human beings or other living creatures or plants or property or environment;

(b) **Air pollution** means the presence in the atmosphere of any air pollutant.

(c) **Approved Appliances** means any equipment or gadget used for the burning of any combustible material approved by SPCB.

(d) **Approved Fuel** means any fuel approved by SPCB.

(e) **Automobile** means any vehicle powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel.

CENTRAL AND STATE POLLUTION CONTROL BOARDS (CPCB)

**CPCB for the Prevention and Control of Air Pollution (Sec.3)**

CPCB under section 3 of the Water (PCP) Act, 1974, shall exercise the powers and perform the functions of CPCB for the Prevention and Control of Air pollution under this Act.

**SPCB for the Prevention and Control of Water Pollution to be, SPCBs for the Prevention and Control of Air Pollution. (Sec.4)**

SPCB in water (PCP) Act, 1974, exercise the power and perform the function of SPCB under this Act.

**Constitution of SPCBs (Sec.5)**

SAME CONSTITUTION AS WATER (PCP) ACT, 1974

**CPCB to exercise the powers of a SPCB in the UTs (SEC.6)**

CPCB shall exercise the power and perform the functions of a SPCB under this Act for that UT

**Terms and conditions of service of members (Sec.7)**

SAME AS WATER (PCP) ACT, 1974
Sec. 8 – Disqualifications.
No person shall be a member of a SPCB constituted under this Act, if he –
1. If any time has been, adjudged insolvent.
2. Is of unsound mind and has been so declared by a competent court.
3. If convicted of an offence which, in the opinion of SG, involves moral turpitude.
4. If any time has been, convicted of an offence under this Act,
5. has directly or indirectly by any interest in firm or company on which this Act apply.
6. has so abused, in the opinion of SG, his position as a member, as to render his continuance on SPCB detrimental to the interest of the general public,

POWER & FUNCTION OF BOARD

FUNCTIONS OF CPCB (Sec. 16)

(1) The main functions of CPCB shall be to improve the quality of air and to prevent, control or abate air pollution in the country.
(2) In particular and without prejudice to the generality of the foregoing functions, CPCB may:
SAME AS WATER POLLUTION ACT, 1974
(3) CPCB may establish or recognize a laboratory or laboratories to enable CPCB to perform its functions under this section efficiently.

Sec. 17 – Functions of SPCBs.

(1) The functions of a SPCB shall be –
(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution.
(b) to advise SG on any matter concerning the prevention, control or abatement of air pollution;
(c) to collect and disseminate information relating to air pollution;
(d) to collaborate with CPCB in organizing the training of persons engaged in programmes relating to prevention, control or abatement of air pollution
(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process
(f) to inspect air pollution control areas at such intervals
(g) to lay down, in consultation with CPCB and having regard to the standards for the quality of air
(h) to advise SG with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
(i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by CPBC or SG;
(2) A SPCB may establish or recognize a laboratory or laboratories to enable SPCB to perform its functions under this section efficiently.

Sec. 21 - Restrictions on use of certain industrial Plants
(1) No person shall, without the previous consent of SPCB, establish or operate any industrial plant in an air pollution control area.

(2) An application for consent of SPCB under subsection (1) shall be accompanied by such fees as may be prescribed, and shall be made in the prescribed form and shall contain the particulars of industrial plant and such other particulars as may be prescribed.

(3) SPCB may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of 4 months after the receipt of application for consent referred to in subsection (1), SPCB shall, by order in writing, and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent.

(5) Before Granting condition, SPCB can ask for satisfaction of following condition:
   • The control equipment of such specifications as SPCB may approve in this behalf shall be installed and operated in the premises
   • The existing control equipment, if any, shall be altered or replaced in accordance with the direction of SPCB
   • The control equipment referred above shall be kept at all times in good running condition
   • Chimney, wherever necessary, of such specifications as SPCB may approve in this behalf shall be erected or re-erected in such premises; and
   • Such other conditions as SPCB, may specify in this behalf.

Sec. 22 – Persons carrying on industry, etc., is not to allow emission of air pollutants in excess of the standard laid down by SPCB.

No person operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by SPCB.

Sec. 22A – Power of Board to make application to court for restraining person from causing air pollution

(1) Where it is apprehended by a Board that emission of any air pollutant, in excess of the standards laid down by SPCB is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate for restraining such person from emitting such air pollutant.

(2) On receipt of the application above, the court may make such order as it deems fit.

(3) Where the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order:
   (a) direct such person to stop from taking such action, is likely to cause emission;
(b) authorize the Board, if the direction under clause (a) is not complied with by the person to whom such directions is issued, to implement the direction in such manner as may be specified by the court.

(4) all expenses incurred by the Board in implementing the directions of the court shall be recoverable from the person concerned as arrears of land revenue.

Sec. 23 – Furnishing of information to SPCB and other agencies in certain cases

(1) Where in any area the emission of any air pollutant into the atmosphere in excess of the standards laid down by SPCB to occur due to accident or other unforeseen act or event, the person in charge of the premises shall intimate the fact to SPCB and to such authorities or agencies as may be prescribed.

(2) On receipt of information SPCB and the authorities shall, as early as practicable, cause such remedial measure to be taken as are necessary to mitigate the emission of such air pollutants.

(3) All Expenses, incurred by SPCB or authority together with interest at such reasonable rate shall recovered from concerned person, as arrears of land revenue,

Sec. 24 – Power of entry and inspection

(1) SPCB and its officer shall have a right at any time to enter at any place:
   • for the purpose of performing any of the functions of SPCB entrusted to him:
   • for the purpose of determining whether and if so in what manner, any such functions are to be performed
   • for the purpose of examining, testing and seizing control equipment, industrial plant, record, register, document or any other material object

(2) Every person operating any control equipment or any industrial plant, in an air pollution control area shall be bound to render all assistance to the person empowered by SPCB for carrying out the functions.

(3) If any person willfully delays or obstructs any person empowered by SPCB in the discharge of his duties, he shall be guilty of an offence under this Act.

Sec. 26 – Power to take SAMPLES of air or emission and procedure to be followed in connection therewith

(1) SPCB or any officer by it in this behalf shall have power to take, for the purpose of analysis, samples of air or emission from any chimney or duct or any other outlet in such manner as may be prescribed.

(2) When a sample of emission is taken for analysis as above, the person taking the sample shall –
   (a) serve on the occupier or his agent, a notice, the and there, in such form as may be prescribed, of his intention to have it so analyzed;
   (b) in the presence of occupier or his agent, collect a sample of emission for analysis;
(c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(3) Send, without delay, the container to the laboratory established by central Board (UT) or state board (in case of state) and also can divided sample on request of occupier or agent and tested through such laboratory. If occupier or agent willfully absent himself or refuse to sign on container, than person taking sample marked, sealed and forward to laboratory as prescribed by Government and mentioned reason for not signing.

Sec. 27 – Reports of the result of analysis on samples taken under section 26.

(1) Where a sample of emission has been sent for analysis to the laboratory established or recognized by SPCB, the Board analyst appointed shall analyze the sample and submit a report in the prescribed form of such analysis in triplicate to SPCB.

(2) On receipt of the report, one copy of the report shall be sent by SPCB to the occupier or his agent, another copy shall be preserve for production before the court in case any legal proceedings are taken against him and the other copy shall be kept by SPCB.

(3) Any cost incurred in getting any sample analyzed at the request of the occupier or his agent shall be recoverable from him as arrears of land revenue.

**Noise Pollution**

Noise pollution means unwanted sound in the atmosphere. It is unwanted because it lacks the agreeable musical quality. Noise is therefore, sound but it is pollution when the effects of sound become undesirable.

**CONTROL OF NOISE POLLUTION**

In order to control noise pollution caused from various sources such as industrial activity, construction activity, generator sets, loud speakers, public address system, music systems, vehicle horns and other mechanical devices.

The Central Government has framed certain rules known as, **The Noise Pollution (regulation and Control) Rules, 2000**.

The rules provide for the ambient air quality standard in respect of noise for different area/zones. **An area comprising 100 meters around hospitals, educational institutions and courts has been declared as the silence area/zone.**

The ambient air quality standards shall also be considered by the all development authorities, local bodies while taking any development activity. A loud speaker or a public address system shall not be used a night (between 10:00 p.m. to 6:00 a.m.) except in closed premises for communication. Whoever commits any offence of playing music or users any sound amplifiers, beats a drum or blows a horn etc. in a silence one/area shall be liable to a penalty.
The Environment (Protection) Act, 1986

**INTRODUCTION**

The Environment Protection Act, 1986 is designed to protect and improve the environment and prevent hazards to human beings, other living creatures, plants, and properties.

**OBJECTIVE**

The main objective is to protect and improve the environment which includes water, air, land, human beings, other living creatures, plants, micro-organisms, and property and for matters connected therewith.

**SCOPE OF ACT**

Under this Act, the Central Government is empowered to take measures necessary to protect and improve the quality of the environment by setting standards for emission and discharges, regulating the location of industries, managing hazardous wastes, and promoting public health and welfare.

The United Nations Conference on the Human Environment was held in Stockholm in June, 1972.

**DEFINITIONS**

- **Environment** includes water, air, land, and the inter-relationship which exists among and between water, air, land, and human beings, other living creatures, plants, micro-organisms, and property;
- **Environment Pollutant (EPT)** means any solid, liquid, or gaseous substance present in such concentration as may be, or tend to be, injurious to the environment;
- **Environmental Pollution (EPN)** means the presence in the environment of any EPT;
- **Handling**, in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer, or the like of such substance;
- **Hazardous Substance** means any substance or preparation which, by reason of its chemical or physical-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property, or the environment;
- **Occupier**, in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance.

**CONCEPT OF SUSTAINABLE DEVELOPMENT**
This “earth” is one of the rarest gift that the nature has given to the human beings. Even after prolonged experiments the scientist could not established, that human can survive in any other planet except earth.

Therefore humanity must live within the carrying capacity of the earth. It is duty of the people who are living now, to use the resources of the earth sustainably and prudently so that they do not deny certain benefits to future generations.

Modern States use the natural resources of the earth recklessly. The result will be that the earth will not be able to support everyone unless there is less waste & extravagance.

We should, therefore have a new approach to future, that is, to secure a widespread and deeply held committed for sustainable living. We have to integrate conservation and development.

Conservation to keep our actions within the earth's capacity and development to enable the people everywhere to enjoy long, healthy and fulfilling lives.

The concept of “sustainable development” was first highlighted at the United Nations Conference on the Human Environment held at Stockholm in June 1972. Since than various countries such as Japan, US, France, Germany and India etc. have enacted legislative measures for protection of the environment by introducing strict penal measures for damages caused by hazardous substances etc.

Various international conferences have been held on the subject of environmental planning. The recent one being the, the United Nations conference on environment and development popularity known as the **Earth Summit held at Rio De Janeiro** in Brazil in June 1992 which aimed at focusing the attention of the world on problems of our environment and look for ways in which these can be avoided in future. India too has been an active participant at these conferences.

### SUSTAINABLE LIVING

- The rule of Sustainable Development basically focus on respect and care for community of life & improving human resources by conserving earth resource.
- An ethic based on respect and care for each other and for Earth is the foundation of sustainable living. Development ought not to be at the expense of other groups or later generations. Development should not threaten the survival of other species.
- The other aspect is the improvement of quality of human life. Economic growth is part of development but it cannot be a goal in itself. Some of universally accepted goals are healthy life, education, access to the resources needed for a decent standard of living, political freedom etc.
- Most important principle of the sustainable development is to conserve the earths vitality and diversity. We need to conserve life support system, conserve bio diversity and ensure that the use of renewable resources is sustainable. This object can be
achieved only if the pollution is prevented. Governments should initiate preventive action by minimizing wherever possible discharges of substances that could be harmful.

**BIO DIVERSITY**

- Biodiversity is fundamental to the fulfillment of human needs and vital for the survival of this planet. India's strategy for conservation and sustainable utilization of biodiversity focuses on according special status and protection to biodiversity rich area by declaring them as national parks, wildlife sanctuaries, biosphere reserves, and ecologically fragile and sensitive areas.
- Biodiversity is being increasingly threatened globally on account of various factors. Human activities area also placing severe pressure on biological resources, and increasingly leading to fragmentation and degradation of habitats, and resultant loss of biodiversity. These losses are irreversible and are a threat to our own well being. This global concern about loss of biodiversity is sought to be addressed in the international Convention on Biological Diversity (CBD), to which India is a Party.
- The National Environment Policy (NEP) 2006 seeks to achieve balance and harmony between conservation and development.
- Efforts should be initiated to minimize the depletion of non-renewable resources like minerals, oil gas and coal, while these cannot be used sustainably, their life can be extended. This can be done by using less of such resource to make a particular product or by switching to renewable substitutes wherever possible.

