



## **DEPARTMENT OF MANAGEMENT STUDIES**

MBA / CF / 2025-27/ MB25C04

### COURSE FILE – THEORY

SUBJECT : LEGAL ASPECTS OF BUSINESS  
SUBJECT CODE : MB25C04  
BRANCH : MBA  
SEMESTER : I  
YEAR : I  
PREPARED BY : DR. NELSON NIRMAL KUMAR



# JEPPIAAR ENGINEERING COLLEGE

Rajiv Gandhi Salai, Chennai-119  
(NAAC Accredited Institution)  
DEPARTMENT OF MANAGEMENT STUDIES

## DETAILED SYLLABUS

MB25C04	Legal Aspects of Business	L	T	P	C
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<b>Course Objectives:</b>					
This course introduces the key Business laws and their practical applications across commercial contracts, company operations, industry regulations, taxation (including GST), and cyber laws in managing risks. It helps learners gain critical awareness of the legal framework.					
<b>Commercial Laws and Business Contracts:</b>					
<p><b>The Indian Contract Act 1872:</b> Definition of contract, essential elements and types of a contract, Formation of a contract, performance of contracts, breach of contract and its remedies, Quasi contracts - Contract Of Agency: Nature of agency, Creation and types of agents, Authority and liability of Agent and principal: Rights and duties of principal and agents, termination of agency.</p> <p><b>The Sale of Goods Act 1930:</b> Nature of Sales contract, Documents of title, risk of loss, Guarantees and Warranties, performance of sales contracts, conditional sales and rights of an unpaid seller -</p> <p><b>Negotiable Instruments Act 1881:</b> Nature and requisites of negotiable instruments, Types of negotiable instruments, liability of parties, holder in due course, special rules for Cheque and drafts, discharge of negotiable instruments - The payment and settlement systems Act, 2007.</p>					
<b>Company Law and Competition Regulations:</b>					
<p><b>Company Act 1956 &amp; 2013:</b> Major principles, Nature and types of companies, Formation, Memorandum and Articles of Association, Prospectus, Power, duties and liabilities of Directors, winding up of companies, Corporate Governance, Competition Act 2002 - Introduction, Definitions, Enquiry into Certain Agreements and Dominant Position of Enterprise and Combinations.</p>					
<b>Industrial Relations and Labour Legislation: An Overview of Factories Act - Payment of Wages Act - Payment of Bonus Act - Industrial Disputes Act</b>					
<b>Corporate Taxation and Goods &amp; Services Tax (GST):</b> Corporate Tax Planning, Corporate Taxes and Overview of Latest Developments in Indirect tax Laws relating to GST: An introduction including constitutional aspects, Levy and collection of CGST & IGST, Basic concept of time and value of supply, Input tax credit, Computation of GST Liability, Registration, Tax Invoice, Credit & Debit Notes, Electronic Way bill, Returns, Payment of taxes including Reverse Charge.					
<b>Consumer Protection and Cyber Laws:</b> Consumer Protection Act, Consumer rights, Procedures for Consumer grievances redressal, Types of consumer Redressal Machineries and Forums— Cyber crimes, IT Act 2000 and 2002, Cyber Laws					
<b>Intellectual Property Rights (IPR) in Business:</b> Introduction of IPR Intellectual Property Laws-Introduction, Legal Aspects of Patents, Filing of Patent Applications, Rights from Patents, Infringement of Patents, Copyright and its Ownership, Infringement of Copyright, Civil Remedies for Infringement— Copy rights, Trade marks, Patent Act, Introduction, Right to Information Act, 2005.					
<b>Weightage: Continuous Assessment: 40%, End Semester Examinations: 60%</b>					
<b>Assessment Methodology: Written Test I &amp; II (60%) Assignment, Presentation, Case Study, Quiz, Simulation, Online Certification, Seminar, Mini project (40%)</b>					

<b>References:</b> <ol style="list-style-type: none"> <li>1. Kapoor, N. D. (2024). <i>Elements of mercantile law</i> (39th rev. ed.). Sultan Chand and Company.</li> <li>2. Goel, P. K. (2023/24). <i>Business law for managers</i> (2nd ed.). Biztantra Publishers.</li> <li>3. Pathak, A. (2022). <i>Legal aspects of business</i> (8th ed.). Tata McGraw Hill.</li> <li>4. Kumar, R. (2016). <i>Legal aspects of business</i> (4th ed.). Cengage Learning.</li> <li>5. Sinha, P. K., &amp; Singhania, V. (2017/18). <i>Text book of indirect tax</i>. Taxmann Publication.</li> <li>6. Taxmann. (2023). <i>GST manual with GST law guide &amp; digest of landmark rulings</i> (12th ed.).</li> </ol>
<b>E-Resources:</b> <ol style="list-style-type: none"> <li>1. Ministry of Corporate Affairs: <a href="https://www.mca.gov.in">https://www.mca.gov.in</a></li> <li>2. GST Portal: <a href="https://www.gst.gov.in">https://www.gst.gov.in</a></li> <li>3. WIPO Intellectual Property Resources: <a href="https://www.wipo.int">https://www.wipo.int</a></li> </ol>

	CO description	PO Mapping	PSO1	PSO2
CO1	Demonstrate conceptual knowledge of commercial laws, company law, industrial relations and labor legislation, corporate taxation (including GST), consumer protection, cyber laws, and intellectual property rights (IPR).	PO5(3)	-	-
CO2	Interpret and relate key legal principles from contract law, company regulations, industrial acts, taxation frameworks, consumer protection laws, and intellectual property statutes to understand the legal environment of business.	PO1(1) PO5(3)	-	-
CO3	Apply legal principles and frameworks from commercial and company law, labor legislation, tax laws, and IPR to evaluate business contracts, corporate governance practices, compliance requirements, and the protection of business innovations.	PO1(3) PO4(3)	1	-
CO4	Analyze legal and regulatory frameworks, including competition law, industrial relations acts, corporate tax and GST provisions, cyber laws, and IPR, to assess their impact on business operations, risk management, and strategic decision-making.	PO1(3) PO3(1) PO4(2)	3	2
CO5	Evaluate the effectiveness of various legal provisions and frameworks, such as consumer protection and cyber laws, and IPR, to build compliance strategies, mitigate legal risks, and ensure ethical and sustainable business practices.	PO1(2) PO3(3)	3	2
CO6	Develop contemporary legal compliance and risk management strategies by integrating knowledge of commercial law, company law, industrial relations, taxation, and cyber and IPR laws to ensure effective and ethical business operations in a global context.	PO1(3) PO3(2)	3	2

## CO PO MATRIX

**SUBJECT** : LEGAL ASPECTS OF BUSINESS  
**SUBJECT CODE** : MB25CO4

**COURSE OBJECTIVES:**

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# **JEPIAAR**

## **ENGINEERING COLLEGE**

Jeppiaar Nagar, Rajiv Gandhi Salai, Chennai - 119.  
(ISO 9001:2008 & NBA Accredited Institution)

### **DEPARTMENT OF MANAGEMENT STUDIES**

Name of the Subject : LEGAL ASPECTS OF BUSINESS

Semester, Year & Branch : I, I & MBA

Subject Code : MB25CO4

Name of the Staff Handling  
the Subject : Dr.M.S.Nelson Nirmal Kumar

Students Batch : 2025-2027

**Signature of HOD**

**Date : 18-12-25**



Rajiv Gandhi Salai, Chennai-119 (NAAC Accredited Institution)

**DEPARTMENT OF MANAGEMENT STUDIES**

**LEGAL ASPECTS OF BUSINESS**

**MB25CO4**

**LECTURE NOTES**

# **LEGAL ASPECTS OF BUSINESS**

## UNIT 1

### COMMERCIAL LAW

- 1) THE INDIAN CONTRACT ACT,1872
- 2) THE SALE OF GOODS ACT,1930
- 3) NEGOTIABLE INSTRUMENTS ACT,1881

**UNIT I**  
**COMMERCIAL LAW**

**SYLLABUS**

**THE INDIAN CONTRACT ACT 1872**

Definition of contract, essentials elements and types of a contract, Formation of a contract, performance of contracts, breach of contract and its remedies, Quasi contracts - Contract of Agency: Nature of agency, Creation and types of agents, Authority and liability of Agent and principal: Rights and duties of principal and agents, termination of agency.

**THE SALE OF GOODS ACT 1930**

Nature of Sales contract, Documents of title, risk of loss, Guarantees and Warranties, performance of sales contracts, conditional sales and rights of an unpaid seller -

**NEGOTIABLE INSTRUMENTS ACT 1881**

Nature and requisites of negotiable instruments. Types of negotiable instruments, liability of parties, holder in due course, special rules for Cheque and drafts, discharge of negotiable instruments.

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**THE INDIAN CONTRACT ACT 1872**

**INTRODUCTION:**

- The Indian Contract Act, 1872 prescribes the law relating to contracts in India and is the key act regulating Indian contract law.
- Indian Contract Act 1872 was enacted on 1st September of that year.
- The Act is based on the principals of English Common Law.
- The word contract is derived from the Latin Word “Contractum”.
- This law is applied to all states of India except Jammu and Kashmir.

**Meaning of Contract:**

- A contract is an agreement between two parties that creates an obligation to perform or not perform a particular duty.

## **Definition of Contract:**

- **Salmond** – “A contract is an agreement creating and defining obligations between two parties”
- **Section 2(h) of Indian Contract Act 1872** – “An agreement enforceable by law is a contract”.

**Contract = Agreement + Enforceability by Law**

### ➤ **Agreement:**

- Manifestation of mutual assent by two or more persons to one another.
- **Section 2(e) of Indian Contract Act 1872** – “Every promise and every set of promises forming the consideration for each other is an agreement”

**Agreement = Offer + Acceptance**

#### **Offer**

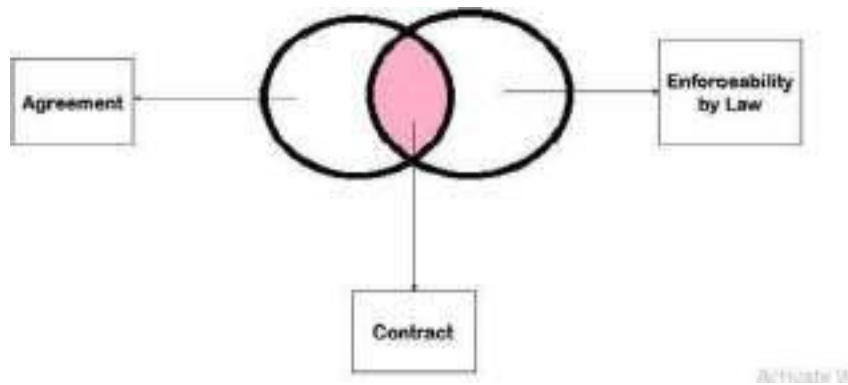
- A promise that one party makes in exchange for another party’s performance
- **Section 2(a) of Indian Contract Act 1872,**” When a person expresses his willingness to another person to do or to abstain from doing something and also obtain the consent of such expression it is called Offer”.

#### **Acceptance:**

- Agreement to the terms of offer.
- **Section 2(b) of Indian Contract Act 1872,**” When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted”.

### ➤ **Enforceability by Law**

- An agreement is said to be enforceable by law if it creates some legal obligations.



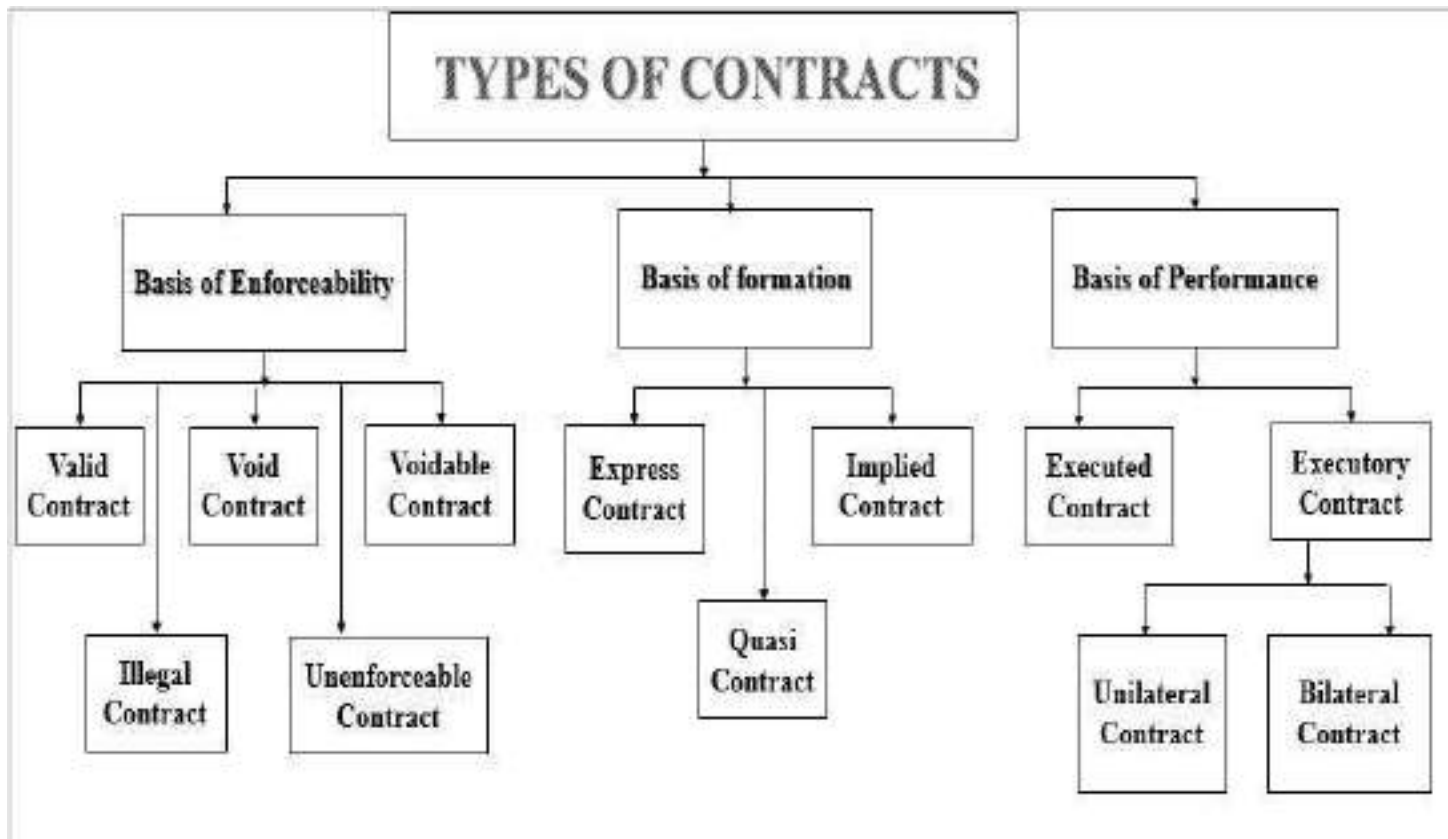
## ESSENTIAL ELEMENTS OF A CONTRACT



- **Agreement:** The primary element that creates a contract between parties is an agreement, which is a result of offer and acceptance, that forms consideration for the parties concerned.
- **Free Consent:** Consent of the parties is another important aspect of a contract, which means the parties entering into the contract, must agree upon the same thing in the same sense. The consent of the parties is said to be free when it is not influenced by coercion, undue influence, fraud, misrepresentation and mistake.
- **Competency:** Competency refers to the capacity of the parties to enter into the contract, i.e., he/she has reached the age of maturity, he/she must be of sound mind, and he/she is not disqualified from contracting, as per the law like the alien enemy, foreign sovereigns, etc.