**CARBON CREDIT**

- The most dangerous gases thrown out by the industrial units are carbon dioxide, methane, nitrous oxide, etc. and the major industry sources of green house gases are cement, steel, textile and fertilizer manufacturers. The groups of such gases, which are responsible for removing greenery from our planet, are known as green house gases (GHGs). Carbon credits are a key component of national and international attempts to mitigate the growth in concentration of green house gases (GHGs). One Carbon credit is equal to one ton of carbon.
- A company has two ways to reduce emissions. One, it can reduce the GHG (greenhouse gases) by adopting new technology or improving upon the existing technology to attain the new norms for emission of gases. Or it can tie up with developing nations and help them set up new technology that is ecofriendly, thereby helping developing country or its companies 'earn' credits India, China and some other Asian countries have the advantage because they are developing countries. Any company, factories or farm owner in India can get linked to United Nations Framework Convention on Climate Change (UNFCCC) and know the 'standard' level of carbon emission allowed for its outfit or activity. The extent to which on emitting less carbon (as per standard fixed by UNFCCC) one can get credited in a developing country. This is called carbon credit.
- There are two distinct types of Carbon Credits:
Carbon Offset Credits (COCs) and Carbon Reduction Credits (CRCs). Carbon Offset Credits consist of clean forms of energy production wind, solar, hydro and biofuels. Carbon Reduction Credits consists of the collection and storage of Carbon from our atmosphere through reforestation, ocean and soil collection and storage efforts. Both approaches are recognized as effective ways to reduce the Global Carbon Emission crisis.

GENERAL POWERS OF THE CENTRAL GOVERNMENT

Power of CG To Take Measures To Protect And Improve Environment (sec.3)

(1) CG shall have the power to take all such measures for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) Such measures may include:
   (a) co-ordination of actions by the State Governments, officers and other authorities;
   (b) planning and execution of a nation-wide programme for the prevention, control and abatement of EPN;
   (c) laying down standards for the quality of environment in its various aspects;
   (d) laying down standards for emission or discharge of EPTs from various aspects;
   (e) restriction of areas in which any I/O/P shall not be carried out or shall be carried out subject to certain safeguards;
   (f) laying down procedures and safeguards for the prevention of accidents which may cause EPN and remedial measures for such accidents;
   (g) laying down procedures and safeguards for the handling of hazardous substances;
   (h) examination of such manufacturing processes & substances as are likely to cause EPN;
   (i) carrying out and sponsoring investigations relating to problems of EPN;
   (j) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such laboratories and institutes under this Act;
   (k) such other matters as CG deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act;

Power To Give Directions (Sec.5)
CG may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer and they shall be bound to comply with such directions.

The power to issue directions under this section includes the power to direct –
   (a) the closure, prohibition of regulation of any industry, operation or process; or
   (b) stoppage or regulation of the supply of electricity or water or any other service;

Rules to Regulate (Sec.6)
(1) CG may, by NIOG, make rules in respect of all or any of the matters referred to in section 3.
(2) such rules may provide for all or any of the following matters, namely:-
(a) the standards of quality, air, water, or soil for various areas and purposes;
(b) the maximum allowable limits of concentration of various EPTs (including noise) for different areas;
(c) the procedures and safeguards for the handling of hazardous substances;
(d) the prohibition and restrictions on the handling of hazardous substances in different areas;

NATURE & TYPE OF REGULATION

- **Sec. 7 = Emission of EPTs in Excess of Standards**

No person carrying on any I/O/P shall discharge or emit or permit to be discharged in excess of such standards as may be prescribed.

- **Sec. 8 = Persons Handling Hazardous Substances – procedural Safeguards**

No person shall handle any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed (Rule 13).

**Sec. 9 = Furnishing of Information To Authorities And agencies In Certain cases**

(1) Where the discharge of any EPT in excess of the prescribed standards occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs shall be bound to prevent or mitigate the EPN caused as a result of such discharge and shall also:
(a) intimate the fact of such occurrence and
(b) be bound, if called upon, to render all assistance,

To such authorities or agencies as may be prescribed (in RULE 12).

(2) On receipt of information with respect to the fact the authorities shall as early as practicable, cause such remedial measures, to be taken as necessary to prevent or mitigate the EPN.

(3) All Expenses, incurred by SPCB or authority together with interest at such reasonable rate shall recovered from concerned person, as arrears of land revenue,

- **Sec. 10 = POWERS OF ENTRY AND INSPECTION**

(1) Any person of CG shall have a right at any time to enter at any place—
(a) for the purpose of performing any of the functions of CG entrusted to him;
(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed

(2) for the purpose of examining, testing and seizing any equipment, industrial plant, record, register, document or any other material object
(3) Every person carrying on any I/O/P of handling any hazardous substance shall be bound to render all assistance to the person empowered by CG for carrying out the functions.
(4) If any person willfully delays or obstructs any persons empowered by CG in the performance of his functions, he shall be guilty of an offence under this Act.

Sec.11= Power to take sample

(1) CG or any officer shall have power to take, for the purpose of analysis, **samples of air, water, soil or other substance** from any factory, premises.

Note: The result of any analysis of sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with.

(2) **Provision are as follows:**
   (a) serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;
   (b) in the presence of the occupier of his agent or person, **collect a sample** for analysis;
   (c) cause the sample to be **placed in a container or containers** which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person;
   (d) sent without delay, the container or the containers to the **laboratory** established or recognized by CG under section 12;

(3) When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent or person, a notice under clause (a) of subsection (3), then,
   (a) If occupier or agent willfully absent himself or refuse to sign on container, than person taking sample marked, sealed and forward to laboratory as prescribed by Government and mentioned reason for not signing.

ENVIRONMENTAL LABORATORIES / AUDIT

ENVIRONMENTAL LABORATORIES

Section 12 of the Act empowers the Central Government to establish by notification in the official Gazette, one or more environmental laboratories.

**Functions of Environmental Laboratories:**
The functions of environmental laboratories:
   (1) To evolve standardized methods for sampling and analysis of various types of environmental pollutants;
   (2) To analysis samples sent by the Central Government or the officers
   (3) To carry out such investigations as may be directed by the Central Government to lay down standards for the quality of environment and discharge of environmental pollutants to monitor
   (4) To send periodical reports regarding its activities to the central Government;
(5) To carry out such other functions

These rules also specify the procedure for submission of samples to the laboratories for analysis/tests, from of the laboratory report, and fees payable therefore etc. The Central Government has also been empowered to appoint, such persons having the prescribed qualifications as Government analyst for the purpose of analysis of samples of air, water, soil or other substances sent to the environmental laboratories.

The qualifications of a Government analyst have been prescribed in the Environment (Protection) Rules 1986. As per the provisions of Section 14, any document purporting to be a report signed by a Government analyst may be used as evidence of facts may be used as evidence of facts in any proceeding under Act.

ENVIRONMENT AUDIT

Rule 14 of Environment Protection Rules 1986, provides for the submission of environment audit report. Accordingly, every person carrying on an industry, operation or process requiring consent under-

1. Section 25 of the Water (prevention and Control of Pollution) Act, or
2. Section 21 of the Air (Prevention and Control of Pollution) Act, or both, or
3. Authorization under the Hazardous Wastes (Management and Handling) Rules, 1989 is required to submit an environmental audit report in Form v (inserted in the rules) from the financial year ending on 31st March every year, on or before the 15th of May to the concerned SPCB.

LIABILITY FOR POLLUTION

Liability of pollution is basically of two types
- Civil liability
- Criminal liability

RULE OF STRICT LIABILITY

Strict liability has its origin in the case of Rylands V. Fletcher where the facts were that the defendants who had a mill wanted to improve its water supply. They constructed a reservoir by employing reputed engineers to do it. When the reservoir was filled, water flowed down the plaintiff’s coal mine causing damage. The defendants were in no way negligent having employed competent engineers to do the job, nevertheless they were held liable on the basis of the rule laid down in the case.

Under the Rule of strict liability, if the defendant brings or accumulates on his land something that is likely to escape and do mischief, then he has to compensate for damage caused irrespective of any carelessness on his part. This rule has been applied to water, gas, electricity, explosives etc.
Exceptions to the Rule in Rylands V. Fletcher
1. Damage due to natural use of land.
2. Act of God i.e. extraordinary rain, storm etc.
3. Plaintiff's own default.
4. Consent of the plaintiff.
5. An act done under the authority of a statute.

RULE IN M.C.MEHTA V. UNION OF INDIA: THE RULE OF ABSOLUTE LIABILITY

A more stringent rule of strict liability than the rule in Rylands V. Fletcher was laid down by the Supreme Court in the case of M.C. Mehta V.U. O.I. The case related to the harm cause by escape of Oleum gas from one of the units of Shriram Foods and Fertiliser Industries in the city of Delhi. The court held that rule of Rylands V. Fletcher evolved in the 19th Century did not fully meet needs of a modern Industrial society, and evolved a new rule of 'Absolute Liability'. The court pointed out that the enterprise cannot escape liability by showing that it had taken all reasonable care and there was no negligence on its part. The new rule Mehta's case is not only strict but absolute and is subject to no exception.

In recent times CRIMINAL LIABILTY of corporations in the sphere of pollution is also going up. In U.P. Pollution control Board v. Modi Distillery (1987) [Water (prevention and control of pollution) Act, 1974] - the Supreme Court held the chairman, vice chairman, managing director and members of the Board of director of the company to be guilty of the offence and liable to be preceded against and punished under section 47 of the Act.
Public Liability Insurance Act, 1991

The Public Liability Insurance Act, 1991, was enacted for the purpose of providing **immediate relief** to the persons affected by accidents occurring while handling any hazardous substance and for other incidental and connected matters. It is compulsory to every occupier to obtain the insurance for the public life and the public property in the vicinity of his I/O/P. the occupier shall pay insurance premium to the insurance company in connection with the public life and public property. In the event of any accident excessive discharge in the factory causing the damage to the public life or property, the insurance company shall pay the claim to the affected persons.

**Hazardous substance:** hazardous substance means any substance or preparation which, by reason of its chemical or physic-chemical properties or handling is liable to cause harm to human beings, other living creatures, microorganism, property or the environment.

**Liability to give relief:** Section 3 of the Act in corporate the principle of “liability without fault” and imposes on the owner liability to give relief in case of death or injury or any person or damage to any property, resulting from an accident occurring while handling any hazardous substance.

**Compulsory Insurance:** Section 4 requires the owner to take out one or more insurance policies, before starting the handling of hazardous substance.

**Verification and publication of accident:**
Section 5 of the act requires the collector to verify, whenever it comes to his notice that an accident has occurred at any place within his jurisdiction, the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting application for claim for relief as under section 6(1) of the Act.

**Application for Claim for relief:** Section 6 says that the application for claim for relief is to made to the collector in the prescribed format by-
- (a) the person who has sustained injury,
- (b) by owner of the property to which damage has been caused: and
- (c) in the case of death resulting from accident by all or any of the legal representatives of the deceased or
- (d) by any agent duly authorized by such person or owner of such property.

**Award of Relief:** Section 7 of the Act requires the collector, on receipt of application for claim for relief, to hold an inquiry into the claim or each of the claims, after giving notice of application to owner and after giving the parties an opportunity of being heard and make an award determining the amount of relief payable to person or persons.

**Establishment of Environment Relief Fund:** Section 7A of the Act empowers the Central Government to establish **ENVIRONMENT RELIEF FUND,** by notification in the Official Gazette, to be utilized for paying relief under the award made by the collector under section 7 of the Act.
The National Green Tribunal Act, 2010

INTRODUCTION

The National Green Tribunal Act, 2010 intend to provide for the establishment of National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

DEFINITION

ACCIDENT
According to clause (a) of Section 2 the term “accident” means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance or equipment, or plant, or vehicle resulting in continuous or intermittent or repeated exposure to death, or injury to, injury person or damage to any property or environment but does not include an accident by reason only of war or civil disturbance.

HANDLING
As per Section 2(e) “handling”, in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance.

HAZARDOUS SUBSTANCE
Clause (f) Section 2 defines “hazardous substance” as to means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1999.

PERSON
As per Section 2(j) the term “person” includes:
1. an individual,
2. a Hindu undivided family
3. a company,
4. a firm,
5. an association of persons or a body of individuals, whether incorporated or not,
6. trustee of a trust,
7. a local authority, and
8. every artificial juridical person, not falling within any o the preceding sub-clauses.
SUBSTANTIAL QUESTION RELATING TO ENVIRONMENT

According to clause (m) of Section 2 the term “substantial question relating to environment” shall include an instance where,-

1. there is a direct violation of a specific statutory environmental obligation by a person by which,-
   A. the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
   B. the gravity of damage to the environment or property is substantial; or
   C. The damage to public health is broadly measureable;
2. The environmental consequences relate to a specific activity or a point source of pollution.

ESTABLISHMENT OF THE TRIBUNAL

Section 3 of the Act empowers the Central Government, by issue of notification, to establish, a tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the National Green Tribunal Act, 2010.