- **Consideration:** It implies the price agreed to be paid for the promisor's obligation by the promisee. It must be adequate and lawful.
- **Lawful object:** The object for which the contract is created must be lawful, or else it is declared as void.
- **Not expressly declared as void:** The law should not expressly declare the contract as void, such as contract in restraint of marriage, trade or legal proceedings.

### **TYPES OF CONTRACTS:**



#### **(1) On the basis of Enforceability:**

##### ➤ **Valid Contract:**

- Valid contract is an agreement that is enforceable by law.
- E.g.: X offers to marry Y. Y accepts X's offer. This is valid contract.

##### ➤ **Void Contract:**

- Void contract is an agreement which is no longer enforceable in the court of law.
- E.g., X agree to write a book with a publisher. After few days, X dies in an accident. Here the contract is void due to impossibility of performance of contract.

- *Section 2(j) of Indian Contract Act 1872, "Void contract is a contract which ceases to be enforceable by law".*

➤ **Voidable Contract:**

- Agreement where parties have a right to cancel it on discovering legal fault.
- *Section 2(i) of Indian Contract Act 1872, "An agreement which is enforceable by law at the option of one or more parties thereto and it is not enforceable by law at the option of the other or others".*
- E.g.: Suppose Christel wants to take a property on the Southwest side of New Jersey. She approaches Harry as he wants to sell it. They make the deal and enter into a voidable contract for real estate. Before agreeing to the contract terms, she acquires details about the property. Once satisfied, the deal occurs. Through some sources, Christel discovers this property is under illegal proceeds. She approaches Harry to sort this out, but he denies the fact. Finally, through constant discussion with the lawyer, Harry accepts his fault. Although the contract had turned voidable, Christel had a choice to either ratify (change) or cancel it. She chose to cancel the agreement and switch to another land.

➤ **Illegal Contract:**

- Agreement that violates the law.
- E.g.: Agreement between Drug User and Drug Dealer is an illegal contract.

➤ **Unenforceable Contract:**

- Contract is good in substance, but because of some technical defect, it cannot be enforced by law.
- E.g.: A agrees to sell to B 100kgs of rice for Rs.10,000. But there was a huge flood in the state and all the rice's crops destroyed. Now, this contract is unenforceable and cannot be enforced against either party.

**(2) On the basis of formation:**

➤ **Express Contract:**

- When the term of contract is expressed orally or in writing.
- E.g.: Person A sends a text from his phone to person B proposing to sell their bike for

cost Rs.10,000. The person B calls the first person and agrees to the term of the promise.

➤ **Implied Contract:**

- A legally binding obligation that derives from actions, conduct or circumstances of one or more parties in an agreement.
- E.g.: Taking ticket in bus to travel from one place to another.

➤ **Quasi Contract**

- It is not a real contract.
- It is a contract created between two parties invisibly.
- A Quasi Contract is a retroactive association between two events with no previous obligation to one another.
- E.g.: A is a Supplier; B is a Stranger and C is a customer. There is a contract between A and C but A supply the goods to B by mistake. B has two options either to return the goods or give money to A. Here contract is created between A and B invisibly.

**(3) On the basis of Performance:**

➤ **Executed Contract:**

- Executed contract is a finalized agreement that has passed the sign stage and been agreed to by all necessary parties.
- E.g.: Purchase of vehicle in one lump payment.

➤ **Executory Contract:**

- Agreement where the consideration can only be fulfilled at some point in future.
- E.g.: Purchase of vehicle in finance

- **Unilateral Contract:**

- ✓ A unilateral contract is a one-sided contract in which only one party has to perform his promise.

- ✓ E.g.: contract between carpenter and customer to make a table, carpenter ask full money to make the table. Here the customer makes full payment but the table making is under process.

- **Bilateral Contract:**

- ✓ A bilateral contract is a contract in which both parties exchange promise to

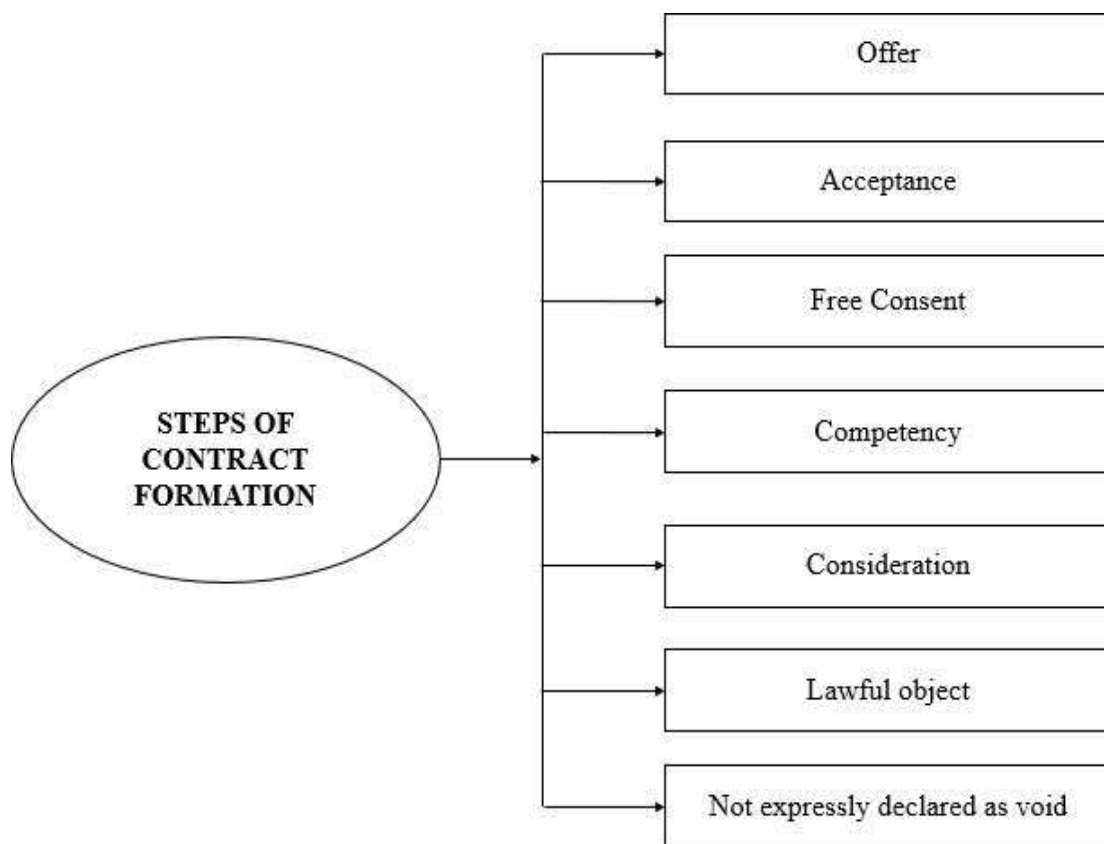
perform.

- ✓ E.g.: Sales agreement between Car Seller A and Car Buyer B. Car Buyer may agree to pay the seller a certain amount of money in exchange for the title to the car. The seller agrees to deliver the car title in exchange for the specified sale amount.

### **FORMATION OF CONTRACT:**

- Formation of a contract is the process of proposal or offer by one party and the acceptance thereof by the other.

### **STEPS / ELEMENTS OF CONTRACT FORMATION:**



- ✓ **Offer:** An offer is a proposal to enter into a contract. The offer must be clear and certain, and it must be made with the intention of creating a legally binding agreement.
- ✓ **Acceptance:** An acceptance is an agreement to the terms of an offer. The acceptance must be unequivocal and made with the intention of creating a legally binding agreement.
- ✓ **Free Consent:** Consent of the parties is another important aspect of a contract, which means the parties entering into the contract, must agree upon the same thing in the same sense. The

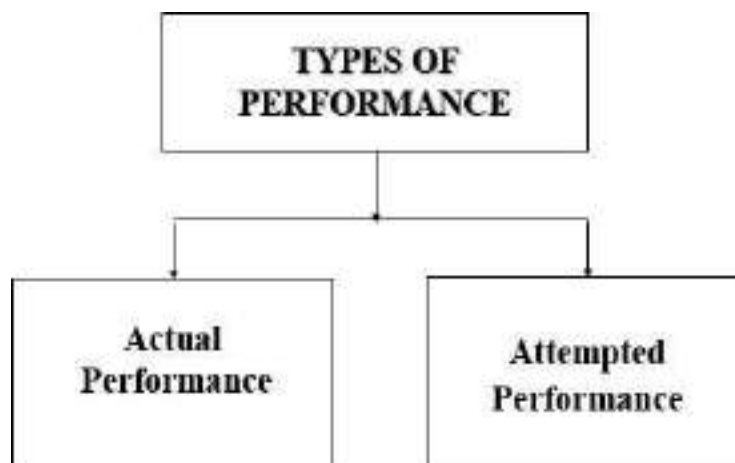
consent of the parties is said to be free when it is not influenced by coercion, undue influence, fraud, misrepresentation and mistake.

- ✓ **Competency:** Competency refers to the capacity of the parties to enter into the contract, i.e., he/she has reached the age of maturity, he/she must be of sound mind, and he/she is not disqualified from contracting, as per the law like the alien enemy, foreign sovereigns, etc.
- ✓ **Consideration:** It implies the price agreed to be paid for the promisor's obligation by the promisee. It must be adequate and lawful.
- ✓ **Lawful object:** The object for which the contract is created must be lawful, or else it is declared as void.
- ✓ **Not expressly declared as void:** The law should not expressly declare the contract as void, such as contract in restraint of marriage, trade or legal proceedings.

### **PERFORMANCE OF CONTRACT:**

- The term 'Performance of Contract' means that both the promisor and the promisee have fulfilled their respective obligations, which the contract placed upon them.
- *Section 27 of Indian contract Act 1872, "The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law".*
- E.g.: A visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and A pays the price. This contract has been discharged by mutual performance.

### **TYPES OF PERFORMANCE:**



- **Actual Performance:**

- Actual performance means both parties fulfill their obligations as set out in contract.
- E.g.: A lent's Rs,1000 from B and offers to repay the sum in two months. A then gives back the money on time. This is actual performance.

- **Attempted Performance:**

- Attempted performance is also called as Offer to Perform or Tender Performance
- When the performance has become due, it is sometimes sufficient if the promisor offers to perform his obligation under the contract.
- E.g.: A undertakes to deliver certain items to B. A delivers the items at the designated location during business hours, but B refuse to accept the delivery of goods. Here A has completed his duty based on contract.

**TENDER:**

- Tender is a formal invitation to trade under the terms of offer and the documents associated with that offer
- *Section 38 of Indian Contract Act,1872, "Where a promisor has made an offer of performance to the promisee and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract".*

**ESSENTIALS OF VALID TENDER:**

**(1) Tender must be Unconditional**

- There must not be any condition associated with the tender.
- The tender should be unconditional.
- In order to be legally enforceable, a tender should not only be in accordance with the contractual terms, the promisor should also not attach any condition to it, because it is not reasonable to compel the other party to accept a changed or otherwise modified performance, whatsoever.
- E.g.: A, the debtor, offers to pay B, the creditor, the amount due to him if B sells some goods to him. It is a conditional tender and therefore is not a valid tender.

**(2) Tender must be made at a proper time and place**

- A tender should be made at the proper time and place.

- ❑ Generally, the time and place of performance are fixed by the parties in their contract.
- ❑ If a person's obligation is to deliver goods or render services, they must be tendered at a reasonable hour, for example, not in the middle of the night.
- ❑ If such a tender is refused, it will not release the tendering party from further obligation.
- ❑ E.g.: A owes B Rs. 1,000 payables on 1st June with interest. B offers to pay on 1st May the amount with interest up to 1st May. It is not a valid tender, as it is not made at the appointed time.

### **(3) Whole Obligation**

- ❑ The tender must be of whole and not of that part. Tender in part is no tender.
- ❑ Moreover, a tender by installment is not a valid tender unless the contract so provides.
- ❑ E.g.: A contracted with B to deliver 100 BPL Washing Machines on 1st January 2001. A offered only 60 machines to B on the appointed day. It is not a valid tender. Here if B refuses to accept, A is not discharged from his obligations.

### **(4) Ability and Willingness to Perform the Obligation**

- ❑ The party making a tender must be in a position and willing to perform his promise.
- ❑ A party cannot be said to be able and willing if he has neither possession of no control over the goods he had promised to deliver.

### **(5) Reasonable Opportunity to Inspect**

- ❑ When a tender of goods is made by the promisor, a reasonable opportunity must be given to the promisee to inspect the goods to enable him to see whether the quality of the goods is as per the contract.
- ❑ There is no valid tender where goods are locked in a box and the other party is not allowed to open it.
- ❑ The usual place of inspection is the place of delivery.
- ❑ If the buyer is not able to inspect a tender made at late hour, it will not be considered a valid tender.
- ❑ E.g.: A contracts to deliver to B at his warehouse on 1st January 2016, 100 bags of rice of a particular quality. A must bring the rice to B's warehouse on the appointed day under

such circumstances that B may have a reasonable opportunity to satisfy himself that the rice offered is of the quality contracted for and that there are 100 bags of rice.

#### **(6) Must be for Agreed Quantity and Quality**

- If the offer is to deliver a particular thing to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the same that the promisor is bound by his promise to deliver.
- E.g.: If a seller tenders too few goods, too many goods, or the right amount of goods mixed with other goods, the buyer may reject all of them because the performance is not exact. The buyer can also reject the tender where the goods are not packed in accordance with the contract.

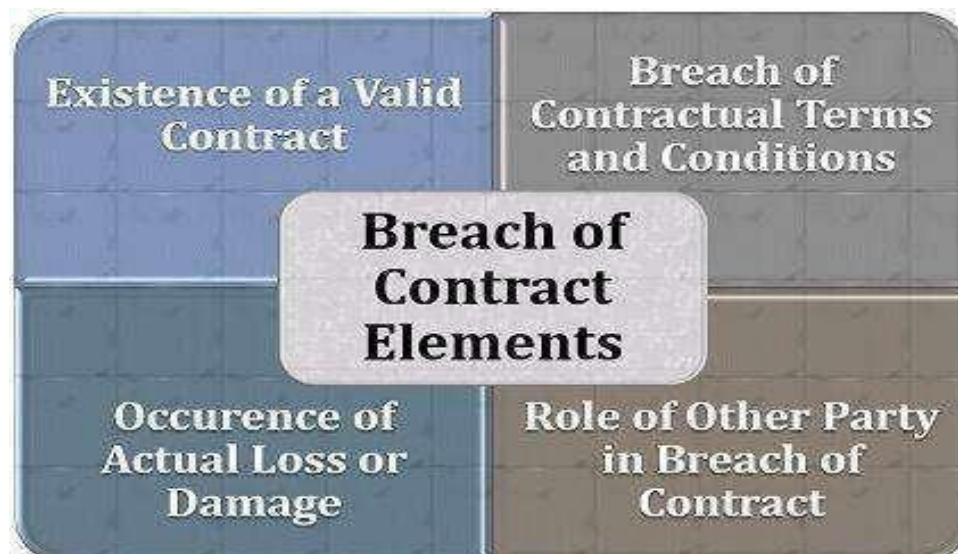
#### **WHO CAN DEMAND PERFORMANCE:**

- **Promisee** – Only a promisee can demand performance and not a stranger demand performance of the contract.
- **Legal Representatives** – Legal representative can demand exception performance. The contrary intention appears from the contract. The contract is of a personal nature.
- **Third Party** – Exception to “Stranger to a contract”.

#### **BREACH OF CONTRACT:**

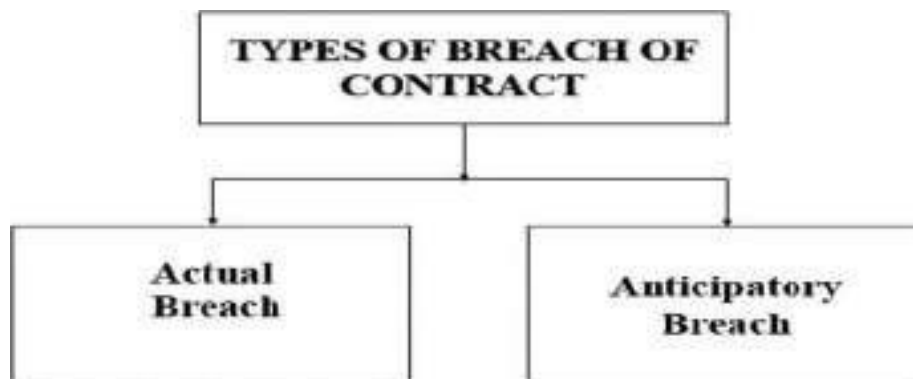
- A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement.

#### **BREACH OF CONTRACT ELEMENTS**



- **Existence of a Valid Contract:** The prior essential for a breach of contract is there must be a valid offer and acceptance made between the parties, along with its legal enforceability.
- **Breach of Contractual Terms and Conditions:** One or both of the parties must fail to adhere to the terms of the contract.
- **The occurrence of Actual Loss or Damage:** Also, one party should be adversely affected by the other party's non-compliance, resulting in a monetary loss or other damages.
- **Role of Other Party in Breach of Contract:** The aggrieved party should be capable of proving that the other party is responsible for such breach.

**TYPES OF BREACH OF CONTRACT:**



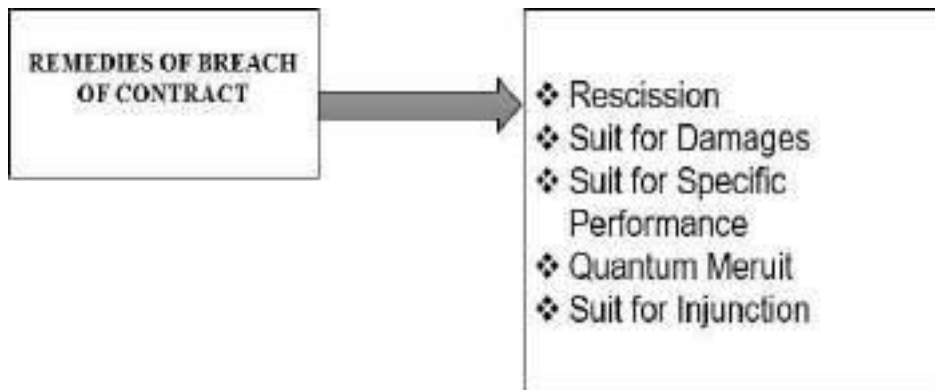
**(1) Actual Breach**

- Actual Breach happens when a party neglects, refuses or fails to perform its duties at a concerned time.
- E.g.: Mrs. A took the order of catering services for Mr. B's wedding party dated December 18,2019 but she refused to provide the services on the due date.

**(2) Anticipatory Breach**

- Anticipatory Breach occurs when a party refuses to complete his or her duty or fulfill his promise before the actual time arrives.
- E.g.: December 1,2019 Mrs. A refused to provide the catering services for the wedding of Mr. B anticipated on December 18,2019.

## REMEDIES OF BREACH OF CONTRACT



- **Rescission**

One of the most common solutions is to terminate the contract as if it never existed. Whenever, there is a breach of contract from one end, both the parties can step out of the promise.

- **Suit for Damages**

The aggrieved party can file a lawsuit for claiming monetary or other forms of compensation; for the damages or loss incurred by it while carrying out the regular business activities.

Two of the significant conditions where a claim for breach of contract is applicable are as follows:

- ✓ **Expectation Damages:** The direct loss occurred to the aggrieved party from non-accomplishment of the contractual obligations by the other party can be recovered by claiming compensation under the expectation damages.
- ✓ **Consequential Damages:** Any indirect loss or damage which the aggrieved party had to bear as a consequence of other party's incapability of fulfilling the contractual responsibilities can be claimed as consequential damage. For Instance; Damage from losing a client.

- **Suit for Specific Performance**

The court intervenes in favor of the aggrieved party, ordering the other party to adhere to the initial contract and meet its part of the contractual duties effectively.

- **Quantum Meruit**

When one of the parties have executed its obligations partly when the other party obstructs it from completing the contract, then the aggrieved party can claim compensation for the work already accomplished.

- **Suit for Injunction**

Through suit for injunction, the court restricts a party involved in the contract from performing a particular act which is considered to be unethical.

**QUASI CONTRACT:**

- Also known as pseudo contract.
- Quasi contract is an agreement that is retroactive in nature.
- This kind of agreement takes place between parties who has no prior contractual commitments or intension of getting into a contract.
- Legal Scholar John Salmond*** – “*Certain obligations which are not in truth contractual in the sense of resting on agreement, but which law treats as if they were*”.
- Example:**

A person orders some perishable items online by providing his address and paying for the same. At the time of the delivery of the goods, the delivery man delivers them to the wrong address. Instead of denying the delivery, the receiving party accepts the order and consumes the same.

The case went to the court, and the court then ordered to issue a quasi-contract according to which the recipient has to pay back the cost of the item to the party who paid for the item initially. So, in this case the benefits of the goods have been enjoyed by the receiving party, so such a receiving party is bound to compensate the former party.

**FEATURES OF QUASI-CONTRACT:**

- No direct agreement between parties.
- Based on natural justice, morality and good conscience.

### **ELEMENTS OF QUASI-CONTRACT:**

- Not an actual contract, but still enforced by law.
- Available for specific person and not against the whole world.
- Individual can receive monetary compensation for damage.
- Assumed to be legally true.

### **DIFFERENCE BETWEEN CONTRACT AND QUASI-CONTRACT:**

<b>CONTRACT</b>	<b>QUASI-CONTRACT</b>
➤ Two or more parties will come together for common intention and generate an agreement.	➤ Not a real contract.
➤ It is always an agreement between the parties.	➤ No agreement between parties.
➤ Parties will give their consent.	➤ Parties' consent is not required.
➤ It has free consent.	➤ It is imposed by law.
➤ It includes right in rem and right in personal.	➤ It includes only right in personal.
➤ Legal contract exists	➤ No legal contract exists

### **DIFFERENCE BETWEEN VOID CONTRACT AND VOIDABLE CONTRACT:**

<b>VOID CONTRACT</b>	<b>VOIDABLE CONTRACT</b>
➤ Agreement which is no longer enforceable by law.	➤ Agreement where parties have a right to cancel it on discovering legal fault.
➤ Section 2(j) of Indian Contract Act,1872.	➤ Section 2(i) of Indian Contract Act,1872.
➤ Party cannot sue for loss	➤ Party can sue for loss.

### **DIFFERENCE BETWEEN VALID CONTRACT AND VOID CONTRACT**

<b>VALID CONTRACT</b>	<b>VOID CONTRACT</b>
➤ Enforceable by law	➤ Not enforceable by law
➤ Section 2(A) of Indian Contract Act,1872	➤ Section 2(j) of Indian Contract Act,1872
➤ Has legal effect	➤ Has no legal effect

## **CONTRACT OF AGENCY:**

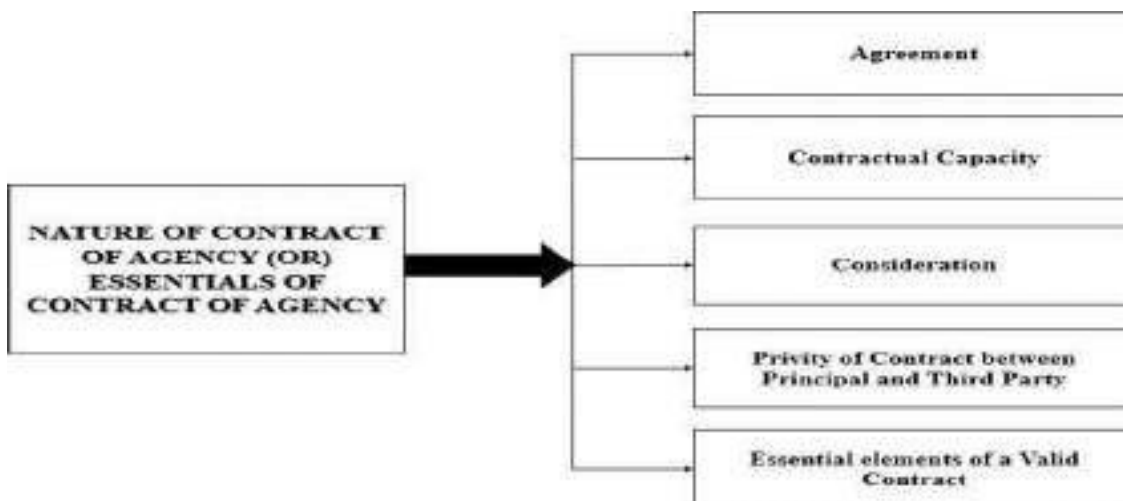
- When a person employs another person to do any act for himself or to represent him in dealing with third person is called “contract of agency”.
- The person who is so represented is called ‘principal’.
- The representative so employed is called ‘agent’.
- E.g.: A appoints B a broker to sell his fiat car on his behalf. A is the principal and B is the Agent. The relationship between A and B is called Agency.
- **Agent:** *Section 182 of Indian Contract Act1872,* ” Any agent is a person employed to do any act for another or to represent another in dealing with third party”.
- **Principal:** *Section 182 of Indian Contract Act1872,* ” The person for whom such act is done, or who is so represented is called the principal”.
- Chapter X of the Indian Contract Act,1872 deals with law relating to agency.
- **Who can appoint an Agent?**

*Section 183 of Indian Contract Act1872,* ” Any person who has attained the age of majority and has a sound mind can appoint an agent”.

- **Who may be an Agent?**

*Section 184 of Indian Contract Act1872,* ” The person who has attained the age of majority and has a sound mind can become an agent”.

## **NATURE OF CONTRACT OF AGENCY (OR) ESSENTIALS OF CONTRACT OF AGENCY:**



**i) Agreement:**

- There must be an agreement between Principal and Agent which leads to creation of relationship of agency.

**ii) Contractual Capacity:**

- The principal must be competent to enter into contract but it is not necessary to have such capacity for the agent.

**iii) Consideration:**

- No consideration is required to create and agency.
- Agent and Principal often superimpose contract on their agency relationship.