PROCEDURE OF THE TRIBUNAL

• Tribunal consist of a full time Chairperson; and not less than ten but subject to maximum of twenty full time Judicial Members and not less than ten but subject to maximum of twenty full time Expert Members.
• The Chairperson of the Tribunal may, if considered necessary, invite any one or more persons having specialized knowledge and experience in a particular case before the Tribunal to assist the Tribunal in that case.
• Any person aggrieved by any award, decision or order of the Tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him (section-22.
• The Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.

JURISDICTION, POWERS AND PROCEEDINGS OF THE TRIBUNAL

Tribunal to Settle Dispute
Section 14(1) provides that the Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the Act.

Schedule I specifies following enactments:
   1. The Water (Prevention and Control of Pollution) Act, 1974;
   2. The Air (Prevention and Control of Pollution) Act, 1981;
   3. The Environment (Protection) Act, 1986;
5. The Biological Diversity Act, 2002,

Relief, Compensation and Reconstitution
Sec 15(1) empower the Tribunal, by an order, to provide,-
(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
(b) for restitution of property damaged;
(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.
The application for grant of any compensation or relief or restitution of property or environment shall be entertained by the Tribunal within a period of five years from the date on which the cause for such compensation or relief first arose. The Tribunal may, if it is satisfied that the applicant within the said period, allow it to be filed within a further period not exceeding sixty days.
The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants

The Schedule II to the Act lists out the following heads under which compensation for damages may be claimed:
(a) Death;
(b) Permanent, temporary, total or partial disability or other injury or sickness;
(c) Loss of wages due to total or partial disability or permanent or temporary disability;
(d) Medical expenses incurred for treatment of injuries or sickness;
(e) Damage to private property;
(f) And soo...

TRIBUNAL TO HAVE APPELLATE JURISDICTION

Section 16 provides that any person aggrieved by-
An order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the following authority
(a) By the appellate authority under section 28 of the Water(Prevention and Control of Pollution) Act 1974
(b) By the state government under section 29 of the Water (Prevention and Control of Protection) Act, 1974;
(c) By a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974;
(d) Section 5 of the Environment (Protection) Act, 1986

May, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal.
The tribunal may, if it is satisfied that the appellant was having a sufficient cause from not filing the appeal within the said period, then tribunal may allow within a further period not exceeding sixty days.

**LIABILITY TO PAY RELIEF OR COMPENSATION**

Section 17 provides that where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.

**WHO CAN APPEAL TO THE TRIBUNAL**

The application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by-

- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organization; or
- (f) the Central Government or a State Government or a union territory administration

Where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

**PROCEDURE AND POWERS OF TRIBUNAL**

Section 19(1) prescribes that, the Tribunal and shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 and Rules of Evidence Act but shall be guided by the principles of Natural justice.

Tribunal to Apply Certain Principle

Section 20 provides that the Tribunal shall, while passing any order or decision or award, apply the principles of

- Sustainable development,
- The precautionary principle and
OFFENCE BY COMPANIES

Section 27 deals with Offence by Companies by a company, every person who, at the time the offence responsible to the company for the conduct of the business of the company, shall be liable to the proceeded against and punished accordingly.

OFFENCE BY GOVERNMENT DEPARTMENT

Section 28 provides that where any Department of the Government fails to comply with any order or award or decision of the Tribunal, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence and punished accordingly.
Industries Development and Regulation

Objectives of Industrial Policy of the Government

- To maintain a sustained growth in productivity;
- To enhance gainful employment;
- To achieve optimal utilisation of human resources;
- To attain international competitiveness; and
- To transform India into a major partner and player in the global arena.

The Policy focus is on –

- Deregulating Indian industry;
- Allowing the industry freedom and flexibility in responding to market forces; and
- Providing a policy regime that facilitates and fosters growth of Indian industry

Industries (Development & Regulation) Act, 1951

Scheme of the Act

IDRA, 1951 has been enacted keeping three major aspects related to Scheduled Industries, which became objectives of this Act. This Act is applicable for only 38 Industries mentioned in Schedule I of IDRA, 1951.

Objectives of IDRA, 1951

- To Develop Scheduled Industries;
- To Regulate Scheduled Industries; and
- To Control Scheduled Industries.

Important Definitions

Scheduled Industry {Section 3(i)} Means

Any of the industries specified in the First Schedule of IDRA, 1951.

Industrial Undertaking {Section 3(d)} Means

Any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government.

Factory {Section 3(c)} Means

Any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on—
with the aid of power, provided that 50 or more workers are working or were working thereon on any day of the preceding twelve months; or
without the aid of power, provided that 100 or more workers are working or were working thereon on any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power.

Case:- Delhi Cloth and General Mills Co. Ltd. v. Joint Secretary, Govt. of India

It had been held that it was not necessary that the manufacturing process should be carried on in the whole of the premises and that even if part of the premises was used for manufacturing process the other could as well be included in factory premises.

Existing Industrial Undertaking {Section 3(bb)} Means
An industrial undertaking which was in existence on the commencement of this Act or for the establishment of which effective steps had been taken before such commencement.

Effective Steps  Means
Any one or more of the following
- 60% or more of the Capital issued for Industrial Undertaking which is a Public Company, has been paid up;
- A substantial part of factory building has been constructed;
- A firm order has been placed for a substantial part of the plant and machinery required for the undertaking.

New Article { Section 3(dd)} Means:
- any article other than the item ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission;
- any article which bears a mark as defined in the Trade Marks Act or which is subject of a patent, if at the date of registration or issue of the licence or permission, the industrial undertaking was not manufacturing or producing such article.

Owner { Section 3(f)} Means
The person who, or the authority which, has the ultimate control over the affairs of the undertaking and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking.

Current Assets {Section 3(ab)}
Includes
- Bank balance and cash and such other assets or reserves as are expected to be realised in cash, or
Sold or consumed within a period of not more than 12 months in the ordinary course of business, such as, stock-in-trade, amounts due from sundry debtors for sale of goods and services rendered, advance tax payments and bills receivable.

But does not include
- sums credited to a provident fund,
- a pension fund,
- a gratuity fund or
- any other fund for the welfare of the employees maintained by a company owning an industrial undertaking.

Current Liabilities \{ Section 3(ac)\} Means
- Liabilities which must be met on demand or
- Within a period of 12 months from the date they are incurred;

And includes
- any current liability which is suspended under Section 18FB.

Small scale industries
An IUT shall satisfy following two conditions for being regarded as SSI undertaking
- Total investment in P & M shall not exceed 5 Crore.
- Moreover, equity holding of other NON–SSI units (either foreign or domestic) shall not exceed 24% of the total equity.

Ancillary industrial undertakings
Ancillary industrial undertakings shall satisfy two additional conditions that:
- It is engaged in the manufacture of part, components sub-assemblies, tools etc.
- It does not supply more than 50% of its total production to other industrial undertakings.

SSI undertaking or Ancillary Industrial Undertaking shall not be owned or controlled by any other IUT, and if it so owned or controlled by any other IUT, then the P&M of the two IUTs will be clubbed together to check the status of SSI UT or Ancillary Industrial Undertaking.

Calculation of Plant & Machinery
- The original price of the P & M, irrespective of whether P & M is new or second hand shall be taken into account.
- In case of imported machinery, the following shall be included in the value –
  - Shipping Charges.
  - Custom Clearance Charges.
  - Sales Tax.
In calculating the value of P & M, following shall be excluded –
1. Transportation charges for indigenous machinery.
2. Charges paid for technical know-how (w.r.t. erection of P & M).
3. Cost of installation of P & M.
4. Cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance.
5. Cost of R & D equipment and pollution control equipment.
6. Cost of firefighting equipment.
7. Cost of generation sets and extra transformer installed as per regulations of electricity board.
8. Cost of gas producer plants.
9. Cost of storage tanks which are not connected with manufacturing process.
10. General electricity fitting expenditure.

Central Advisory Council { Section 5}
The Central Government to establish Central Advisory Council, for advising the Government on matters concerning the development and regulation of scheduled industries.

It shall consist of
1. a chairman and
2. such other members not exceeding 30 in number,
to be appointed by the Central Government from among persons who are, in its opinion, capable of representing
3. the interest of owners of industrial undertakings;
4. persons employed in industrial undertakings;
5. consumers of goods manufactured or produced by Scheduled Industries;
6. and such other class of persons, as in the opinion of the Central Government

Development Council { Section 6}
Empowers the Central Government to establish a Development Council consisting of such members who, in the opinion of the Central Government, are persons capable of representing the interests of owners of industrial undertakings in the scheduled industry or group of scheduled industries;

1. persons having special knowledge of matters relating to the technical or other aspects of the scheduled industry or group of scheduled industries;
2. persons capable of representing the interests of persons employed in industrial undertakings in the scheduled industry or group of scheduled industries; and
persons not belonging to any of the aforesaid categories, who are capable of representing the interests of consumers of goods manufactured or produced by the scheduled industry or group of scheduled industries.

**Functions of Development Council:-**

- Recommending targets for production, coordinating production programmes and reviewing progress from time to time.
- Suggesting norms of efficiency with a view to eliminate waste, obtaining maximum production, improving quality and reducing costs.
- Recommending measures for securing the fuller utilisation of installed capacity and for improving the working of the industry, particularly of the less efficient units.
- Promoting arrangements for better marketing and helping in the devising of a system of distribution.
- Promoting standardisation of products.
- Promoting the training of persons engaged or proposing engagement in the industry and their education in technical or artistic subjects relevant thereto.
- Promoting the retraining in alternative occupations of personnel engaged in or retrenched from the industry.
- Promoting or undertaking scientific industrial research.
- Promoting improvements and standardisation of accounting and costing methods and practices.
- Promoting or undertaking the collection and formulation of statistics.

Development Council to prepare and transmit to the Central Government and the Advisory Council annually a report (including a statement on the audited accounts together with a copy of audit report) on its functions during the financial year last completed. *(Section 7)*

A copy of each such report shall be laid before Parliament by the Central Government.

Central Government to levy and collect cess on all goods manufactured and produced in any specified scheduled industry and hand over the proceeds to the Development Council established for that industry. The Development Council, in turn, is required to utilise the proceeds, to promote scientific and industrial research; and to meet such expenses as specified for exercise of its functions including its administrative expenses. *(Section 9)*

**Regulation of Scheduled Industries**

Industrial licence to be obtained from the Central Government for certain specific purposes.

**Issue of Certificate of Registration**

Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, after such investigation as it may consider necessary, grants the applicant a certificate of registration containing, besides other prescribed particulars, the productive capacity of the undertaking.
In specifying the productive capacity in the certificate of registration, the Central Government takes into consideration the following matters:

- the productive or installed capacity of the undertaking as specified in the application for registration;
- level of production immediately before the date on which the application for registration was made;
- the level of the highest annual production during the preceding three years;
- the extent to which production during the said period was utilised for export;
- such other factors as the Central Government may consider relevant including the extent of underutilization of capacity, if any during the relevant period due to any cause.

Circumstances When Registration is not necessary

If the undertaking

- is a small scale industrial undertaking or
- is otherwise exempt from the licensing/registration provisions of the Act or
- where the undertaking concerned is not satisfying the definition of the term ‘factory’ under the Act.

Penalty for Failure to Register (Section 24)

The owner of an industrial undertaking which is registrable but has not been registered as required under Section 19(1) of the Act, is liable to be punished

- with imprisonment up to 6 months or
- fine, which may extend to 5,000 Rupees or
- with both.

Power to Revoke Registration

The Central Government has been empowered to revoke the registration if it is satisfied that

- it was obtained by misrepresentation as to essential facts; or
- the undertaking has ceased to be registrable by reason of any exemption granted under this Act; or
- for any other reason the registration has become useless or ineffective and therefore requires to be revoked.

The Central Government is however, required to give an opportunity to the owner of the undertaking to be heard, before revoking the registration.
Industrial Licence

- An Industrial licence is a written permission from the Government to an industrial undertaking to manufacture specified articles, listed in the First Schedule.
- It includes particulars of the industrial undertaking, its location, articles to be manufactured, the capacity on the basis of maximum utilisation of plant and machinery etc.
- The licence is subject to a validity period within which the licensed capacity of the undertaking should be established.

Licensing of New Undertaking { Section 11}

- No person or authority other than Central Government after the commencement of the Act, shall establish any new industrial undertaking without a licence from the Central Government.
- The licence may contain such conditions including in particular, the location and size of the undertaking as the Central Government may deem fit.
- In case any State Government wants to establish any new industrial undertaking, previous permission of the Central Government would be required.

Licence for Producing or Manufacturing New Articles

The owner of an industrial undertaking (other than Central Government, shall not produce or manufacture any new article unless:

- in the case of an industrial undertaking registered he has obtained a licence for producing or manufacturing such new articles, and
- in the case of an undertaking licensed he has had the existing licence amended in the prescribed manner.

Licence for Carrying on Business after the Revocation of Certificate of Registration { Section 10A}

- The certificate of registration granted by the Central Government can be revoked under certain circumstances. Section 13(1)(b) provides that after such revocation, the owner shall not carry on the business unless a licence or permission for this purpose has been obtained from the Government Licence for Carrying on Business by an Industrial Undertaking to which the Act became applicable.
- There may be cases, where the Act did not originally apply to an industrial undertaking but becomes applicable after the commencement of the Act for any reason.
- In such cases the owner of the undertaking concerned shall not carry on the business after the expiry of three months from the date on which the provisions become so applicable unless a licence or permission as the case may be, has been obtained from the Central Government.
Licence for Change in Location (Section 13(1)(e))

Under the owner of an industrial undertaking (other than Central Government) cannot change the location of the whole or any part of a registered industrial undertaking without the Central Government’s permission/licence.

Licence for Effecting Substantial Expansion { Section 13(1)(d)}

The owner of an industrial undertaking (other than Central Government) cannot effect any substantial expansion of an industrial undertaking registered or in respect of which a licence or permission has been issued, without a licence from the Central Government.

Substantial Expansion

- Every expansion beyond 25% of licensed capacity is considered as substantial expansion.
- An expansion up to 25% of licensed capacity is not considered as substantial expansion if all the following three conditions satisfied -
  - no additional expenditure is incurred in the Forex,
  - no additional plant and machinery is installed (except minor balancing equipments), and
  - no additional demand is created for scarce Raw Materials.

<table>
<thead>
<tr>
<th>Every expansion more than 25% of licensed capacity</th>
<th>An expansion up to 25% of licensed capacity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is considered</strong> as substantial expansion.</td>
<td><strong>Is NOT considered</strong> as substantial expansion if all the above three conditions are satisfied.</td>
</tr>
<tr>
<td></td>
<td><strong>Is considered</strong> as substantial expansion if any the above three conditions are not satisfied.</td>
</tr>
</tbody>
</table>

Wherever a question arises as to whether or not there has been a substantial expansion of an industrial undertaking, the decision of the Central Government thereon shall be final.

Power of the Central Government to Revoke/Amend Licences in Certain Cases { Section 12} 

- Central Government to revoke the licence issued if it is satisfied, either on a reference made to it in this behalf or otherwise that the licencee has, without reasonable cause, failed to establish or to take effective steps to establish the new industrial undertaking within the prescribed time or the extended time.
- The Central Government is also empowered to vary or amend any licence issued under Section 11.
- This power shall not be exercised when the licencee has already taken effective steps to establish the new industrial undertaking.
Investigation (Section 15)
Central Government can investigate into scheduled industries or industrial undertakings if it is of the opinion that:

- there has been or is likely to be, a substantial fall in the volume of production without justification; or
- there has been or is likely to be a marked deterioration in the quality of any article, which could have been or can be avoided; or
- there has been or is likely to be a rise in the price of any article, for which there is no justification; or
- it is necessary to take any such action for the purpose of conserving any resources of national importance.
- the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to public interest.

Case:- Juggilal Kamlapat Cotton Spinning Mills v. Union of India
In this case it was held that,

- The opinion, the Central Government is required to form before passing an order of investigation under this section is to be on a subjective satisfaction, which has to be based on relevant material.
- Before passing an order the party must be heard.
- The Central Government may either itself make an investigation or it may cause such investigation to be made by any person or body of persons appointed by it for this purpose.
- Before commencing investigation the investigator has to call upon the management of the undertaking to furnish written statements relating to the affairs thereof.
- He is required to probe into the causes which have brought about the above circumstances and make a report in respect of matters referred to after taking into account the relevant data for a period of 3 years.
- It is also required to be stated in the report that whether the opinion of the Central Government (in respect of ordering investigation) is justified and correct.
- The investigator is also required to give his recommendations for the purpose of taking remedial action.

Investigation into the Affairs of a Company in Liquidation { Section 15A}

Step – 1
The prerequisites for conducting such an investigation are:
- the company is either being wound up by or under the supervision of a High Court;
the business of such company is not being continued; and

the Central Government is of the opinion that it is necessary in the interests of the general public and in particular in the interests of production, supply or distribution of articles or class of articles relatable to the scheduled industry, to investigate into the possibility of running or restarting the industrial undertaking.

**Step – 2**

If the above circumstances are present in a particular case, the Central Government may make an application to the High Court praying for permission to make or cause to be made an investigation into possibility of re-starting or running the industrial undertaking.

**Step – 3**

On application by the Central Government under this section the High Court shall grant the permission prayed for.

**Case:- Union of India v. Anglo-French Textiles Limited**

In this case the Madras High Court considered the question as to whether an application filed by the Central Government seeking permission of the Court to investigate in regard to restarting of manufacturing unit is maintainable even where a petition for winding up of a company under Section 271 of the Companies Act, 2013 is pending.

**Case:- Union of India v. Shalimar Works Limited**

On the other hand, the Calcutta High held that the expression being wound up by or under the supervision of the High Court would mean that the company is directed to be wound up, and hence the Court held that the proper stage for application under Section 15A is when the order for winding up has been made by the Court and not before that.

**Step – 4**

**Directions after Investigation (Section 16)**

After investigation if the Central Government is satisfied that action is desirable, it may issue such directions to the industrial undertaking.

**The Central Government may issue directions under Section 16 for all or any of the following purposes:**

- regulating the production of any article and fixing standards of production;
- requiring the industrial undertaking to take such steps as the Central Government may consider necessary;
- prohibiting the industrial undertaking from resorting to any act or practice which might reduce its or their production capacity or economic value;
- controlling the prices, or regulating the distribution of any article.
Central Government may take over the management of an industrial undertaking under the following circumstances.

1. an industrial undertaking to which directions have been issued has failed to comply with such directions; or
2. an industrial undertaking in respect of which an investigation has been made, is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

Such order shall have effect for a period not exceeding 5 years, but may be extended by the Central Government for a period of 2 years at a time subject to a maximum of 12 years.

Effect of Notified Order (Section 18B)

- All persons in charge of the management, including persons holding office as managers or directors of the industrial undertaking shall be deemed to have vacated their office.
- Any contract of management between the industrial undertaking and any director shall be deemed to have terminated.
- The persons or body of persons authorised under Section 18A to take over management shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims;
- shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial undertaking; and

Contracts in Bad Faith to be Cancelled or Varied (Section 18C)

The persons authorised to take over the management, may, with the previous approval of the Central Government, make an application to any court for cancelling or varying any contract or agreement entered into any time before the issue of the notified order under Section 18A, between the industrial undertaking and any other person.

The court may, after satisfying itself in this behalf that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial undertaking, make an order cancelling or varying that contract or agreement (either unconditionally or subject to such conditions).

Case: P.K. Bhattacharjee v. Indian Machinery Company Ltd.

The Court held that the provisions of takeover of an undertaking did not indicate ‘deep and pervasive State control so as to constitute the undertaking an instrumentality of the State.'
The State does not acquire ownership of the undertaking; but only for a limited period assumes management and control of the undertaking which has either failed to comply with the directions issued or when an industrial undertaking is being managed in a manner detrimental to the scheduled industry or to public interest.

Merely because control and management had been temporarily taken over under Section 18A of the Act, it cannot be said that the undertaking was an authority within the meaning of Article 12 of the Constitution.

No right to compensation for termination of office or contract (Sec. 18D)

No person who ceases to hold any office or whose contract of management is terminated shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management.

But the right of any such person to recover from the industrial undertaking moneys recoverable otherwise than by way of such compensation is not affected.

Where the management of an IUT is taken over by CG, then (Sec. 18E)

It shall not be lawful for the shareholders of such IUT or any other person to nominate or appoint any person to be a director of the IUT;

No resolution passed at any meeting of the shareholders of such IUT shall be given effects to unless approved by CG;

No proceeding for the winding up of such IUT or for the appointment of a receiver in respect thereof shall lie in any court except with the consent of CG.

Power of CG to cancel notified order under section 18A (Sec. 18F)

The Central Government is empowered under Section 18F to cancel any order made under Section 18A either on an application made by the owner of the industrial undertaking or otherwise, if it is satisfied that the purpose of the order under Section 18A has been fulfilled or for any other reason it is not necessary that such order should remain in force. On cancellation of such order, the management or control of the undertaking shall vest in the owner of the undertaking.

Take-Over without Investigation (Section 18AA)

The power to take over without investigation is an extraordinary power in the hands of the Central Government and therefore, only the most extraordinary circumstances should justify the invoking of this power.

Central Government may take over industrial undertakings without investigation under following circumstances.
the persons in charge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking and that immediate action is necessary to prevent such a situation;

Or

it has been closed for a period of not less than 3 months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to restart the undertaking and such restarting is necessary in the interests of the general public.

Such take over shall have effect for a period not exceeding five years. However, the total period of such continuance after the initial period of five years, should not exceed twelve years.

Section 18A and Section 18AA - Comparison

action under Section 18A can be taken only after an investigation had been made, whereas under Section 18AA(1)(a) or (b) action can be taken without such investigation;

before taking action under Section 18A, the Central Government has to form an opinion on the basis of the investigation, that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest,

whereas under Section 18AA, the government has to satisfy itself that the person in charge of the undertaking have brought about a situation likely to cause fall in production by committing any of the three kinds of acts specified in that provision.

The phrase highly detrimental to the scheduled industry or public interest under Section 18A is capable of being construed to cover a variety of facts or things which may be considered alongwith the manner of running the industry by the management.

In contrast, the action under Section 18AA can be taken if the Central Government is satisfied with regard to the existence of the twin conditions specifically mentioned therein on the basis of evidence in its possession.
Case:- Swadeshi Cotton Mills v. Union of India

Basis of the case - Notice before passing an order under section 18AA whether necessary or not?

Discussion- The Supreme Court held that in respect of such takeover without investigation, hearing at pre decisional stage must be given and the rule of audi alteram partem (listen to the other side) could not be dispensed with.

The salient features of the judgment are given below:

The principles of natural justice consist of two basic elements,

(i) audi alteram partem (Opportunity of being heard) and

(ii) nemo debet esse judex in propria causa (Nobody should be a judge in his own cause).

Take-Over of Industrial Undertaking Owned by Company in Liquidation (Section 18FA)

After the necessary investigations have been made under Section 15A if the Central Government is of the opinion that there are possibilities of running or restarting an industrial undertaking, and the Central Government is further satisfied that the industrial undertaking should be run for maintaining or increasing the production, supply or distribution of articles or class of articles relatable to the scheduled industry needed by the general public, it may make an application to the High Court praying for permission for appointment of any person or body of persons to take over the management or control of the whole or any part of the industrial undertaking.

As soon as such an application is made by the Central Government, the High Court shall make an order empowering the Central Government to authorise any person to take over the management or control of the industrial undertaking for a period not exceeding five years. Total period of extension after the expiry of the initial period of five years should not exceed twelve years.

Cancellation of the Notified Order (Section 18F)

Section 18F contains provisions for cancellation of the Notified Order issued under Section 18A, 18AA and Section 18FA.

Power to Provide Relief to Certain Industrial Undertakings (Section 18FB)

Central Government may make certain declarations in relation to an industrial undertaking, the management or control of which has been taken over under Sections 18A, 18AA or 18FA to exempt from provision.
The Industrial Employment (Standing Orders) Act, 1946
The Industrial Disputes Act, 1947, and
The Minimum Wages Act, 1948

The notified order so issued shall remain in force in the first instance for a period of 1 year. The duration of the notified order may be further extended by a period not exceeding 1 year at a time.

However, no such notified order shall remain in force after the expiry of the period for which the management of the industrial undertaking was taken over under Sections 18A/18AA/18FA; or for more than 8 years in the aggregate from the date of issue of the first notified order, whichever is earlier.

Reconstruction of the Company Owning the Industrial Undertaking { Section 18FD(2)}

The scheme of the reconstruction may be ordered to be prepared only where the Government is satisfied that

- it is in the interest of the general public or
- it is in the interest of the shareholders or
- it is necessary to secure the proper management of the company owning the industrial undertaking.

Step - 1 - The Central Government shall authorise a person to draft a scheme of reconstruction of the company.

Step - 2 - A copy of the scheme, as approved by the Central Government shall be sent in draft to the company, to the registered trade union if any.

Step - 3 - The Central Government may make such modifications, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the company, the registered trade union of which the employees of the company are members and any member or creditor of the company.

Step - 4 - The scheme shall thereafter be placed before the High Court for its sanction

Step - 5 - The scheme sanctioned by the High Court, shall come into force on such date as the Court may specify in this behalf.

Step - 6 - Copies of the scheme shall be laid before each House of Parliament as soon as may be, after the scheme has been sanctioned by the Court.