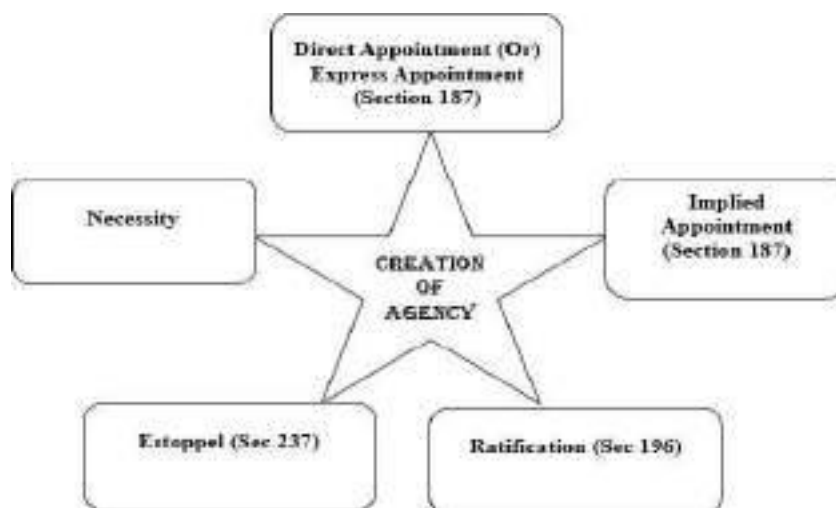
**iv) Privity of Contract between Principal and Third Party:**

- Agent establishes privity of contract between Principal and Third Party

**v) Essential elements of a Valid Contract:**

- Contract of agency must fulfill all conditions of valid contract like lawful object, free consent etc.

**CREATION OF AGENCY**



**1) Direct Appointment (Or) Express Appointment (Section 187):**

- When a person in writing or speech appoints another person as his agent, direct appointment.
- E.g.: Power of Attorney – written Contract.

**2) Implied Appointment (Section 187):**

- An agency which has to be understood from the conduct and behavior of the parties.

- Agent is not directly appointed.
- E.g.: A owns a shop in Chennai, living himself in Coimbatore and visiting the shop occasionally. The shop is managed by B and he is in the habit of ordering goods from C in the name of A for the purpose of the shop and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

### 3) Necessity:

- One person can act on behalf of another to save the person from any loss or damage without expressly being appointed as agent.
- E.g.: Raja has a large farm on which Shyam is the caretaker. When Raja is in Canada, there is huge fire on the farm, Shyam becomes an agent of necessity for Raja so as to save the property from being destroyed by fire. Raja (the principal) will be liable for any expenses, Shyam (his agent of necessity) incurred to put out the fire and save the farm from destruction during Raja's absence from the country.

### 4) Estoppel (Sec 237)

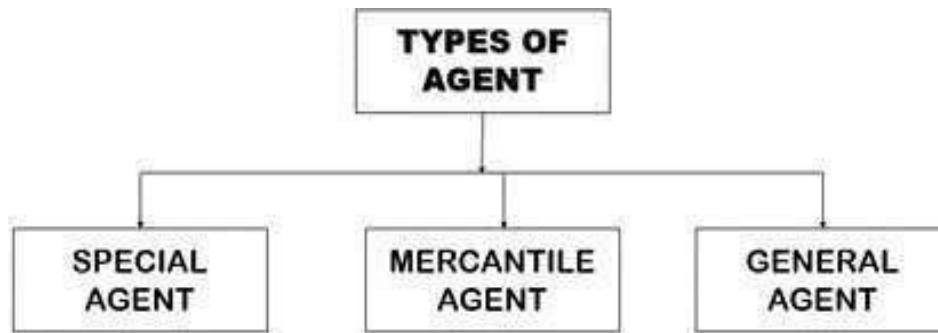
- In a situation where one person behaves in such a manner in front of third person, as to make someone believe he is an authorized agent on behalf of someone.
- E.g.: A informs B in the presence and within the audible distance of R that R is his agent. Later B enters into contract with R thinking that R is the agent of A. In a situation like this neither 'R' nor 'A' can refuse the obligations under the contract. R had become the agent of 'A' by estoppel.

### 5) Ratification (Sec 196)

- When an act of a person, who acted as another person's agent (on his behalf) without his knowledge is later ratified by that person.
- E.g.: X who is Y's agent (Y – Principal & X - Agent) has on 1<sup>st</sup> July 2020 purchases goods from Z on credit without Y's permission. After the purchase, on 15<sup>th</sup> July 2020 Y tells X that he will accept responsibility to pay for the purchase. Although at the time of purchase the agent has no authority to buy on credit. Y's subsequent statement on 15<sup>th</sup> July 2020

amounts to a ratification of the agent (X's) purchase of goods on 1<sup>st</sup> July 2020.

## TYPES OF AGENTS:



### 1. General Agent:

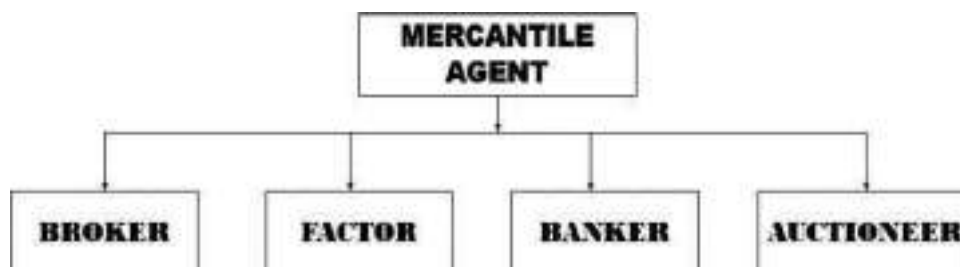
- The principal appoints a general agent to do anything within his authority in all transaction or in all transactions relating to a specific trade, business or matter.

### 2. Special Agent:

- This type of agent is the one who is appointed or employed to do or perform only a specific act, task or function.
- Outside the special act, he has no authority or power.

### 3. Mercantile Agent:

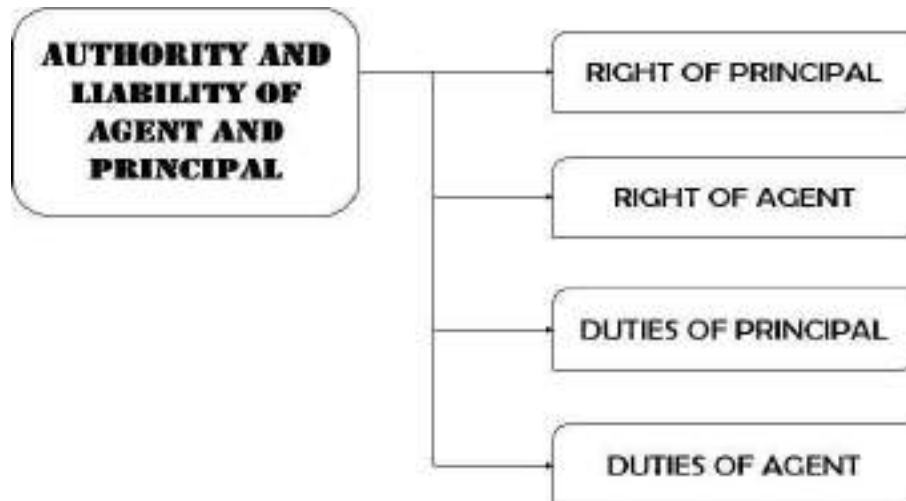
- *Section 2(9) – Sale of Goods Act, 1930* “A mercantile agent having in the customary course of business as such agent authority either to sell goods or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods”.



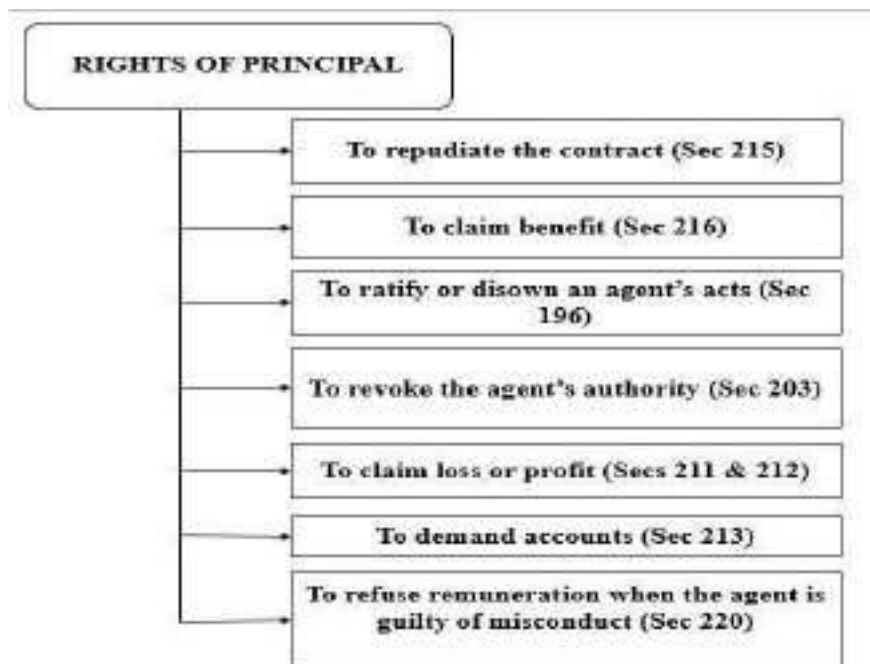
- **Broker:** A broker is any kind of middleman who brings two person or sides together and arranges for an agreement between them.
- **Factor:** A factor is an agent whose primary duty is to sell principal goods entrusted to him.
- **Auctioner:** An auctioner is a person who conducts an auction for the sale of goods of another person.

- **Banker:** Banker acts as an agent of the customer when he collects cheques or bills or buys or sells securities on behalf of his customer.

**AUTHORITY AND LIABILITY OF AGENT AND PRINCIPAL:**



➤ **RIGHTS OF PRINCIPAL**



- **To repudiate the contract (Sec 215)**

If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent or that the

dealings of the agent have been disadvantageous to him.

- **To claim benefit (Sec 216)**

If an agent, without the knowledge of the principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted from the transaction.

- **To ratify or disown an agent's acts (Sec 196)**

Where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or disown such acts.

- **To revoke the agent's authority (Sec 203)**

The principal may revoke the authority given to his agent by giving reasonable notice of revocation at any time before the authority has been exercised.

- **To claim loss or profit (Secs 211 & 212)**

The principal is entitled to compensation for any loss sustained by him or to any profits accrued:

- 1) Where the agent acts contrary to the directions given by the principal; or
- 2) Where loss is caused due to agent's neglect, want of skill, or misconduct.

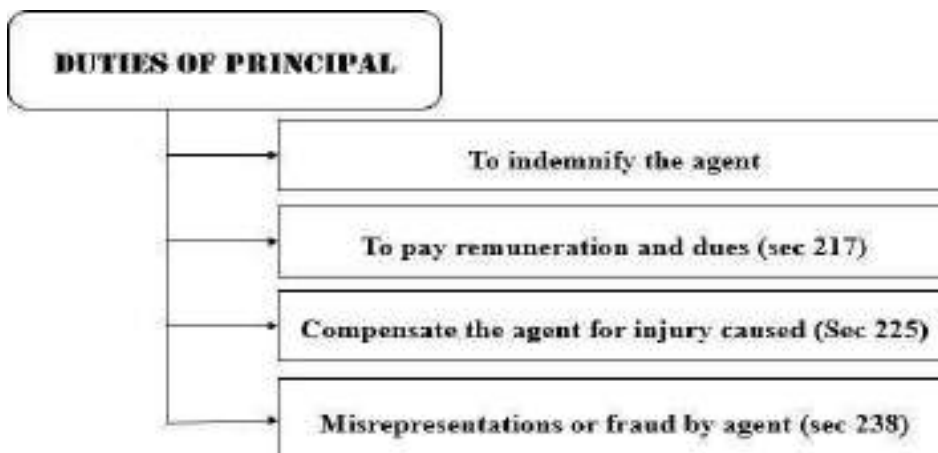
- **To demand accounts (Sec 213)**

The principal is entitled to demand proper accounts from the agent.

- **To refuse remuneration when the agent is guilty of misconduct (Sec 220):**

The principal has a right to refuse remuneration to the agent who is guilty of misconduct in the business of the agency.

➤ **DUTIES OF PRINCIPAL**



- **To indemnify the agent**

- Against consequences of the lawful act (sec 222):** the employer is bound to indemnify his agent against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him. It must be noted that the principal is liable only for such damages as are direct and immediate and naturally follow the execution of the agency.

- Against consequences of the acts done in good faith (Sec 223):** Where one person employs another to do an act and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act though it causes an injury to the third person

- **To pay remuneration and dues (sec 217)**

It is the principal's duty to pay his agent such remuneration as may be payable to him as an agent, and also all monies due to the agent in respect of advances made or expenses properly incurred by the agent in conducting the principal's business.

- **Compensate the agent for injury caused (Sec 225)**

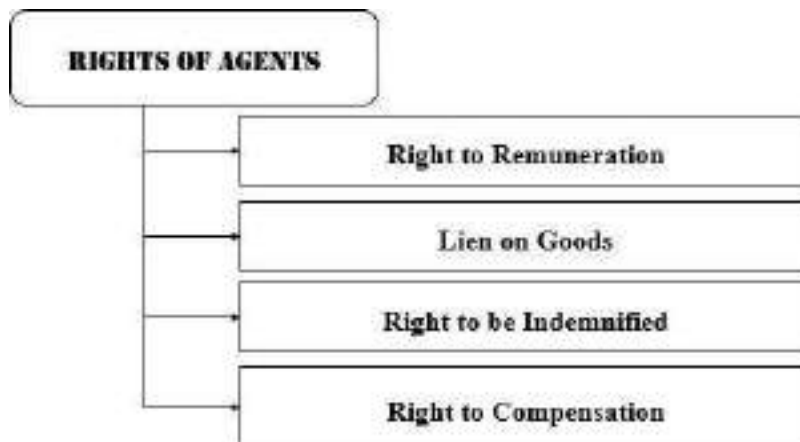
The principal must make compensation to his agent in respect of injury caused to the agent by the principal's neglect or want of skill.

- **Misrepresentations or fraud by agent (sec 238)**

Misrepresentations made, or frauds committed, by an agent acting in the course of business for his principal, has the same effect on an agreement made by such agent as if such misrepresentations or fraud had been made or committed by the principal. In order that a principal shall be made liable for the misrepresentations and frauds committed by the agent, such misrepresentations or frauds must be committed by the agent —

- 1) In the course of the business of his principal; and
- 2) The act must be within the scope of the agent's authority.