Power to Control Supply, Distribution, Price, etc. of Certain Articles { Section 18G}

controlling the prices at which any such article or class thereof may be bought or sold;
regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof;
prohibiting or withholding from sale of any such article or class thereof ordinarily kept for sale;
requiring any person manufacturing, producing or holding in stock any such article or class thereof to sell the whole or part of the articles so manufactured or produced during a specified period or to sell the whole or a part of the articles so held in stock, to such person or class of persons and in such circumstances as may be specified in the order;
regulating or prohibiting any class of commercial or financial transactions relating to such article or class thereof which in the opinion of the authority making the order, if unregulated are likely to be detrimental to public interest;
collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and
any incidental or supplementary matters,

General Prohibition of Taking Over Management or Control of Industrial Undertakings by State Government { Section 20}
Any State Government or a local authority prohibited to take over the management or control of any industrial undertaking.

Power to Exempt in Special Cases Section 29B(1)
The Central Government may, by notification in the Official Gazette, exempt any industrial undertaking or class of industrial undertakings or any scheduled industry or class of Scheduled Industries as may be specified, from all or any of the provisions of the Act or Rule or Order made there under having due regard to the smallness of the number of workers employed or the amount invested in any industrial undertaking or the desirability of encouraging small industrial undertakings generally or the stage of development of any scheduled industry and is further convinced that it would not be in public interest to apply all or any of the provisions of the Act to such undertakings.

Constitution of Advisory Committee { Section 29B(2B)}
The Advisory Committee shall consider following aspect before communicating its recommendations to the Central Government:

- the nature of any article or class of articles which may be produced economically by ancillary or small scale undertakings;
- the level of employment likely to be generated by the production of such article or class of articles by the ancillary or small scale undertakings;
- the possibility of encouraging and diffusing entrepreneurship in industry;
the prevention of concentration of economic power to the common detriment; and
such other matters as it may think fit.

Chairman
Secretary to the Government of India, Ministry of Small Scale Industries and Agro and Rural Industries

Members
Secretary to the Government of India, Deptment of Industrial Policy and Promotion, Ministry of Commerce and Industry
Advisor, Village and Small Industries Division, Planning Commission
Secretary to the Government of India, Department of Commerce, Ministry of Commerce and Industry

Member Secretary
Additional Secretary to the Government of India and Development Commission, Small Scale Industries.

Registration and Licensing of Industrial Undertaking Rules, 1952

Procedure for making application for Industrial Licensing
Stage 1 – Filling of application & obtaining letter of Intent (LOI)
Stage 2 – Conversion of Letter of Indent (LOI into Industrial License (IL).

STAGE 1: Filling of application to SIA
Step 1 - Application in Form FC/IL should be submitted to EAU of SIA in 9 copies.
Step 2 - The application should be submitted along with demand draft.
Step 3 - On receipt of application, the receiving office in EAU will note the date of receipt on it, and give a dated acknowledgement to the applicant.
Step 4 - The ministry [DIPP] can call for additional information, which shall be furnished, in the specified time.
Step 5 - Ministry of industry, normally issues LOI within 4-6 weeks of filling of application.
Step 6 - Letter of intent contains such conditions as may be considered necessary by the Government, depending upon the particulars furnished in the Form FC-IL.
Step 7 - Letter of Intent is initially issued for a period of 3 years. Extension can be granted up to 2 years (6 months x 4).
Step 8 - Application for conversion of LOI into IL shall be filed within initial validity period of 3 years if all the conditions contained therein are fulfilled. Otherwise, the application for extension shall be filed within that period. Letter of intent shall be converted into IL within 5 years; otherwise the whole procedure is nullified.
STAGE 2: CONVERSION OF LOI into IL

- File an application (in duplicate) to SIA and to administrative ministry simultaneously, without any fee. [No prescribed format]
- IL is issued in the Form F.
- IL bears –
  - name of license,
  - location of IUT,
  - type of RM and product,
  - date of issuance,
  - annual production capacity.

Industrial Entrepreneurs Memorandum

- All industrial undertakings exempt from the requirements of industrial licensing need to file information in the Industrial Entrepreneurs Memorandum (i.e. Form IEM).
- IEM has to be submitted to the EAU the SIA in the person or by posts. [Part A of IEM].
- A computer acknowledgment containing the “SIA Registration No.” will be issued across the counter immediately if delivered in person; or sent by post if received through post. No further approval from SIA is required.
- IEM should be submitted along with crossed demand draft. (1000/-)
- An IEM may contain up to 10 items proposed to be manufactured in the same unit. For more than 10 items, an additional fee of 250 up to 10 additional items needs to be paid though crossed demand draft.
- Form IEM will be forwarded by SIA to the other authorities,
  - Administrative Ministry,
  - Deputy Commissioner of SSI &
  - State Directorate of Industries;

for the purpose of scrutinizing whether the item is eligible for delicensing or not.

- Concerned authorities and Ministries are requested to furnish their comments to SIA only if
  - The proposed item of manufacture requires licensing or
  - The Location of the proposed unit doesn’t confirm to location policy.

- All concerned are requested to ensure that their comments are made available to SIA within 2 weeks from the date of receipts of the computerized summary. In case no comments are received within stipulated time period, it will be presumed that the unit satisfied de-licensing requirements.

- All industrial undertakings also need to file information in “Part B” of IEM at the time of commencement of commercial production. (No Fee)
The Micro, Small and Medium Enterprises Development Act, 2006

The Act provides for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

Important Definitions

Appointed Day { Section 2(b)} Means
The day following immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Enterprise { Section 2(c)}
An industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (IDRA) or engaged in providing or rendering of any service or services.

Supplier { Section 2(n)} Means
A micro or small enterprise, which has filed a memorandum with the authority and includes—
- the National Small Industries Corporation, being a company, registered under the Companies Act, 1956;
- the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956;
- any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

National Board for Micro, Small and Medium Enterprises { Section 3}
The Central Government can establish National Board for Micro, Small and Medium Enterprises with its head office at Delhi and consisting of –
- the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be the ex officio Chairperson of the Board;
- the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be ex officio Vice-Chairperson of the Board.
Where there is no such Minister of State or Deputy Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;
six Ministers of the State Governments and others

Functions of Board { Section 5 }

examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises; and
advise the Central Government on the use of the Fund

Classification of Enterprises { Section 7 }
The Central Government can classify any class or classes of enterprises, whether

Proprietorship,
Hindu undivided family,
Association of persons,
Co-operative society,
Partnership firm,
Company or undertaking

In the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the IDRA as—
a micro enterprise, where the investment in plant and machinery does not exceed 25 lakh rupees;
a small enterprise, where the investment in plant and machinery is more than 25 lakh rupees but does not exceed 5 crore rupees; or
a medium enterprise, where the investment in plant and machinery is more than 5 crore rupees but does not exceed 10 crore rupees;

In the case of the enterprises engaged in providing or rendering of services, as—
a micro enterprise, where the investment in equipment does not exceed 10 lakh rupees;
a small enterprise, where the investment in equipment is more than 10 lakh rupees but does not exceed 2 crore rupees; or
a medium enterprise, where the investment in equipment is more than 2 crore rupees but does not exceed 5 crore rupees.

Cost of pollution control, research and development, industrial safety devices and such other items as may be specified shall not be included in calculating the investment in plant and machinery.
Advisory Committee (Section 7(2))
The Central Government constitutes an Advisory Committee consisting of the following members:

- the Secretary of the Ministry or Department of the Central Government having administrative control of the small and medium enterprises as the Chairperson, ex officio;
- not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises as members, ex officio;
- not more than three representatives of the State Governments, as members, ex officio; and
- one representative each of the associations of micro, small and medium enterprises, as member, ex officio.

The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.

The Central Government has been put under obligation to obtain the recommendation of the Advisory Committee before classifying any class or classes of enterprises.

Functions of Advisory Committee
(1) To examine the matters referred to it by the

(2) To advise Central Government on any of the matters

- measures for promotion and development
- credit facilities
- procurement preference policy
- Funds and Section or
- Administration and utilization of funds

(3) To advise the State Government on any of the matters

- to make rules in respect of the composition of the Micro and Small Enterprises Facilitation Council,
- the manner of filing vacancies of the members and

(4) To communicate its recommendations or advice to the Central Government or, State Government or the Board

Memorandum of micro, small and medium enterprises (Section 8)
Any person who intends to establish

- a micro or small enterprise, may, at his discretion, or
- a medium enterprise engaged in providing or rendering of services may, at his discretion; or
A medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the IDRA, is required to file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government or the Central Government.

**Measures for Promotion, Development and Enhancement of Competitiveness**

- Promotion and Development
- Credit facilities
- Procurement preference policy Funds
- Delayed Payments to Micro and Small Enterprises

**Liability of buyer to make payment { Section 15}**

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day.

However, in no case the period agreed upon between the supplier and the buyer in writing should exceed forty-five days from the day of acceptance or the day of deemed acceptance.

**Day of Acceptance { Explanation to Section 2(b) (i)} Mean**

- The day of the actual delivery of goods or
- the rendering of services; or
- where any objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier.

**Day of Deemed Acceptance** Means

Where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

**Payment of Interest { Section 16}**

In case the buyer fails to make payment of the amount to the supplier, the buyer, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force should pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date
immediately following the date agreed upon, at 3 times of the bank rate notified by the Reserve Bank.

**Reference to Micro and Small Enterprises Facilitation Council { Section 18}**
- In the case of dispute regarding payment of any amount any of the parties to the dispute can make a reference to the Micro and Small Enterprises Facilitation Council.
- In case the conciliation fails and stands terminated without any settlement between the parties, refer it to any institution for such arbitration in terms of the provisions of Arbitration and Conciliation Act, 1996.
- Every reference should be decided within a period of 90 days from the date of making of such a reference.

**Application for setting aside decree, award or order { Section 19}**
No application for setting aside any decree, award or other order made either by the Facilitation Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it 75% of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court.

**Micro and Small Enterprises Facilitation Council { Section 20}**
The State Government can establish by notification, one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

**Composition of Facilitation Council { Section 21}**
- Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises, as chairperson; and
- one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
- one or more representatives of banks and financial institutions lending to micro or small enterprises; or
- one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.

**Penalty for contravention { Section 27}**
- Intentional contravention or
- attempting contravention or
- abetting the contravention

of provisions of
Section 8(1) relating to filing of memorandum or
Section 26(2) relating to furnishing of information,
has been made punishable in the case of the
first conviction, with fine which may extend to rupees 1000; and
in the case of any second or subsequent conviction, with fine which shall not be less
than rupees 1000 but may extend to rupees 10000.

Contravention of the provisions of section 22, by a buyer has been made punishable with a fine
which shall not be less than rupees 10000.
LAW RELATING TO SOCIETIES

SOCIETIES REGISTRATION ACT, 1860

A registered society is a legal entity but it is not a body corporate.
It is separate from its members.
It can own properties.
It is capable of suing or being sued.
The position of a society is comparable with an incorporated company under the Companies Act 1956/2013.
The main Act has been continuing to be applicable in all the States with some amendments made by almost all the States in operation, administration and management of societies within the respective States.

Registration

A society can be registered by minimum 7 individuals which may include foreigners, or registered society for the promotion of literature, science or fine arts or diffusion of useful knowledge and political education or charitable purposes as under:-
(i) Grant of charitable assistance.
(ii) Creation of military orphan funds.
(iii) Societies established at the several Presidencies of India.
(iv) Promotion of –
   - Science
   - Literature
   - Fine Arts
   - Instructions or diffusion of useful knowledge
   - Diffusion of political education
   - Foundation or maintenance of libraries or reading rooms
   - Public museum and galleries of paintings
   - Works of art
   - Collections of natural history
   - Mechanical and philosophical investments
   - Instruments
   - Designs

Case :- Md. Yunus v. The Inspector General of Registration
In this case it was held that a “charitable purpose” is a purpose which has some element of general public benefit; it does not embrace purposes which are religious or predominantly religious.

Case :- Hindu Public and another v. Rajdhani Puja Samithee and others
A charitable purpose includes religious purpose.

Procedure for Registration

The following documents are required to be filed with the Registrar of Societies for registration of a society:-

1. Covering letter requesting for registration stating various documents annexed to it addressed to the registering authority and signed by all the subscribers to the Memorandum or by a person authorised by all of the them.
2. Memorandum of Association (in duplicate) containing
   (a) name of the society;
   (b) the objects of the society;
   (c) the names, addresses and occupation of the members of the governing body;
   (d) the place of registered office of the Society, and
   (e) the names, addresses and full signatures of the 7 or more persons subscribing their names to the memorandum of Association. Their signatures should be witnessed.

3. Rules & Regulations/Bye-laws (in duplicate) duly signed by at least 3 members of the governing body.

4. Affidavit on non-judicial stamp paper of requisite value by the President or secretary of the society duly attested by Oath Commissioner or Notary Public or Magistrate of first class.

5. Documentary proof such as rent receipt or property tax receipt in respect of the Registered office of the Society or no-objection of the owner of the premises.

6. Registration fee in cash or by demand draft.

Important Notes:-

- The formalities and requirements may differ from State to State.
- On registration, the society becomes a legal entity or a judicial person apart from its members.
- Its Rules & Regulations bound its members.
- It must confine its activities to the sphere embraced by its objects.
- Any inconsistent object with the provisions of the applicable Act shall be inoperative even after registration. A non-registered society may exist in fact but not in law.

Rules & Regulations

The Rules & Regulations help and guide the members and management of the society in carrying out its objects. They also bind members of the society. The Rules that are inconsistent with the provisions of the Act are inoperative although registered with the Registrar of Societies.

The Rules & Regulations of a society may provide for–

(i) the conditions of admissions of members,
(ii) the liability of members for fines, forfeitures under certain circumstances,
(iii) the consequence of non-payment of any subscription or fine registration and expulsion of members,
(iv) the appointment and removal of trustees and their powers,
(v) the manner of appointing and removing the governing body,
(vi) the manner in which the notice of meetings may be given,
(vii) the quorum necessary for the transactions of business at meetings of the society,
(viii) the manner of making, altering and rescinding regulations,
(ix) the investment of funds, keeping of accounts and for annual or periodical audit of account,
(x) the manner of dissolving the society,
(xi) the determination upon the dissolution that the property be utilised by the Government or others in particular manner,
(xii) matters to be provided in bye-laws and the manner in which they shall be made,
(xiii) such other matters as may be thought expedient having reference to the nature and objects of the society.

Bye-laws of Society
A society can make its bye-laws in accordance with the Rules and Regulations of the society. If the rules do not provide for the making of bye-laws, bye-laws can be made at a general meeting of the society at which concurrent votes of three-fifths of the members present shall be necessary.

The bye-laws of a society may provide for:

(a) The business hours of the society;
(b) The objects of the society;
(c) The activities of the society in furtherance of its objects;
(d) The name of the person or officer, if any, authorised to sue or to be sued on behalf of the society;
(e) The name of other person or officer who is empowered to give directions in regard to the business of the society;
(f) Enrolment of members –
   (i) Qualifications for membership, classification, restrictions and conditions etc.
   (ii) The entrance and other fee, or subscription, if any, to be collected from members,
   (iii) The dates prescribed for payment of the amount specified above and levy of penalties or fine, if any, imposed on defaulting members.
(g) Removal of members, the circumstances under which members could be removed from the rolls and the procedure for such removal and appeal, if any, against such removal;
(h) Rights, applications, privileges of members;
(i) The manner in which the society shall transact its business;
(j) The constitution of the Committee and qualifications of the members of the Committee, their term of office and the procedure for their appointment and reappointment;
(k) The preparation and filing with the concerned Registrar, of records, annual lists or other statements;
(l) Audit of accounts and the balance-sheet for the financial year;
(m) The supply of copies of bye-laws, the receipt and expenditure account and of the balance sheet to the members on application and the fee payable for the same;
(n) Imposition of fine, if any, for breach of the provisions of the bye-laws by any member or officer;
(o) The mode of custody, application and investment of the funds of the society and the extent and conditions of such investment;
(p) Funds earmarked specifically for the purpose of making provisions for dependent of a deceased or disabled member and the quantum of payment to be made thereof;
(q) Arrangements for transactions of day-to-day business of the society, the expenditure to be incurred therefor, the staff to be employed and condition of services of such employees;

(r) (i) Conduct of annual general meetings and procedure therefor,

(ii) Conduct of extraordinary general meetings and procedure therefor and the number of members required for making a requisition in writing, calling for such a meeting,

(s) Exhibition of the Register of Members, the books containing minutes and the books of accounts at the registered office of the society during business hours for inspection by its members free of charge.

Members’ Rights and Liabilities

Any arrear of subscription amount for a period of exceeding 3 months is disqualification for continuing to be a member and vote.

Case :- Abhoy Pado Bose v. Queen’s Anglo Sanskrit School

No one can claim admission to a society as a matter of right on payment of the prescribed subscription. The discretion of the governing body is final concerning grant or refusal of admission to a person.

When members treated as strangers?

A member of the society is liable to be sued as stranger in the following cases:

(i) When he is in arrear of a subscription which he is bound to pay according to the rules, or

(ii) When he has detained any property of the society, or

(iii) When he has stolen/destroyed any property of the society.

The Rights of members of a society

- receive notice of all special and annual general meetings;
- vote at all meetings.
- resolve all disputes among members and society or inter se;
- receive copies of the rules and regulations and bye-laws.

The Liabilities of members of a society

- A member may be sued as a stranger by the society.
- Member, guilty of an offence to the society, is punishable as a stranger;
- Member causing breach of any rule or regulation or bye-law of the society is liable to pay penalty under the Bye-Laws.
- Member who is guilty of misfeasance or breach of trust or misapplication of funds in relation to the society shall be accountable to make good the loss so caused to the society.

Property of Society

- Movable and immovable properties, belonging to the Society, vests in trustees.
- But if it is not vested in trustees, then it shall be deemed to be vested in the governing body of such Society for the time being.
The Act does not create in the members of the registered Society any interest other than that of the bare trustees.

A property, which has vested in the trustees before registration of the Society, becomes as from, the registration of the Society, a property belonging to the Society and must be deemed to be the property of the Society.

Case:- Board of Trustee, Ayurvedic and Unani Tibbia College v. State of Delhi,
In this case it was held that the Board of Trustees of Tibbia College was dissolved by the Tibbia College in 1952 and the property which had vested in the Board of Trustees, passed to the newly constituted Board.

Working and Management of Society
- As the society is a legal person having no physical existence, its governing body is its brain.
- Its activities are managed, executed and supervised by the governing body.
- It has to work within the objects of the society in accordance with the rules, regulations and bye-laws and to carry out the statutory duties under the main Act or the corresponding State Act.
- The governing body shall also be constituted in accordance with the rules and regulations of the society. The property of the society vests in the governing body and not in the members.
- The filing and defending the suits by the society shall continue in the original form and the changes in the governing body shall not affect.
- There should be minimum three members of the governing body.
- Its members are either elected or nominated as per the rules and regulations of the society. The term of office of members is three years and members can enjoy two terms.

Duties of Governing Body

1. To hold annual general meeting as per the rules and regulations of the society for laying before such meeting the statement of activities, Income & Expenditure Account and other information as provided in the rules and regulations for the purpose;

2. A list of the names, addresses and occupations of the governors, council, directors, committee or other governing body to which the management of the society is entrusted, is to be filed with the Registrar or such authority as prescribed once in a year either within 14 days of the date of holding such meeting or in the month of January every year.

3. To hold extra-ordinary general meeting to transact some special business, which cannot be waited or delayed, till the holding of the annual general meeting.

4. To report changes or alterations made in the managing, governing body or in the rules of the society to the Registrar.

5. To file notice of situation of the registered office of the society and of any change therein with the Registrar.

6. To register amendment in Memorandum of Association or Bye-laws with the Registrar by way of an application with a copy of the special resolution of the amendment with filing fee.

7. To supply copies of the Bye-laws, the Receipts/Incomes & Expenditure Account and Balance Sheet to the members of the society on their application with the fees, if any, prescribed by the society.

8. To invest and apply the funds and properties of the society in a manner as a prudent man will apply his own funds.
9. To keep and maintain a register of members of the society in accordance with the rules and regulations of the society.

10. To display the name of the society prominently at its registered office and other places of business.

11. To produce or submit periodical statement of Receipts Incomes & Expenditure A/c, Assets & Liabilities of the society.

12. To file a certified copy of every special resolution duly signed by an authorised officer of the society with the Registrar within the prescribed time.

13. To keep and maintain minutes of the meetings of the governing body and general body correctly and truly at the registered office of the society.

14. To retain all the important documents permanently.

15. To prepare periodical Accounts of the society and get them audited and to file Income-Tax Return, and

16. To attend all other duties as may be provided in the rules and regulations of the society.

Amendment or Alteration

Step wise procedure for alteration of the objects, Rules and Regulations or Bye-laws, change of name, and change in the registered office of a society –

Step 1. Submission of the proposal by the governing body to the members of the society;

Step 2. Ten days notice to members about holding of a special general meeting;

Step 3. Convening a special meeting for consideration and passing of the proposal by 3/5th of the members;

Step 4. Convening second special general meeting after a month; and

Step 5. Confirmation to the proposal by 3/5th of the members present at the second special meeting.

Step 6. Every change is required to be registered with the Registrar or the authority as prescribed as per the rules and regulations of the society.

Suits by and against Society

- A Society registered under the Act is a legal entity.
- It is capable of suing and be sued in the name of the president, chairman or principal, secretary or trustees as determined by the rules and regulations.
- If there is no such prescribed determination then in the name of such person as appointed by the governing body for the occasion.
- If no such person is nominated by the governing body on an application made to it, then a person having a claim against society may sue the president or chairman or secretary or trustee.

Amalgamation or Division of the Society

A society may be amalgamated with any other society, either wholly or partially by the governing bodies of the societies for the better utilisation of the properties, resources or any other purpose. The following actions are to be complied with —
Dissolution of Society

A society can be dissolved.

Dissolution of a society becomes necessary

- where the objects for which it is formed, has been fulfilled or
- where the purposes for which it is formed, have become irrelevant, invalid or inoperative or
- by passing of a resolution by 3/5th majority of the members present at a meeting to dissolve the society for utilisation of its assets for some other better uses.
- A society may be dissolved forthwith or within the agreed time.

Stepwise procedure of Dissolution of Society:

Step 1. Decision of the governing body;
Step 2. Convene a special general meeting of the members by giving a requisite notice for consideration and passing resolution by 3/5th majority of the members present thereat;
Step 3. Decision as to dissolve it forthwith or at a later time agreed upon by them.
Step 4. Decision for the actions to be taken for disposal of properties and settlement of claims and liabilities as per the rules and regulations of the society; and
Step 5. Delegate authority to the person(s) of the governing body to comply with the decisions accordingly.

Where any Government is a member of the society or has contributed the funds to the society or is otherwise interested therein, the society shall have to obtain prior consent of such Government for the purpose.

Dissolution of Societies by the Registrar under the following circumstances—

1. Where the office of the society has ceased to be in the State of registration, or
2. Where the society has shifted its office from the State of registration to some other State, or
3. Where the activities of the society are considered subversive, or
4. Where it is carrying on any unlawful activity, or
5. Where it has allowed any unlawful activity to be carried on within any premises under its control,
6. Where the registered society has contravened any of the provisions of the Act or the rules made thereunder, or
7. Where the registered society is insolvent or must necessarily become so, or
8. Where the business of such registered society is conducted fraudulently or not in accordance with the bye-laws or the objects specified in the memorandum of the society, or
(9) Where the society contravened any provision of any other law for the time being in force, or
(10) Where the number of members of the society is reduced below seven, or
(11) Where the society has ceased to function for more than three years, or
(12) Where the society is unable to pay its debts or meet its liability, or
(13) Where the registration of the society has been cancelled on the ground that its activities or proposed activities have been or will be opposed to public policy.

Court may order for dissolution of a society on application by 10% of its members or the Registrar on having been satisfied that any one or more of the following circumstances exist:–

(1) If there is any contravention by the society of the provisions of the Act, or
(2) If the number of members is less than seven, or
(3) If the society has ceased to function for more than three years, or
(4) If the society is unable to pay its debts or meet its liabilities, or
(5) If it is proper that the society has to be cancelled on the ground of its activities or proposed activities have been or will be opposed to the public policy.

The Government may by written order containing detailed reasons, dissolve a society. Before passing such order an opportunity has to be given to the society for representation against dissolution.

Consequences of Dissolution

- Dissolution of a society results in cessation of its activities.
- Its liabilities are to be settled suitably and its surplus assets are to be given to another society or the Government in terms of its rules and regulations.
- If the rules do not provide in the matter, the governing body of the society shall take appropriate steps with requisite majority vote or as directed by the Registrar or the Court.
- But in no circumstances, the surplus assets of the dissolved society can be paid or distributed amongst its members or any of them.

Powers & Duties of Registrar of Societies

1. Allow inspection of documents by any person and provide certified copy thereof on payment of fees as prescribed,
2. Call information, explanation or returns from the societies relating to the affairs, employees, documents filed, accounts etc,
3. Hold inquiries and settle disputes suo moto or at the request of the members of the governing body or other members,
4. Investigate into the affairs of the society,
5. Cancel registration on happening of certain events,
6. Refuse registration, if the name is undesirable or identical or the objects are contrary to any other law etc,
7. Order amendment of Memorandum of Association, rules and regulations, bye-laws of society,
8. Seize and take possession of the books and records, funds and property of the society,
9. Summon and enforce attendance of witness including the parties interested for giving evidence and producing documents,
10. Order for auditing of the accounts of the society,
11. Compounding offences on application with fee,
12. Settle disputes regarding election of the office bearers,
13. Restoration of the property or money of the society,
14. Removal of the defunct society from the register of societies,
15. Condonation of delay in filing of documents,

**Offences and Penalties**

- No Court inferior to that of a Magistrate of the first class shall try any offence punishable under the main Act.
- No Court shall take cognizance of any offence except upon complaint made by the Registrar of Societies or any authorised person by him.
A 'trust' is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner.