## ➤ RIGHTS OF AGENTS



- **Right to Remuneration**

As per section 219, an agent has a right to receive the agreed remuneration or in absence of agreement, a reasonable remuneration for rendering the services to the principal that are not voluntary or gratuitous. He becomes eligible to receive the remuneration as soon as he completes the work that he undertook.

- **Lien on Goods**

Some agents who have the possession of goods, securities or properties of their principal also have a lien on these goods, securities or properties regarding their remuneration and also for any expenses or liabilities that they incur. When he is an unpaid seller, he has a right to stop the goods in transit.

- **Right to be Indemnified**

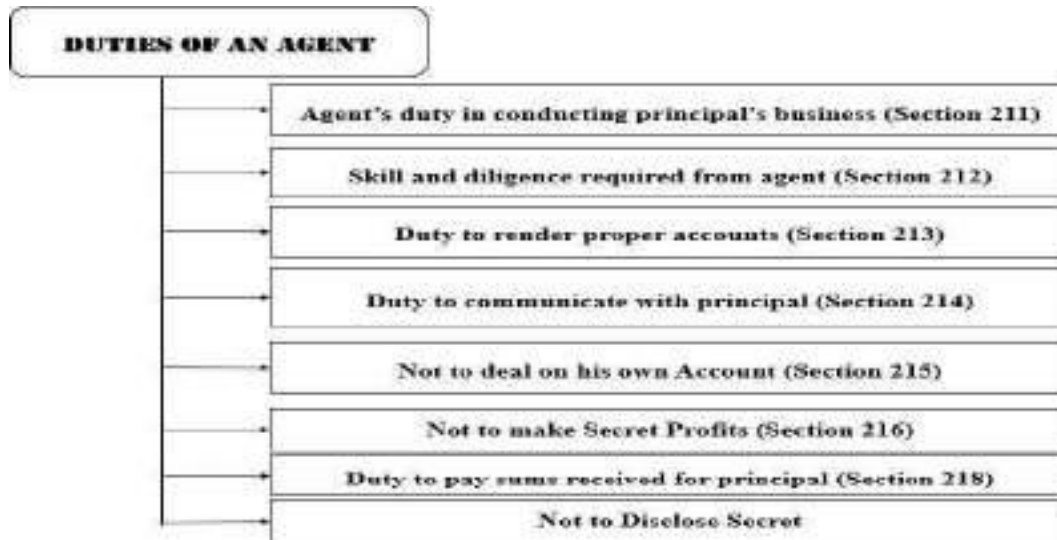
An agent represents his principal to the third parties. As per sections 222 and 223, an agent has a right to be indemnified by his principal for all charges, expenses, and liabilities that he incurs during the course of the agency.

- **Right to Compensation**

According to section 225 of the said Act, an agent is entitled to claim compensation for the injuries suffered as a consequence or want of skill of the principal. Section 225 reads as follows – “The principal must make compensation to his agent in respect of injury caused to such agent

by the principal's neglect or want of skill.

## ➤ DUTIES OF AN AGENT



The duties of agents include:

- **Agent's duty in conducting principal's business (Section 211)**

As per the Indian Contract Act, the first duty of an agent is:

An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

- **Skill and diligence required from agent (Section 212)**

An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

- **Duty to render proper accounts (Section 213)**

According to Section 213 of Indian Contract Act 1872, An agent is bound to render proper accounts to his principal on demand.

- **Duty to communicate with principal (Section 214)**

It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

- **Not to deal on his own Account (Section 215)**

Section 215 of the Indian Contract Act 1872 deals with right of principal when agent deals, on his own account, in business of agency without principal's consent. Section 215 runs as follows – “If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.”

- **Not to make Secret Profits (Section 216)**

Section 216 of Indian Contract Act, deals with Principal's right to benefit gained by agent dealing on his own account in business of agency. An Agent, without the knowledge of his principal, should not deal in the business of agency on his own to make secret profit.

Section 216 of the Indian Contract Act, 1872 reads as – “If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.”

- **Duty to pay sums received for principal (Section 218)**

According to Section 218 of the said Act, an agent is bound to pay to his principal all sums received on his account.

- **Not to Disclose Secret:**

It is duty of an agent to maintain secrecy of the business of agency and should not reveal the confidential matters.

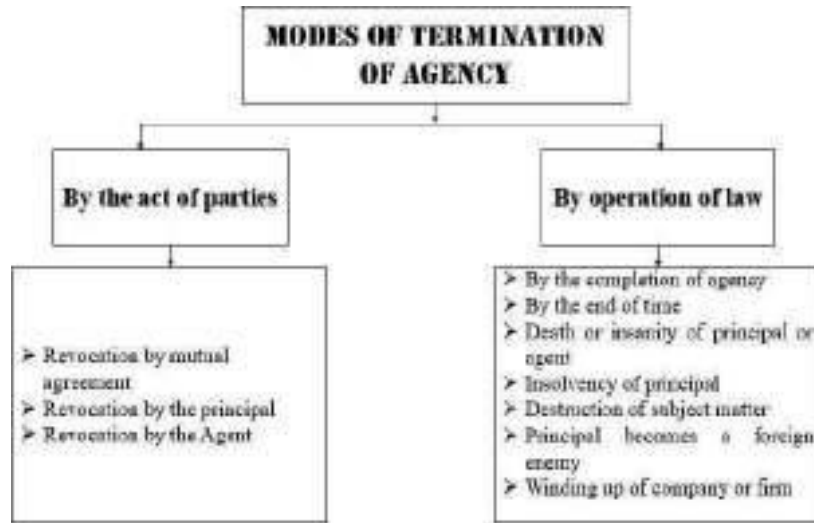
### **TERMINATION OF AGENCY**

- When the relationship between principal and agent comes to an end, it's known as

termination of agency.

- Section: 201 – 210 deals with termination of agency.

## MODES OF TERMINATION OF AGENCY:



### 1. By the act of parties:

There are following manner in which by the act of parties the agency can be terminated:

- **Revocation by mutual agreement:** The agency of contract can be terminated at any time by mutual agreement between the principal and the agent.
- **Revocation by the principal:** Agency can be terminated by the principal by revoking the agent's authority. The principal can revoke his agent's authority when it has not been exercised by the agent reasonable, notice must be given for such revocation. For Example- A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.
- **Revocation by the Agent:** The Agent also can revoke the agency by serving notice to the principal. As per section 206 of the Indian Contract Act 1872, the agent must give proper notice of renunciation / revocation of his principal. Otherwise, he shall be liable to make good for the loss to the principal for such notice.

### 2. By operation of law:

- **By the completion of agency**
  - ❑ After completion of agency work, an agency can be terminated for which agency is created.
  - ❑ Example: Mahesh employed Sachin as his agent to sell his house in China when the

house was sold by Sachin, it automatically terminates the contract of agency between Mahesh and Sachin.

➤ **By the end of time**

- ❑ The agency can also be terminated by the end of time. If the agency is created for a specific period of time, then it expires after the time period is over.
- ❑ Example: Anandam employs Anjana as a secretary for the period of 3 years at the end of the 3 years. The contract of agency will come to an end after the specified period.

➤ **Death or insanity of principal or agent**

- ❑ Section 209 of the Indian Contract Act deals with it. If there is a death of the principal or agent, the business or agency of the firm may be terminated in this situation.

➤ **Insolvency of principal**

- ❑ To create an agency, it is necessary to be competent but, if the principal becomes insolvent or bankrupt, the agency may be terminated.

➤ **Destruction of subject matter**

- ❑ If this subject of agency is destroyed then the agency is closed.
- ❑ For example – any agency is made for sale of airplanes, if the airplane catches fire before the sale, then, this agency can be terminated because airplane is the subject of this contract.

➤ **Principal becomes a foreign enemy**

- ❑ If the principal becomes a foreign enemy, the contract of agency terminates.
- ❑ Example: Mr. T is employed in America and Mr. Sachin who works as an agent for Mr. T in China for business, due to war climate between the countries of principal and agent, the contract of agency gets terminate.

➤ **Winding up of company or firm**

- ❑ A firm or company can be considered as a chief in an agency contract. If the company or firm is dissolved, then the agency is terminated.

## **SALE OF GOODS ACT,1930**

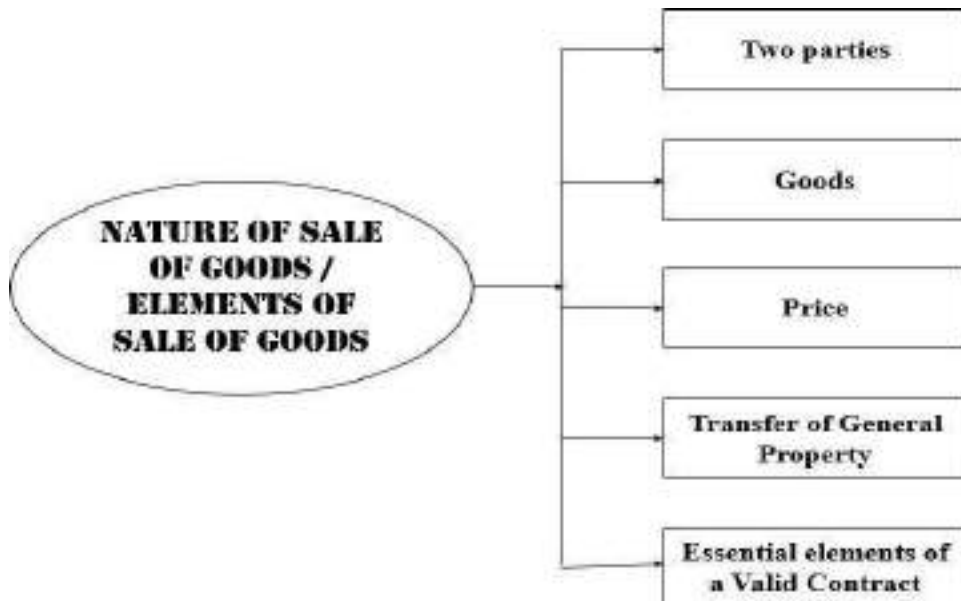
### **INTRODUCTION:**

- Mercantile law.
- Came into existence on July 1,1930.
- Applicable all over India except Jammu and Kashmir.
- Act as proof of the transfer of ownership of any object from one person to another in exchange for a price.
- Includes agreement on the part of buyer as well as seller.

### **CONTRACT OF SALE OF GOODS:**

- ❖ *Section 4(1) of Sale of Goods Act,1930 – “A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price”.*

### **NATURE OF SALE OF GOODS / ELEMENTS OF SALE OF GOODS:**



#### **1. Two parties:**

- ❖ There are two distinctive parties i.e.) Buyer and Seller.
- ❖ *Section 2(1) of Sale of Goods Act,1930 – “Buyer means a person who buys or agrees to buy goods”.*
- ❖ *Section 2(13) of Sale of Goods Act,1930 – “Seller means a person who sells or agrees to*

*sell goods”.*

## 2. Goods

- ❖ *Section 2(7) of Sale of Goods Act,1930 – Goods – “All 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 served before sale or under the contract of sale”.*

## 3. Price

- ❖ *Section 2(10) of Sale of Goods Act,1930 – Price – “The money consideration for a sale of goods”.*

## 4. Transfer of General Property:

- ❖ *Section 2(11) – Sale of Goods Act,1930 – Property – “The general property in goods and not merely a special property”.*
- ❖ General property in Goods – ownership of goods.
- ❖ Special property in Goods – possession of goods.

## 5. Essential elements of a Valid Contract:

- ❖ Sale must conform to all essential elements of a valid contract.

### CONTRACT OF SALE:



### ❖ Sale:

- *Section 4(3) – Indian Contract Act,1872 – “Where under a contract of sale, the property(ownership) in the goods is transferred from the seller to the buyer; the contract is called a sale”.*
- E.g.: X sells his car to Y for Rs.1,00, 000.If all essential elements of a valid contract are present, it is a sale and therefore the ownership of the car stands transferred from X to Y.

This is so even where the payment of the price or the delivery of the car or both has been postponed.

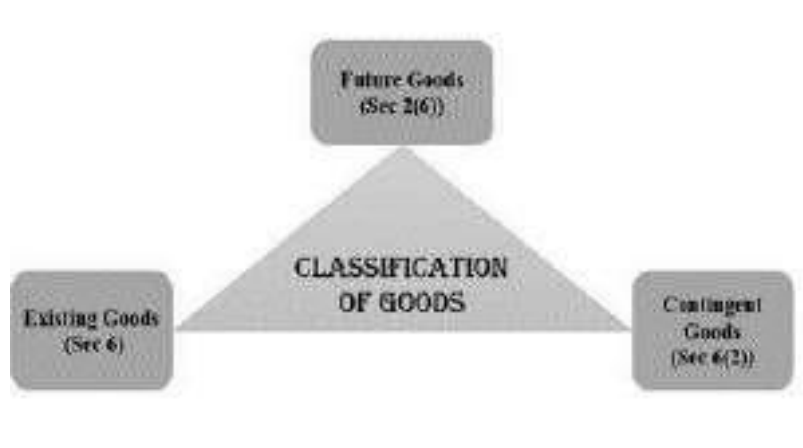
❖ **Agreement To Sale / Conditional Sale:**

- **Section 4(3) – Indian Contract Act,1872** – “Where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell”.
- **E.g.:** A agrees to sell certain goods to B. The goods are on their way from London to Mumbai in a ship. The ownership in the goods will pass to the buyer when the goods come and the agreement is subject to the condition that the ship arrives at port with the goods.

**GOODS:**

- ❖ Goods are items that satisfy human wants and provide utility.
- ❖ Goods are also known as inventory.
- ❖ Inventory is a key asset for any company because it represents the finished products or services that a company sells to its customers.
- ❖ **Section 2(7) of Sale of Goods Act,1930 – Goods** – “All 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 served before sale or under the contract of sale”.

**CLASSIFICATION OF GOODS:**



**1. Future Goods (Sec 2(6)):**

- Goods to be manufactured or produced or acquired by the seller after making of the contract of sale:

- E.g.: X agrees to sell to Y all the crops to be grown at his farm in Haryana during the year 2000 season for a sum of Rs.1,00, 000.This is an agreement to sell future goods and not a sale.