The following are the essential elements of a trust:
- the author or the settler of the trust;
- the trustee;
- the beneficiary;
- the trust property or the subject-matter of trust
- the object of the trust;
- the instrument of trust.

CLASSIFICATION OF TRUSTS

Simple and Special Trusts
- Where the trustee is merely to hold the estate without having any active duties to perform it is called a simple trust.
- Where, however, the trust has been created for a particular object or purpose there is a special trust.
- Thus, in a simple trust, the trustee is merely to hold the property for the benefit of the beneficiary and in a special trust, the trustee has duties to perform.

Oral and Written Trusts
- A trust may be declared either orally or through an instrument in writing.
- However, a trust in relation of movable property can be declared orally by transferring the possession of the property with a direction that the property be held in trust.
- In regard to a private trust for immovable properties, a written trust deed is pre-requisite.

Charitable or Religious Trust
- Where the main and paramount intention of the settler was to benefit the members of his family and thereafter the members of his caste who might need assistance from such funds there could be no public or charitable trust created.
- It is one of the cardinal rules governing execution of charitable trusts that the intention of the donor must be observed.
- Cy pres means near to it.
- The doctrine of Cy pres applies only to charitable trusts.
- The reason is that a public charity is perpetual and the rule against perpetuity does not apply to it.
- It can never die though its nature may be changed. Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be
executed, but the law will substitute another mode Cy pres, that is, as near as possible
to the mode specified by the 'donor'.

The doctrine of Cy pres, applies if the nature of the charitable object is general and not
specific.

Express and Implied Trusts

Express trusts are created by the act of parties either in words or in writing.

While an implied trust is one which is deduced from the conduct of the parties and the
circumstances of the transactions.

Public and Private Trusts

The criterion for deciding whether a particular trust is or is not of a private nature, is
whether the said trust is or is not for the benefit of individuals.

Where the intention of the founder, as shown by the recitals in his Will, was that the
property was to be dedicated for the benefit of idols, the trust is undoubtedly of a public
nature and not for the benefit of the individual members of family.

The essential difference between a private and a public trust is that in the former the
 beneficiaries are definite and ascertained individuals or individuals who within definite time
can be definitely ascertained but in the latter the beneficial interest must be vested in an
uncertain and fluctuating body of persons either the public at large or some considerable
portion of it answering a particular description.

Revocable and Irrevocable Trusts

A revocable trust is one which is revocable when it is created by a non-testamentary
instrument or orally and

a power of revocation has been expressly reserved by the settler.

A trust may be revoked by the consent of all the beneficiaries who are competent to
contract.

All other trusts are irrevocable.

Besides if a trust is created for charitable or religious purposes, such a trust cannot be
revoked.

Public-cum-Private Trust

A Public-cum-Private Trust is one in which a religious trust is created for the immovable
property like a Temple, Durgah etc. in the nature of a public trust but there is a direction for
use of income through offerings

or otherwise for public purposes and also a part thereof to person(s) in charge of the
Temple, Durgah etc.

A public-cum-private trust may become a fully public trust when the private beneficiary
renounces his rights to which they are entitled.

Constructive Trust

A constructive trust is one which is not created by the express or implied act of the settler,
but which is deemed by operation of law or arises by construction of law.

A constructive trust is a relationship with respect to a property subjecting the person by
whom the title to the property is held by an equitable duty to convey it to another on the
ground that his acquisition or retention of the property would be wrongful and that he would
be unjustly enriched if he were permitted to retain the property.
Resulting Trust

Case:- Dwarkadas Bhimji v. CIT

In this case it was held that

- A resulting trust is one, which is implied in favour of the settler or his representative.
- It comes into existence where the property is incompletely conveyed or where on a conveyance, the beneficial interest in the property is not completely disposed of and the property or the undisposed beneficial interest in it reverts back to the settler.
- When a trust is bad as a charitable trust, a resulting trust comes into existence in favour of the settler.

Executed and Executory Trust

- An executed trust is one in which the limitation of the estate and the beneficiaries are prescribed by the settler in the trust deed itself and no further instrument is required.
- An executory trust is not complete in itself and its execution is left to the judgement of the trustees.
- Here, the settler instead of expressing exactly what he means, tells the trustees to do their best to carry out his intentions.

Creation of Trusts for lawful purposes only

Trust of immovable property

Trust of movable property requires no writing or registration. The mere transfer of possession coupled with the intention of the parties that such delivery of possession should vest the property in the trustee is sufficient to create a trust.

Certainties of a Trust

For creating a trust the author of the trust should indicate with reasonable certainty the following:

1. Certainty in words: The words used to create a trust must be clear and certain so as to explain a clear intention to create a trust. Recommendatory words like "I hope" "I wish" are not sufficient.

2. Certainty in the object of the trust: The beneficiary, for whose benefit the trust is created, must be shown clearly.

3. Certainty in the subject-matter of the trust: The subject matter of the trust must be clear, i.e., the property, in respect of which a trust is created, must be shown clearly. Purpose of the trust should be certain.

If the trust instrument is lacking in first and third certainties, no trust is created but if the second certainty is absent, resulting trust will be created in favour of the author of the trust.

Who can create a Trust?

A trust may be created

- by every person competent to contract, and
- with the permission of a Principal Civil Court of original jurisdiction, by or on behalf of a minor. Thus, generally any person competent to contract and competent to deal with the property can create a trust.

Who may be a Trustee?

Every person capable of holding property may be a trustee. But if the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.
No one is bound to accept a trust.
Acceptance of the trust by a trustee may be express or implied.

Duties of Trustee
1. The Trustee should execute the trust and obey the directions given in the instrument of the trust. He can make any alteration in those directions only with the consent of the beneficiaries who are competent to contract. If a beneficiary is incompetent to enter into a contract, the Principal Civil Court of original jurisdiction may give consent on behalf of the minor.

2. It is a duty of a trustee to acquaint himself with the nature of the trust property.

3. The trustee must protect and preserve the trust property.

4. The trustee must not set up a title to the trust property, which is adverse to the interest of the beneficiary. Nor should he allow any person to do so.

5. He must deal with the trust property in such a manner as a man of ordinary prudence would deal with such property as if it were his own.

6. If a trust is created in favour of several persons in succession and the trust property is of washing nature or consists of a future or reversionary interest, the trustee is bound to convert it into property of permanent nature. However, this is subject to any contrary intention which could be inferred from the trust instrument.

7. The trustee must act impartially where there are more than one beneficiary.

8. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust property, if that person commits any act destructive or injurious to the trust property, the trustee must take the steps to prevent it.

9. The trustee must keep an accurate account of the trust property. At the request of the beneficiary he must furnish him the account and the state of trust property.

10. The trustee must sell the trust property within the specified or extended time without prejudice to the beneficiary or as authorized by the Court.

Liabilities of Trustees
1. **Liability for a breach of Trust**: If a trustee commits a breach of the trust, he is liable to make good the loss which the trust property of the beneficiary has suffered. However, in two cases he is not liable for such a loss.
   - Where the breach of the trust has resulted due to any fraud committed by the beneficiary; and
   - Where the beneficiary, being competent to contract, has given his consent for that breach without any coercion or undue influence or subsequently acquiesced therein, with full knowledge of the facts.

2. **No right of set-off**: A trustee who is liable for a loss because of a breach of trust committed by him in respect of one portion of the trust property is not allowed to set-off against his liability, a gain which he has accrued to another portion of the trust property through another and distinct breach of the trust property.

3. A trustee is not liable for the acts and defaults of his predecessor.
4. Generally a trustee is not liable for a breach of the trust committed by his co-trustee. However, such a trustee will be liable in the following cases:
   (i) Where he delivers his trust property to his co-trustee without seeing to its proper application;
   (ii) Where he allows his co-trustee to receive the trust property and fails to make due inquiries about his co-trustee’s dealing therewith; and
   (iii) Where after he comes to know of the breach of the trust committed by his co-trustee, he either actively conceals it or does not take proper steps to protect the interest of the beneficiary.

However, a co-trustee who joins in signing a receipt for the trust property for sake of conformity without actually receiving it shall not be liable merely by reason of his signature only.
A trustee is liable for money and property actually received by him.

5. Nature of liability of a co-trustee: When co-trustees jointly commit a breach of trust, and when one of them, by his negligence, enables another trustee to commit a breach of trust, each trustee is liable to the beneficiary for the whole loss sustained by the beneficiary.

6. In certain circumstances, a trustee is liable to pay simple or compound interest to the beneficiary.

Rights of Trustees

1. The right to have the possession of the instrument of trust and the title-deed relating to the trust property.
2. The right to reimburse himself of all costs, expenses and liabilities incurred in administration of the trust.
3. In case of a breach of the trust, the person who derives any benefit out of such a breach, must indemnify, the trustee to the extent of the amount actually received by him.
4. A trustee has a right to take opinion, advice or direction from the Court on questions relating to the management and administration of the trust.
5. When a trustee, properly completes his duties, he is entitled to get a discharge to the effect in writing.
6. A trustee has a general right to do all necessary acts
   (i) for preservation and protection of the trust property, and
   (ii) to protect the interest of a beneficiary who is not competent to contract but he cannot give on lease any trust property for more than twenty-one years without the permission of a Court.

Powers of Trustee

1. He can sell the trust property where instrument of the trust so empowers him.
2. A trustee has a power to vary investments.
3. A trustee has a power to apply the trust property for the maintenance of property as provided in the instrument of trust.
4. A trustee can compromise claims unless a contrary intention appears from the instrument of the trust.

5. A trustee can give receipt for the money received on account of the trust.

6. In case of death of one of the trustees, the other trustees have a right to act, unless contrary intention appears from the instrument of the trust.

Disabilities of Trustees

1. A trustee who once accepted the trust, cannot renounce it except:
   (i) with the permission of the Court,
   (ii) with the consent of the beneficiaries who are competent to contract,
   (iii) by virtue of a special power in the instrument of the trust.

2. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, except in the following cases:
   (1) When the instrument of the trust so provides,
   (2) When such a delegation is in the regular course of business,
   (3) When such a delegation is necessary, and
   (4) The beneficiary, being competent to contract, consents to such a delegation.

3. Where there are more trustees than one, all must join in the execution of the trust unless the trust instrument or any law for the time being in force provides otherwise.

4. The trustees cannot exercise their discretionary powers arbitrarily.

5. In the absence of express direction to the contrary contained in the instrument of trust or of a contract entered into with the beneficiary or of the sanction of the Court, the trustee has no right to remuneration.

6. A trustee may not use or deal with the trust property for his own use.

7. No trustee whose duty is to sell the trust property may directly or indirectly buy the trust property.

8. No trustee and no person who has recently ceased to be a trustee may, without the permission of the Court, buy, or become mortgagee or lessee of the trust property.

9. The trustee and the co-trustee may not lend the trust amount to themselves.

Vacating the office of trusteeship

The office of a trustee is vacated on his death or by his discharge.

He may be discharged from his office by the extinction of the trust or by the completion of his duties or by new appointee etc.

Doctrine of Cypres

Where the object of the charitable trust, specified by the settler, is or subsequently becomes impossible or
impracticable or unlawful, the trust will not necessarily fail, but the Court has power to apply the trust to some other charitable object as nearly as possible resembling the intention of the author. This power of the Court is known as "doctrine of cypres". When a particular mode of charity indicated by the author is not capable of being carried out, yet a general intention of charity, is indicated by the author of the trust, the Court would execute it 'cypres' i.e. in a way as nearly as possible to that which testator specified.

Rights of Beneficiaries

1. Right to rents and profits of the trust-property;
2. Right to the specific execution of the trust;
3. Right to inspect and take copies of the instrument of trust;
4. Right to transfer the beneficial interest, if he is competent to contract;
5. Right to sue for execution of trust;
6. Right to proper trustees; and proper number of trustees;
7. A beneficiary has a right to follow the trust property in the hands of a third person. Even where a trustee disposes of the trust property and acquires some other property with the help of the disposal money, the beneficiary is entitled to have the latter property, the same rights or as nearly as possible the same rights, he had over the trust property.
8. Right to compel to any act of duty.

Liabilities of Beneficiaries

If a beneficiary commits a breach of trust or obtains any advantage, the other beneficiaries may attach the interest of such a beneficiary until the loss caused by the breach has been compensated.

Extinction of a Trust

A trust is extinguished:

(a) When its purpose is completely fulfilled; or
(b) When its purpose becomes unlawful; or
(c) When the fulfillment of its purpose becomes impossible by destruction of the trust property or otherwise; or
(d) When the trust being revocable, is revoked.