## 2. Existing Goods (Sec 6):

- Goods which are owned and possessed by the seller at the time of sale are called existing goods.
- Classified into:
- **Specific Goods (Sec 2(14))**
  - ❖ Goods which are identifies and agreed upon at the time when the contract of sale is made.
  - ❖ E.g.: Specified TV, VCR, Car, Ring etc.
- **Ascertained Goods**
  - ❖ Goods are said to be ascertained when out of a mass of unascertained goods, the quantity extracted for is identified and set aside for a given contract.
  - ❖ E.g.: You have 500 Apples. Out of these 500 apples, you decided to sell 200 Apples. To sell these 200 Apples, you will need to separate them from the 500(Larger set). Thus, you specify 200 Apples from a larger group of unspecified Apples. These 200 Apples are now the ascertained goods.
- **Unascertained Goods**
  - ❖ Goods which are not identified and agreed upon the time when the contract of sale is made.
  - ❖ E.g.: You decided to sell 200 Apples out of 500 but you don't specify which ones you want to sell. A seller will have the liberty to choose any 200 Apples from the lot. These are thus the ascertained goods.

## 3. Contingent Goods (Sec 6(2))

- Goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

- E.g.: X agrees to sell Y all the crops to be grown at Z's farm in Haryana during the year 2000 season for a sum of Rs.1,00,000 if Z sells the same to X. This is an agreement to sell contingent goods because the availability of crops depends on its sale by Z.

### **DOCUMENT OF TITLE OF GOODS:**

- ❖ *Section 2(4) – Sale of Goods Act 1930 – Document of title to Goods – “A document used in the ordinary course of business as a proof of possession or control of goods authorizing or purporting to authorize either by endorsement or delivery, the possessor of the document to transfer or to receive the goods thereby represented”.*



#### **1. Bill of Lading:**

- **Meaning:** "A document issued by the shipping company acknowledging the receipt of goods to be transported to a specified port. It also contains the conditions for such transportation of goods and full description of the goods, i.e., their markings and contents as declared by the consignor."

- ✓ Names of Consignor and consignee
- ✓ Names of the ports of departure and destination
- ✓ Name of Vessel
- ✓ Date of departure and arrival
- ✓ List of goods being transferred
- ✓ Number of packages and kind of packaging
- ✓ Marks and numbers on packages.
- ✓ Weight of the goods
- ✓ Freight and amount
- ✓ Description of goods

- **Contents/Items in Bill of Lading:**

## **2. Warehouse keeper's certificate (wharfinger's Certificate or warehouse certificate):**

- "Warehouse receipt means an acknowledgement in writing or in electronic form issued by the warehouse keeper or by his duly authorized representative."
- Warehouse means a store where goods are accepted temporarily for safe keeping.
- On the receipt of the goods a warehouse keeper gives a certificate known as warehouse keeper's certificate.
- Under the Bombay Warehouse Act 1959, the warehouse receipt shall be transferable by endorsement.

## **3. Dock-warrant:**

➤ "A Dock-Warrant is the document issued by a dock company in exchange of goods received."

### **Key points of Dock-warrant;**

- ❖ The document possesses title to goods and the person named in can obtain the possession of the goods stored at the dock.
- ❖ It is not a receipt, but it is a warranty only.
- ❖ It can be transferred by endorsement and delivery.

### **Precautions in the case of Dock-Warrant:**

- ❖ Before advancing against the dock-warrant, the banker must be satisfied with the integrity and the financial condition of the customer.
- ❖ It is to be verified that the dock company is having the authority of lien on goods or not.
- ❖ To prevent the unauthorized dealing of the goods, the banker should get himself registered as owner of the goods.

## **4. Railway Receipt:**

- ❖ It is a document issued by the Railway authority acknowledging the receipt of the goods for the purpose of transportation to a space specified therein.
- ❖ It cannot be transferred by endorsement and delivery.

### **Precautions to be taken by the banker in case of Railway Receipt:**

- ✓ Documentary bill of well-established parties only should be accepted/discounted.
- ✓ To examine the authenticity of the railway receipt, banker should examine it carefully.

- ✓ The railway receipt should be endorsed in favor of bank. (Bank should be made consignee by endorsement)
- ✓ There should not be any alteration in the receipt other than the competent authority.
- ✓ The goods must be covered by the insurance against fire, theft and damage in transit.
- ✓ The banker should accept only 'Freight Paid' railway receipt, as banker would not be paying any freight due.
- ✓ To ensure the validity and the availability of the goods the date of the receipt should be checked carefully.
- ✓ Advance should not be granted in case if the receipt contains the information regarding the damaged goods or defective packing.
- ✓ Delivery Order

### **DELIVERY ORDER:**

- ✓ Delivery order is an order issued by the owner of the goods to the warehouse keeper to deliver the goods to a particular person.
- ✓ *According to the Uniform Commercial Code, "A delivery order refers to an order given by an owner of a goods to a person in possession of the warehouse keeper directing that person to deliver the goods to a person named in the order."*
- ✓ It is the document issued by the transporter or the carrier of the goods directly if they have their own office at the destination.
- ✓ The holder of the delivery order must either take delivery of the goods or obtain a receipt or warrant from warehouse keeper or get his title of goods registered in the books of the warehouse keeper.

### **RISK OF LOSS**

- Risk of loss is the allocation of responsibility for covering the Risk of damage to or loss of goods after a sale has been completed, but before delivery.

## TYPES OF RISK OF LOSS



### **Physical Risk of Loss:**

- ✓ This is the type of risk that exists when the physical condition of the goods is in question.
- ✓ For example, if you own a piece of jewelry that is damaged, the physical risk of loss would be the financial loss you incur from the decrease in value of the jewelry.

### **Market Risk of Loss:**

- ✓ This type of risk exists when the market value of the goods fluctuates.
- ✓ For example, if you own a stock that drops in value, the market risk of loss would be the financial loss you incur from the decrease in value of the stock.

### **Possessory Risk of Loss:**

- ✓ This type of risk exists when there is a possibility that you may not have possession of the goods.
- ✓ For example, if you lend your car to someone and they get into an accident, the possessory risk of loss would be the financial loss you incur from not having use of your car.

## GUARANTEES AND WARRANTIES:

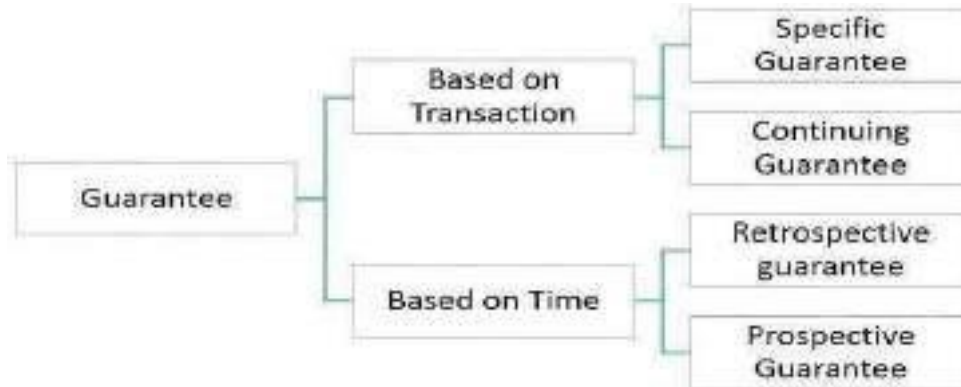
### GUARANTEES:

- ✓ A written promise by a company that it will repair or replace a product if it breaks in a certain period of time.
- ✓ *Black Law Dictionary* defines the term *guarantee* as the assurance that a legal contract will be duly enforced.

## PARTIES INVOLVED IN GUARANTEES:

- ✓ Buyer (Beneficiary)
- ✓ Seller (Principal)
- ✓ Guarantor.

## TYPES OF GUARANTEES



### ✓ **Based on Transaction**

- **Specific Guarantee:** The form of guarantee that sticks to a single debt or a particular transaction is called a specific guarantee. In such a guarantee, as and when the debt is repaid or the promise is fulfilled, the liability is discharged.
- **Continuing Guarantee:** A type of guarantee that stretches to a number of transactions is continuing guarantee. In such a guarantee, the liability of the surety continues till it is revoked.

### ✓ **Based on Time**

- **Retrospective Guarantee:** A guarantee given by the surety for an existing debt or promise, is a retrospective guarantee.
- **Prospective Guarantee:** Any guarantee given by the surety for the ensuing debt or promise is a prospective guarantee.

## WARRANTY:

- ✓ A guarantee to repair or replace a faulty product within a window of time after purchase.
- ✓ **Section 12(3) – Sale of Goods Act,1930**, “A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated”.

- ✓ For example: Ram buys a new Maruti Car from the show room and the car is guaranteed against any manufacturing defect under normal usage for a period of one year from the date of original purchase and the event of any manufacturing defect there is a warranty for replacement of defective part if it cannot be properly repaired. If after six months Ram finds that the horn of the car is not working, he cannot terminate the contract. The manufacturer can either get it repaired or replace it with a new horn. Ram gets a right for claim for damages, if any, suffered by him but not the right of repudiation.

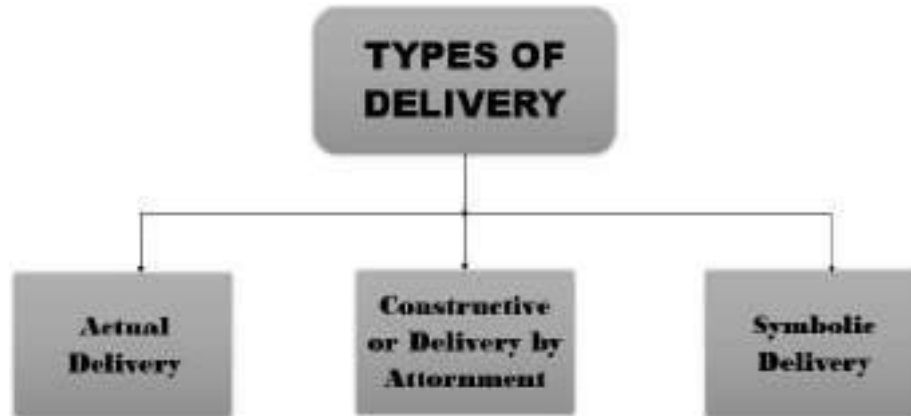
**DIFFERENCE BETWEEN GUARANTEE AND WARRANTY:**

GUARANTEE	WARRANTY
✓ Guarantee serves as a promise made by the manufacturer to the buyer.	✓ Warranty is a written assurance that the facts specified in the product is true and genuine but if they are not, it will be repaired or replaced.
✓ Applicable to Product, Service and Person	✓ Applicable to Product only
✓ It can either be oral or written	✓ It is generally written and so it is easy to prove.
✓ E.g.: Snap fitness “If you don’t experience a positive difference within 30 days of joining our gym, you’ll receive full refund”.	✓ E.g.: Mobile Phone.

**PERFORMANCE OF SALES CONTRACT:**

- ✓ Performance of contract of sale means delivery of goods by seller and acceptance of delivery of goods and payment for the same by buyer.
- ✓ **Section 31 – Sale of Goods Act,1930 - Performance of contract of sale** – “It is the duty of the seller to deliver the goods and the buyer to accept and pay for them, in accordance with the terms of the contract of sale”.
- ✓ **Delivery:**
- **Section 2(2) - Sale of Goods Act,1930 – Delivery** – “Voluntary transfer of possession of goods from one person to another”.

## TYPES OF DELIVERY



### ➤ **Actual Delivery**

- ✓ The goods are handed over by the seller to the buyer or to his authorized agent; it has the effect of putting the goods in the possession of the buyer: Sec. 33.
- ✓ Example: Amar sold 10 tons of oil to Akbar and delivered the same to him. In this case, there is the actual delivery of oil from Amar to Akbar.

### ➤ **Constructive or Delivery by Attornment**

- ✓ A third party (bailee) who is in possession of the goods of the seller at the time of sale acknowledges to the buyer that he holds the goods on his behalf: Sec. 36(3).
- ✓ Example: A sells to B 10 bags of wheat lying in C's godown. A gives an order to C, asking him to transfer the goods to B. C assents to such order and transfer the goods in his books to B. this is delivery by attornment.

### ➤ **Symbolic Delivery**

- ✓ The goods are too bulky and unwieldy such as large machinery, where a symbolic passing of documents or keys and the like demonstrate the transfer of goods.

## UNPAID SELLER

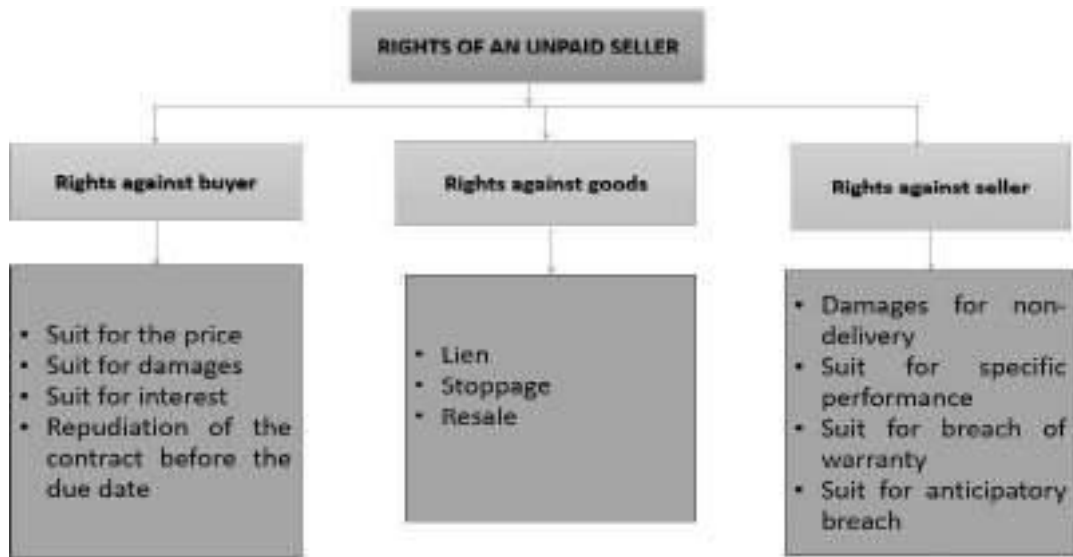
- ✓ *Section 45(1) of the Sale of Goods Act, 1930 a seller of goods is called an "Unpaid Seller" when;*

- 1. The price has not been paid or tendered.*
- 2. A bill of exchange or other negotiable instruments (like a Cheque) that was received as conditional payment has been dishonored.*

✓ Example:

X sold some goods to Y for Rs.1 Lakh and received a Cheque. On presentment, the cheque was dishonored by the bank. X is an unpaid seller.

### **RIGHTS OF AN UNPAID SELLER**



#### ❖ **Rights against buyer**

##### **1- Suit for the price**

- ✓ When any goods are passed on to the buyer and the buyer has wrongfully neglected or refused to pay as per the terms and conditions of the contract, the seller may sue him as per the Section 55(1) because once the property has been passed the buyer is bound to pay the price.
- ✓ But in the case due date of payment has been passed and goods had not been delivered yet, the seller can sue the buyer for the wrongful neglect or refusal on his part according to clause 2 of Section 55.
- ✓ In case the price is due in foreign currency the damages must be calculated at the rate of exchange prevailing at the time when the price was due not on the judgement date.

##### **2- Suit for damages**

- ✓ In case there is a wrongful refusal on the part of buyer for acceptance of goods and payment of money, the seller can sue him for damages of non-acceptance as per

Section 56. For calculating the quantum of damages Section 73 and 74 of the Indian Contract Act applies.

- ✓ In case the goods have a ready market, the seller has to resell the goods and buyer have to pay the losses if incurred. If the seller does not resell the goods the difference between contract and market price at the day of breach is taken as a measure for damages. If the difference between them is nil seller gets nominal value.
- ✓ There is a duty of mitigation on the part of the seller, which means that injured has to make reasonable efforts to minimize the loss from that breach. For instance, if the seller can resale the goods, the difference in price in contract and resale price is given to the seller but if the seller deliberately refuses to resale the goods and its market value reduces then the buyer will not be liable for the exaggerated loss.

### **3- Suit for interest**

- ✓ As stated under Section 61, where there is a specific agreement between buyer and seller with regards to interest on the price of goods from the date on which payment becomes due, the seller may recover interest from a buyer. But if there were no such agreement the seller may charge interest from the day, he notifies the buyer.
- ✓ If there is no contract to the contrary, the court of law may award interest to the seller at such rate as it thinks fit on the amount of the price from the date on which amount is payable.

### **4- Repudiation of the contract before the due date**

- ✓ According to Section 60, the rule of anticipatory breach contract applies, wherein, if buyer repudiates the contract before the date of delivery the seller can consider the contract as rescinded and can sue for damages of the breach.
- ✓ According to this Section, if one party repudiates before due date other has two courses of action. Either he may immediately accept the breach and bring the action of damages the contract is rescinded and damages will be assessed according to the prices then prevailing or he can wait for the date of delivery. In the second case, the contract is open at risk and will be a benefit to both parties. May be the party changes is mind and agree to perform and damages will be assessed according to prices on the day of delivery.

## ❖ Rights against goods

### a- Lien

Lien is a right which seller of goods can exercise when a buyer has not paid the price of goods, under this right seller can retain the possession of goods as an agent or bailee for the buyer. The seller can retain his possession as per Section 47 under the following circumstances:

1. In case the buyer is insolvent.
2. When the term of goods sold on credit is expired.
3. Goods sold without any stipulation as to credit.

When the goods are sold on credit the right to lien is suspended during the term of credit and lien exist only for the price of goods, not any additional charges.

According to Section 48 if the seller has delivered a part of unpaid goods, he can exercise his right of lien on rest. In *Grice V Richardson*, the sellers had delivered a part of the three parcels of tea comprised in the sales, and they had not been paid for the part which remained with them. They were allowed to keep it till the payment of the price. Where, however, a part of goods delivered which show an agreement to waive the lien, the seller cannot the remainder.

Termination of lien takes place when the seller losses the possession of goods. As per Section 49, under following circumstances right of lien is terminated-

#### Waiver of lien-

The right of lien is an implied right attached by law in every contract of sale, the seller has the autonomy to waive this right, it may be expressed or implied from the conduct of the seller.

#### When buyer or agent lawfully obtains possession of goods.

Once the buyer got the possession of goods from the seller, all the rights of the seller in respect to goods are ceased even if the price is not paid. The seller can recover the price as a normal debt because the acceptance of possession gives absolute, unqualified and indefeasible right of goods to the buyer. When the goods are given again to the seller for repair, he cannot access the right of lien.

#### When the seller delivers goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods.

When the seller has delivered goods to the carrier for transmission, his right of lien is ceased but the right to stoppage in transit is still accessible by him. In case seller regains possession of goods in transit by stoppage his right to lien is revived.

### **b- Stoppage**

When the goods have been transferred to carrier or bailee for the purpose of transmission to the buyer, who has become insolvent, the seller has the right to stop the goods in transit in order to protect himself against the loss that may arise due to insolvency. As per Section 50, there are four essential requirements for stopping the goods in transit:

1. Unpaid seller.
2. Buyer insolvent.
3. Property should have passed to the buyer.
4. Property should be in course of transit.

The course of transit depends upon the capacity of middleman to hold the goods. Middleman should be an intervening person between the seller who has parted with the goods and the buyer who has not yet received the goods.

Section 5 lays down the rules and regulations related to commencement and end of the transit, this Section is divided into seven sub-Sections which solve all the issues related to commencement and end of transit:

#### **1- Delivery to the buyer**

Goods are considered to be in transit from the time when they are delivered to the carrier or other bailee for the purpose of transmission to the buyer, till the goods are received by the buyer himself or his agent takes delivery of them.

#### **2- Interception by the buyer**

When the buyer or the agent takes the delivery of the goods from the carrier, the transit ends even before their arrival at the appointed destination. In case the carrier delivers the goods before the arrival of the buyer, although it is wrongful and the carrier may be held liable for the damages but the transit ends here.

### **3- Acknowledgement to the buyer-**

The transit is considered to come to an end when the goods arrive at the appointed destination and the carrier acknowledges to the buyer or his agent that he is now holding the goods on his behalf. It is immaterial if the goods are still in the carrier or the buyer has indicated another destination. In order to put an end to the original contract of carriage, a very clear acknowledgement is required.

### **4- Rejection by the buyer**

When the buyer rejects the goods and the carrier or other bailee continues to possess them, the goods are held to be still in transit. This will also include the case when the seller himself refuses to take back goods.

### **5- Delivery to ship chartered by the buyer**

It is a question of fact whether the carrier is acting independently or as an agent of the buyer at the time when the goods are delivered to a ship chartered by buyer. As soon as the goods are loaded on the ship, the transit ends if the carrier is acting as an agent of the buyer.

### **6- Wrongful refusal to delivery**

When the carrier wrongfully denies delivering the goods to the buyer or his agent the transit is at the end. It is obvious that goods should have arrived at their destination because otherwise, the carrier has the right to refuse to deliver them.

### **7- Part delivery**

In the case when the goods have been delivered partly, the seller has a right to stop the delivery of the rest of the goods unless the part delivery shows an agreement to the possession of the whole. For instance, A sells to B 20kg of wheat, 10kg has been transferred to B but rest 10kg is still in transit, in case B fails to pay A has a right to stop the goods in transit.

### **c- Resale**

Exercising the right of lien or stoppage does not rescind the agreement but reselling of goods does and without this right, the other two rights of lien and stoppage would not be of much usage because he can only retain goods under these right till the buyer pays back the money.

The unpaid seller can exercise his right under following conditions and circumstances-

- Seller before reselling the goods needs to send a notice to the buyer except in the case of perishable goods, giving him last chance to pay the price and take back the goods within a reasonable time. If the buyer does not pay the money back seller has the right to resell the goods. If the seller fails to give notice of his intention to resell, he cannot claim damages from the buyer and he has to give any profit.
- If there is any loss in the resale of goods he can claim the loss from the buyer, on the contrary, if there is profit buyer cannot claim it.
- Seller gives rightful ownership to buyer after the resale it does not matter notice of resale is given or not to defaulted buyer.
- Sometimes the seller reserves exclusive right to resale the goods if the buyer makes a default in payment, in such cases the buyer cannot ask for profit on resale if no notice is served and seller has the exclusive right to resale.

#### ❖ **Rights against seller**

##### **1- Damages for non-delivery**

Section 57 states that, whenever any seller or refuses to deliver the goods to the buyer, the buyer may sue for non-delivery of goods. If the buyer has paid any amount, he is entitled to recover it. Quantum of damages is decided through market forces, contract and market price on the day of the breach is considered as damages. If the buyer wants to claim that damages he must prove it in the court of law, otherwise, he cannot get a penny more than refund i.e. the amount he has already paid. Buyer must try to keep the loss at a minimum by purchasing the goods from other sources instead of waiting for the market to fluctuate.

##### **2- Suit for specific performance**

Acc to Section 58 when goods are specific or ascertained and there is a breach of contract committed on the part of the seller then the buyer can appeal to the court of law for specific performance. The seller has to perform the contract and he does not have any option of retaining the goods by paying damages. The power of the court to order specific performance is subject to the provisions of chapter II of Specific Relief Act, 1963.

Thus, on the sale of ship buyer was allowed to recover the ship specifically in the case of Behnke

V Bede Shopping, there was a ship named the city which holds a unique value to the plaintiff but

she was a cheap vessel being old but her engines were new and as to satisfy the German regulations and hence plaintiff could as a German shipowner have her at once put on the German register. A very experienced ship-valuer has said that he knew only one other comparable ship, but that may not be sold. Thus, on sale of a ship buyer was allowed to specifically recover the ship.

### **3- Suit for breach of warranty**

As stated under Section 59, the buyer cannot reject the goods solely on the basis of breach of warranty on the part of the seller or when a buyer is forced to treat a breach of condition as a breach of warranty. But he may sue the seller for damages or set up against the seller the breach of the warranty in the extinction of the price.

The measure of damages is directly and naturally occurring loss in ordinary events from breach of warranty. Mason V Burningham, the buyer of a second-hand typewriter spends some money on getting it overhauled. Afterwards, the typewriter was seized from her as stolen property. this was a breach on the part of the seller of warranty of quiet possession. She was held entitled to recover damages including the cost of repair. She did a natural thing in having the typewriter repaired and the amount she had spent was a loss directly and naturally resulting from the breach.

### **4- Suit for anticipatory breach**

According to Section 60, the rule of anticipatory breach contract applies, wherein, if any party repudiates the contract before the date of delivery the other party can consider the contract as rescinded and can sue for damages of the breach.

According to this Section, if one party repudiates before due date other has two courses of action. Either he may immediately accept the breach and bring the action of damages the contract is rescinded and damages will be assessed according to the prices then prevailing or he can wait for the date of delivery. In the second case, the contract is open at risk and will be a benefit to both parties. Maybe the party changes are mind and agree to perform and damages will be assessed according to prices on the day of delivery.

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## **NEGOTIABLE INSTRUMENTS ACT,1881**

### **INTRODUCTION:**

- A significant law that governs the use of negotiable instruments in India.
- **NEGOTIBALE INSTRUMENT:** A Negotiable Instrument is a piece of paper that guarantees the payment of a certain sum of money, either immediately upon demand or at any predetermined period, and whose payer is typically identified.
- “Negotiable” – Transferable
- “Instrument” – Document giving legal effect by the virtue of law.
- Enacted on 9<sup>th</sup> December 1881.
- Commenced in 1<sup>st</sup> March 1882.
- *Section 13(1) of Negotiable Instruments Act,1881 – “A Negotiable Instrument means a promissory note, bill of exchanges, or cheque payable either to order or to bearer”.*

### **NATURE/FEATURES/REQUISITES OF NEGOTIBALE INSTRUMENT:**

- It is a written document signed by the issuer.
- It is like a valid contract easily transferable from one party to another. The holder can transfer the document to another individual or entity without hassle. It is this feature that makes such instruments negotiable.
- As named on the instrument, the payee enjoys complete ownership of the legal document. This means the title gets transferred when the note is handed over to the consecutive parties.
- A negotiable instrument always mentions the payee’s name, which signifies making the payment to a specific person or firm.
- In addition to the payee, the time is also predetermined and is certain. A payee can present the document to encash it or receive the payment as promised within the specified date or on-demand.
- There is flexibility as the payee can receive the funds in cash or transfer the document to another party for consecutive usage.

## TYPES OF NEGOTIABLE INSTRUMENTS



### **1. Cheque:**

A check is a note containing the amount paid by one party to another party. It includes the bearer's name and account number from which the money would be debited. In addition, it also mentions the name of the payee. As a result, even if the check goes missing, no third party can misuse it. In short, checks are the safest mode of making payments or transferring funds from one party to another.

Though debiting the amount from one account and crediting the same in the other takes a bit more time, people still consider issuing a check for safety reasons. People and firms use various checks, like traveler's checks, personal checks, certified checks, cashier's checks, etc.

### **2. Promissory Notes**

A promissory note means one party promises to pay a sum of rupees to another party whose name is mentioned on the note along with a fixed future date. Generally, it is used as short-term trade credit, and the maker pays the due amount on or before the note's expiry. As a safe mode of transferring money, business people frequently use it to have smooth business transactions.

Individuals or firms can claim the outstanding funds after the expiry of the term in the event of non-payment of the promised money. It is also issued as a debt instrument, which corporations use to finance their short-term projects.

### **3. Certificates of Deposit (CD)**

Banks and financial institutions offer Certificate of Deposit as a financial product. In the process,

the customers deposit a certain amount and keep it safe for a fixed tenure while receiving a high-

interest rate on the amount in return. The interest rate tends to increase constantly with the increasing deposit span. The individuals can withdraw the amount plus interest once the CD matures. However, in case of early withdrawal, one would need to pay the penalty.

#### **4. Bills of Exchange**

Bills of Exchange are similar to promissory notes and can be used for national and international trade. Using this instrument, one party promises to pay the sum of money to another party or any other person on a fixed future date. The person it is endorsed for is the drawee, who has a valid claim on the bill writer or the drawer for the amount mentioned on the bill.