Revocation of a Trust

If a trust is created by a Will, it may be revoked by the revocation of the Will. A trust which has been created otherwise, by an instrument other than a Will or orally, can be revoked only:

(a) with the consent of all the beneficiaries competent to contract;
(b) by the exercise of power of revocation expressly reserved by the author of the trust (in cases of trusts declared orally or by non-testamentary instruments); or
(c) where the trust is created for the payment of debts of the author of the trust, and has not been communicated to the creditors, at the pleasure of the author of the trust.

A trust is generally irrevocable unless a power of revocation is expressly reserved.
Law Relating to Registration of Documents

REGISTRABLE DOCUMENTS
Documents can be classified into two classes:
(i) Those whose registration is compulsory; (Section 17)
(ii) Those whose registration is optional. (Section 18)

DOCUMENTS WHOSE REGISTRATION IS COMPULSORY
(a) Instruments of gift of immovable property
Case:- Venkata Rama Reddy v. Pillai Rama Reddy
Case:- Kalyana Sundram v. Karuppa Mopanar
Case:- Venkata Rama Reddy v. Pillai Rama Reddy
- In this case it was held that while registration is a necessary for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective.
- And if it is presented by a person having necessary interest within the prescribed period the Registrar must register it.
- Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with.
- Delay in registration of a gift does not postpone its operation.
- Section 123, Transfer of Property Act, 1882 merely requires that donor should have signed the deed of gift. Hence a gift deed can be registered even if the donor does not agree to its registration.

(b) Other non-testamentary instruments (other than instruments of gift of immovable property) which purport
or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title of interest whether vested or contingent, of the value of 100/- rupees and upwards, to or in immovable property situated in a district in which this Act is in force.

(c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest.

An acknowledgement in the form of a receipt to be registered, but not an acknowledgement of the fact that a transaction has taken place.
To be registrable under this clause a receipt must satisfy the following two conditions:

(i) it must be the receipt of a consideration; and
(ii) it must on the face of it be an acknowledgement of payment or some consideration on account of the creation, declaration, assignment, limitation or extinction of an interest of the value of 100/- or upwards in immovable property.

A lease of immovable property is compulsory registrable:

(a) if it is from year to year; or
(b) if it is for a term exceeding one year; or
(c) if it reserves a yearly rent.

(d) A transfer of a decree or order of a court or of any award when such decree or order or award operates to create, declare, etc. any interest of the value of 100/- and upwards in immovable property, requires registration.

Exceptions
- any composition deed, i.e., every deed the essence of which is composition; or
- any instrument relating to shares in Joint Stock Company; or
- any debentures issued by any such Company; or
- any endorsement upon or transfer of any debenture; or
- any decree or order of a court; or
- any grant of immovable property by the Government; or
- any instrument of partition made by Revenue-officer; or
- any order granting loan made under the Agriculturists Loans Act, 1884 or instrument for securing the repayment of a loan made under that Act; or
- any order made under the Charitable Endowments Act, 1890 vesting any property in a treasurer of a charitable endowment or divesting any such Treasurer of any property; or
- any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer.

DOCUMENTS OF WHICH REGISTRATION IS OPTIONAL
- instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of value less than one hundred rupees, to or in immovable property;
- instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any such right, title or interest;
- leases of immovable property for any term not exceeding one year and leases exempted under Section 17;
- instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of a value less than 100/- rupees, to or in immovable property;
- instruments (other than wills) which purport or operate to create declare, assign, limit or extinguish
  - any right, title or interest to or in movable property;
  - wills; and
- other documents not required by Section 17 to be registered

TIME LIMIT FOR PRESENTATION
- A document other than a will must be presented within 4 months of its execution. In cases of urgent necessity, etc. the period is eight months, but higher fee has to be paid.
- The document was executed outside India and it has been presented for registration within 4 months after its arrival in India, he may accept such document for registration on payment of proper registration fee.
- A document executed outside India is not valid unless it is registered in India.
- A Will may be presented for registration at any time; Registration of a Will is optional.
PLACE OF REGISTRATION

- Documents affecting immovable property shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the relevant property is situated and
- Any other document may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed or in the office of any other Sub-Registrar under the State Government at which all the persons executing desire the document to be registered.
- Registration of a document elsewhere has been held to be void.
- There is nothing in law to prohibit a person conveying property in one district and residing and owing property in another district and asking the vendee to accept a conveyance also of some small property in the district in which he resides, so that the sale-deed is not validly registered at the place where it is got registered.
- However, there should be no fraud or collusion. Smallness of the area does not necessarily lead to inference of fraud.

COPY OF A DECREE OR ORDER

A copy of a decree or order may be registered with the Sub-Registrar within whose sub-district it was made. If the decree or order does not affect immovable property, it may be presented for registration in the office of any other Sub-Registrar under the State Government at whose office all persons claiming under the decree or order desire it to be registered.

PRESENTING OF DOCUMENTS FOR REGISTRATION (Section 32)

The persons who can present documents for registration at the proper registration office are as follows:

- some person executing or claiming under the same, or in the case of a copy of a decree or order, claiming under the decree or order, or
- the representative or assign of such person, or
- the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in the manner hereinafter mentioned.

Case:- Kishore Chandra Singh v. Ganesh Prashad Singh

In this case it was held that, it is immaterial whether the registration is compulsory or optional; but, if it is presented for registration by a person other than a party not mentioned in Section 32, such presentation is wholly inoperative and the registration of such a document is void.

However, there are some exceptions to this requirement.

ENQUIRY BEFORE REGISTRATION BY REGISTERING OFFICER (Section 34)

For registering a document the persons executing such document or their representatives, assigns or authorised agents must appear before the registering officer within the time allowed for presentation.

Who is entitled to present Wills and authorises to adopt

The testator, or after his death, any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration. In case of authority for adoption, the donor or (after his
Registrar for registration. Thus, even a legatee can present a will.

Registration of will and authority to adopt

- A will, or an authority to adopt, if presented by the testator or the donor, may be registered in the same manner as any other document.

- If presented by any other person entitled to present it, it shall be registered if the registering officer is satisfied about the particulars mentioned.

DEPOSIT OF WILLS

- Any testator may, either personally or by duly authorised agent, deposit with any Registrar his will in a sealed cover superscripted with the name of the testator and that of his agent, if any, and with a statement of the nature of the document.

- On receiving such documents, the Registrar on being satisfied shall transcribe in his Registrar Book No. 5, the superscription and shall note the date, time, month, etc. of such receipt and shall then place and retain the sealed cover in his fire-proof box.

- However, the testator may withdraw it by applying for the same and the Registrar shall deliver it accordingly.

REGISTERED DOCUMENT WHEN OPERATIVE

- A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration.

- As between two registered documents, the date of execution determines the priority. Of the two registered documents, executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other, although the former deed is registered subsequently to the later one

REGISTERED DOCUMENT RELATING TO PRIORITY WHEN TO TAKE EFFECT AGAINST ORAL AGREEMENT

- Generally, priority to rights accorded by different transfers is governed by the principles embodied in the maxim qui prior tempore potior est jure that is “he who is first in time is better in law”.

- Section 48 refers to the priority of the registered agreements over oral agreements and Section 50 refers to the priority of registered agreements over non-registered agreements.

- A subsequent registered deed will not prevail over a prior unregistered deed or a prior oral transaction if the subsequent transferee had notice of the prior transaction.

EFFECT OF NON-REGISTRATION OF DOCUMENTS REQUIRED TO BE REGISTERED (Section 49)

- No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall:
  - affect any immovable property comprised therein; or
  - confer any power to adopt; or
  - be received as evidence of any transaction affecting such property or conferring such power unless it has been registered.
A document which is required to be registered cannot be received in evidence as affecting immovable property.

An unregistered document which comes within Section 17 cannot be used in any legal proceeding to bring out indirectly the effect which it would have if registered.

However an unregistered document affecting immovable property and required by this Act or the Transfer of property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction not to be effective by registered instrument.

In a suit for specific performance an unregistered document affecting immovable property may be given in evidence. The purpose is that the document which has not conveyed or passed title may still be used as evidence of the terms.

Case:- K. Narasimha Rao v. Sai Vishnu
It has been held that It is settled legal principle that an unstamped instrument is not at all admissible in evidence even for collateral purpose. But an unregistered instrument originally unstamped, if duly stamped subsequently can be admitted in evidence even though it continues to be unregistered for collateral purpose but actual terms of transaction cannot be looked into.

In instant case, however settlement deed in question produced by defendant was not only unregistered but also insufficiently stamped. That apart on an objection raised by plaintiff, Court had already passed an order directing impounding of document, which was never complied with by defendant. In such circumstances, document in question, which still remained insufficiently stamped could not be admitted in evidence even for collateral purpose. Application filed by defendant seeking to admit said document for collateral purpose is liable to be dismissed.

Duties and Powers of Registering Officer

The following books must be kept in the several offices as

follows: A – In all Registration Offices

Book 1 – “Register of non-testamentary documents relating to immovable property”;  
Book 2 – “Record of reasons for refusal to register”;  
Book 3 – “Register of wills and authorities to adopt”;  
Book 4 – “Miscellaneous Register”;  
B – In the Offices of Registrars

Book 5 – “Register of deposits of Wills”.

In Book 1 shall be entered or filed all documents or memorandum registered under Sections 17, 18 and 89 which relate to immovable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses (d) and (f) of Section 18 which do not relate to immovable property.

The registering officer should enter the registration in the proper book. However, if by mistake and in good faith the registration was entered in the wrong book, it will not make the registration invalid.
When the document is presented for registration, the day, hour and place of presentation and signature of every person presenting it shall be endorsed.

The registering officer should give a receipt for such document to the person presenting it and shall make a copy of the document in the appropriate book.

All such books shall be authenticated from time to time as prescribed by the Inspector General.

**PROCEDURE ON ADMISSION TO REGISTRATION**

**Particulars to be endorsed on documents admitted to registration:**

1. On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer, there shall be endorsed from time to time the following particulars:
   - the signature and addition of every person admitting the execution of the document and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
   - the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
   - any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document and any admission of receipt of consideration, whole or in part, made in his presence in reference to such execution.

2. If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

**CERTIFICATE OF REGISTRATION**

- After the provisions as applicable to the document are complied with, the registering officer shall endorse thereon a certificate containing the word “registered” along with the number, and page of the book in which the document has been copied. The certificate shall be signed, sealed and dated by the registering officer.

- The certificate of registration in respect of a document is prima facie evidence that the document has been legally registered and raises a presumption that the registering officer proceeded in accordance with the law.

**PROCEDURE AFTER REGISTRATION OF DOCUMENTS RELATING TO LAND**

1. On registering any non-testamentary document relating to immovable property the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

2. The Registrar shall also forward a copy of such document, together with a copy of map or plan (if any) to every Registrar in whose district any part of such property is situate.

3. Such Registrar, on receiving any such copy, shall file it in his Book No. 1 and shall also send a memorandum of the copy to the Sub-Registrar subordinate to him within whose sub-district any part of the property is situate.
(4) Every Sub-Registrar receiving any memorandum shall file it in his Book No. 1.

**PROCEDURE AFTER REGISTRATION**

On any document being registered, a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure.

**REFUSAL TO REGISTER BY THE SUB-REGISTRAR**

- Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words “Registration refused” on the document; and, on application made by any person executing or claiming under the document, shall without payment and unnecessary delay, give him a copy of the reasons so recorded.
- No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.
- Registration cannot be refused on the ground of undervaluation for stamp.

**APPEAL TO REGISTRAR**

- An appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate if presented to such Registrar within 30 days from the date of the order; and the Registrar may reverse or alter such order.
- This does not apply where the refusal is on the ground of denial of execution.
- If the order of the Registrar directs the document to be registered and the document is duly presented for registration within 30 days after the making of such order, the Sub-Registrar shall obey the same.
- And thereupon shall, so far as may be practicable, follow the procedure; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

**INSTITUTION OF SUIT IN CASE OF ORDER OF REFUSAL BY REGISTRAR (Section 77)**

Where the Registrar refuses to order the document to be registered any person claiming under such document, or his representative, assign or agent, may, within 30 days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

**EXEMPTION OF CERTAIN DOCUMENTS EXECUTED BY OR IN FAVOUR OF GOVERNMENT**

(Section 90)

- documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land revenue and which form part of the records of such settlement; or
documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land which form part of the record of such survey; or
documents which, under any law for the time being in force are filed periodically in any revenue office by patwaris or other officers charged with the preparation of village records; or
sanads, inam, title deeds and other documents purporting to be an evidence, grants or assignments by Government of land or of any interest in land; or
notices given under section 74 or section 76 of the Bombay Land Revenue Code, 1879 of relinquishment of occupancy by occupants or of land by holders of such land.