#### **5. Money Orders**

It is a substitute for the check for making payments on-demand. In a money order, the amount is specified. To process the money order, the payer has to pay the amount to a financial institution beforehand and a small processing fee. In return, the financial institution issues the money order. It has long been the traditional way of transferring money from one party to another with utmost security guaranteed. These are the best mode of money transfer for those who do not possess a bank account.

#### **6. Bearer Bonds**

These are the unregistered bonds issued by the Government or Corporate, and as the name suggests, the bondholder is entitled to get a coupon and principal payment thereon. The issuer doesn't keep the record of the original bond owner. Whoever has physical possession of the bearer bonds will be treated as the legal owner. Therefore, there is a huge risk of loss, theft, or otherwise the destruction of these bonds.

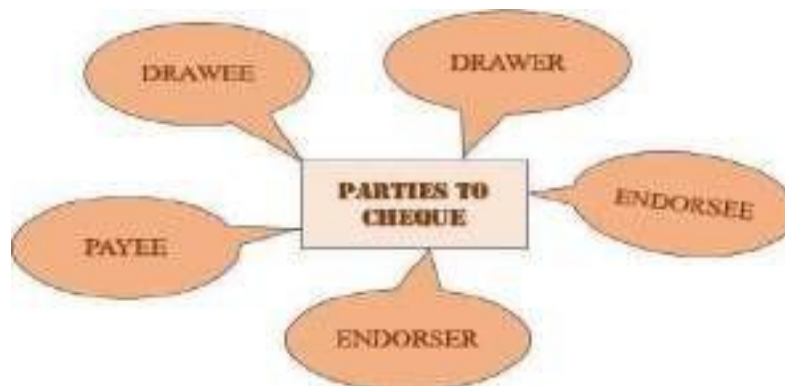
### **CHEQUE**

- A written instruction to a bank or financial institution to pay a given amount from the cheque holder's account to the bearer is known as Cheque.
- IFSC (Indian Financial System Code), MICR (Magnetic Ink Character Recognition) and Cheque number make each cheque unique.
- *Section 6 – Negotiable Instruments Act, 1881 – Cheque – “A bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand”.*

## FEATURES OF A CHEQUE

- ❑ Cheques can be issued by individuals who hold a savings account or a current account.
- ❑ Once the payee of the cheque is written, it cannot be changed.
- ❑ The amount that is written on the cheque cannot be changed later on.
- ❑ An oral order to pay the money is not recognized as a cheque.
- ❑ The cheque is an unconditional order and not a request to the bank.
- ❑ The cheque carries validity only when it is signed and dated.
- ❑ The unsigned cheques are invalid.
- ❑ The Cheques are usually valid from the day they are dated. Usually, the cheques longer than six months from the date mentioned are called stale cheques. Although they are stale cheques, they are still valid.
- ❑ The cheques with a sign but no amount written are called blank cheques. These are the riskiest as they can be used by others or also misused.

## PARTIES TO CHEQUE:



- **Drawer:** The person who signs and issues the bank to pay the respective amount of money from his account to the person who can draw the cheque.
- **Drawee:** The particular bank from which the cheque needs to be drawn.
- **Payee:** The person who receives the payment from the holder of the cheque through bank.
- **Endorser:** When the right of payment is transferred from the payee to another party, then the payee is called endorser.
- **Endorsee:** When the right to take the payment is transferred from the payee to another party, the party to whom the right is transferred is endorsee.

## TYPES OF CHEQUE



### 1. Bearer Cheque

- The bearer cheque is a type of cheque in which the bearer is authorized to get the cheque encashed.
- This means the person who carries the cheque to the bank has the authority to ask the bank for encashment.
- This type of cheque can be used for cash withdrawal.
- This kind of cheque is endorsable. No kind of identification is required for the bearer of the cheque.
- For example: A cheque has been signed by Arjun (drawer) and the payee for the cheque is Varun. Varun can either go to the bank himself or can send a third person to get encashment for the cheque. No identification shall be required for the bearer's name.
- If a person does not want their cheque to be endorsable, they can strike off the "OR BEARER" option mentioned in the cheque.

### 2. Order Cheque

- This type of cheque cannot be endorsed, i.e., only the payee, whose name has been mentioned in the cheque is liable to get cash for that amount.
- The drawer needs to strike the "OR BEARER" mark as mentioned on the cheque so that

the cheque can only be encashed to the payee.

- For Example: If a cheque has been signed with the name of Varun, then only the payee can visit the bank to get an encashment for the same for an order cheque.
- The payee's identity may be cross-checked by the bank before encashing the sum of money.

### **3. Crossed Cheque**

- In this type of cheque, no cash withdrawal can be done.
- The amount can only be transferred from the drawer's account to the payee's account.
- Any third party can visit the bank to submit the cheque.
- In case of a crossed cheque, the drawer must draw two lines at the left top corner of the cheque.

### **4. Account Payee Cheque**

- This is the same as the account payee cheque but no third-party involvement is required.
- The amount shall be transferred directly to the payee's account number.
- To ensure that it is an account payee cheque, two lines are made on the left top corner of the cheque, labelling it for "A/C PAYEE".

### **5. Stale Cheque**

- In India, any cheque is valid only until 3 months from the date of issue.
- So, if a payee moves to the bank to get withdrawal for a cheque which was signed 3 months ago, the cheque shall be declared a stale cheque.
- For example: If a cheque is dated January 1, 2021, and the payee visits the bank for withdrawal on May 1, 2021, his/her request shall be denied and the cheque is declared stale.

### **6. Post Dated Cheque**

- If a drawer wants the payee to apply for withdrawal or transfer of money after the present date, then he/she can fill a postdated cheque.
- For example: If the date on which the drawer is filling the cheque is May 10, 2021, but he wants the payment to be done later, he/she can fill the cheque dates as May 30, 2021. It shall be called a post-dated cheque.

## 7. Ante Dated Cheque

- If the drawer mentions a date prior to the current date on the cheque, it is called ante dated cheque.
- For example: If the current date is January 30, 2021, and the drawer dates the cheque as January 1, 2021. It shall be considered as an ante-dated cheque.

## 8. Self Cheque

- If the drawer wishes cash for himself, he can issue a cheque where in place of the Payee's name he can write "SELF" and get encashment from the branch where he owns an account.
- For example: If a person wants Rs.1,00,000/- in cash, he can issue a self cheque and visit his bank branch where he owns an account and get encashment in place of a cheque.

## 9. Traveller's Cheque

- As the name suggests, the Traveler's cheque can be used when a person is travelling abroad where the Indian currency is not used.
- If a person is travelling abroad, he can carry the traveller's cheque and get encashment for the same in abroad countries.

## 10. Mutilated Cheque

- If a cheque reaches the bank in a torn condition, it is called a mutilated cheque.
- If the cheque is torn into two or more pieces and the relevant information is torn, the bank shall reject the cheque and declare it invalid, until the drawer confirms its validation.
- If the cheque is torn from the corners and all the important data on the cheque is intact, then the bank may process the cheque further.

## 11. Blank Cheque

- When a cheque only has a drawer's signature and all the other fields are left empty, then such a type of a cheque is called a blank cheque.

### **SPECIAL RULES FOR CHEQUE:**

- ❖ Date must be mentioned properly on the cheque.
- ❖ Cheque should not be more than three months old.
- ❖ Name of the Payee mentioned correctly.

❖ The drawer must mention the account number clearly and correctly.

- ❖ There should not be any crossing and overwriting on the cheque.
- ❖ The drawer should sign the cheque properly.
- ❖ The signature on the cheque should tally with the signature on the specification card kept with the bank.
- ❖ Amount on the cheque should be mentioned both in words and figures clearly.
- ❖ The amount mentioned on the cheque should not be more than the amount deposited in the bank.

### **LIABILITY OF PARTIES TO NEGOTIABLE INSTRUMENT**



#### **1. Liability of Drawer:**

- ❖ According to Section 30 of the Negotiable Instrument Act 1881, The drawer of a bill of exchange or cheque is bound in case of dishonor by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonor has been given to, or received by, the drawer

#### **2. Liability of Drawee of Cheque:**

- ❖ The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default (Section 31 of the Negotiable Instrument Act 1881)

### 3. Liability of Makers of note and acceptor of bill:

- ❖ The maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand. In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default. (Section 32 of the Negotiable Instrument Act 1881)

### 4. Liability of endorser:

- ❖ Liability of endorser In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonor by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonor, provided due notice of dishonor has been given to, or received by, such endorser as hereinafter provided. Every endorser after dishonor is liable as upon an instrument payable on demand. (Section 35 of the Negotiable Instrument Act 1881)

### 5. Liability of Prior Parties to a holder in due course:

- ❖ Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied. (Section 36 of the Negotiable Instrument Act 1881)

#### **DEMAND DRAFT:**

- ❑ A negotiable instrument similar to bill of exchange.
- ❑ A bank issues a demand draft to a client (Drawer), directing another bank(drawee) or one of its own branches to pay a certain sum to the specified party (Payee).
- ❑ Also known as Sight Drafts.
- ❑ *Section 85(A) – Negotiable Instruments Act 1881 – Demand Draft – “A demand draft is an order to pay money drawn at one office of a bank upon another office of the same bank for a sum of money payable to order on demand”.*

### **SPECIAL RULES FOR DRAFT:**

- ❖ Issued by a bank on another bank or one of its branches.
- ❖ Cannot be issued by individual.
- ❖ Cannot be made payable to bearer.

### **DEMAND DRAFT OR CHEQUE? WHAT'S THE BETTER OPTION?**

- Demand draft is only prepared after checking the drawer's account balance or after the bank receives the required payment from the drawer, this makes demand drafts a safer option as there is no chance of payment denial on grounds of low funds. So, while dealing with an unknown party, asking for a demand draft is always a better option.

### **DIFFERENCE BETWEEN CHEQUE AND DEMAND DRAFT:**

<b>CHEQUE</b>	<b>DEMAND DRAFT</b>
❖ Payment made after the cheque is issued.	❖ First payment is made then DD is issued.
❖ Issued by the account holder	❖ Issued by the bank on behalf of the account holder.
❖ Chance of cheque bounce.	❖ Zero chance of DD being dishonored
❖ Risky if lost	❖ Completely safe
❖ Signature of Account Holder required	❖ Signature not required
❖ Can be withdrawn from any branch.	❖ Can be withdrawn from location mentioned in DD
❖ Can get cancelled	❖ Cannot be cancelled
❖ Can be stopped by the drawer	❖ Cannot be stopped by the drawer
❖ Cheque is issued if there is trust between two parties.	❖ DD is issued if there is no trust between two parties.
❖ Parties involved are – Drawer, Drawee, Payee, Endorser, Endorsee	❖ Parties involved are - Drawer, Payee
❖ No charges are payable.	❖ Charges are paid based on the amount of the draft.

## **HOLDER IN DUE COURSE:**

### **HOLDER:**

- ❖ A person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable.
- ❖ *Section 8 – Negotiable Instruments Act,1881 – “The holder of a negotiable instrument means any person, entitled in his own name to the possession thereof and to receive or recover, the amount due thereon from the party liable thereto”.*

### **HOLDER IN DUE COURSE:**

- ❖ A person who acquires the negotiable instrument in good faith for consideration before it becomes due for payment and without any idea of a defective title of the party who transfers the instruments to him.
- ❖ *Section 9 – Negotiable Instruments Act,1881 – “Holder in due course means any person who for consideration, becomes the possessor of a negotiable instrument if payable to bearer or payee or indorsee thereof if payable to order before the amount mentioned in it became payable and without sufficient cause to believe that any defect existed in the title of a person from whom he derived his title”.*

### **DISCHARGE OF NEGOTIABLE INSTRUMENT:**

- All the rights of action under it are completely extinguished and it ceases to be negotiated anymore.

### **MODES OF DISCHARGE OF LIABILITY IN NEGOTIABLE INSTRUMENT**



**1) By Cancellation**

➤ Under this scheme, a holder who cancels acceptors or endorser's name apparently or with intention to discharge him from the negotiable instrument, the latter is said to have discharged.

**2) By release**

➤ A holder thereof who, by means other than cancellation, discharges maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge.

**3) By Payment in the Due Course**

➤ When the payment on an instrument, at its maturity, is made by the party liable then all the parties stand discharged from the liability of negotiable instrument.

**4) By Allowing Drawee**

➤ In this case, if a person holding the negotiable instrument allows the drawee for over 48 hours to consider whether he will accept the same then all the previous who didn't consent to the said allowance stand discharged.

**5) Material Alteration**

➤ In case a material alteration brought in the instrument, all the parties who do not consent to the said alternation stand discharged from the liability.

**6) Notice of Dishonor**

➤ In case the holder of negotiable instrument fails to issue notice of dishonor to all the previous parties, they stand discharged.

**7) By Operation of Law**

➤ Liability against the negotiable instrument also stand discharged in case of legal operations like:

- Insolvency of debtor
- Loss of remedy on expiry of the limitation
- Merger of note into judgement debt
- Merger of lesser security into higher security

# **LEGAL ASPECTS OF BUSINESS**

## **UNIT II**

### **COMPANY LAW AND COMPETITION ACT**

## UNIT II

### COMPANY LAW AND COMPETITION ACT

#### SYLLABUS:

#### COMPANY ACT 1956&2013

Major principles – Nature and types of companies, Formation, Memorandum and Articles of Association, Prospectus, Power, duties and liabilities of Directors, winding up of companies, Corporate Governance.

#### COMPETITION ACT 2002

Introduction, Definitions, Enquiry into Certain Agreements and Dominant Position of Enterprise and Combinations.

\*\*\*\*\*

#### COMPANY ACT 1956&2013

#### INTRODUCTION:

#### COMPANY ACT,1956

- Company Act,1956 regulates the incorporation of a company, responsibilities of a company, directors and dissolution of a company.
- It was enacted by Parliament of India.
- It was signed by the President of India on 18<sup>th</sup> January 1956.
- It was commenced on 1<sup>st</sup> April 1956 and amended on 2015.

#### COMPANY ACT,2013

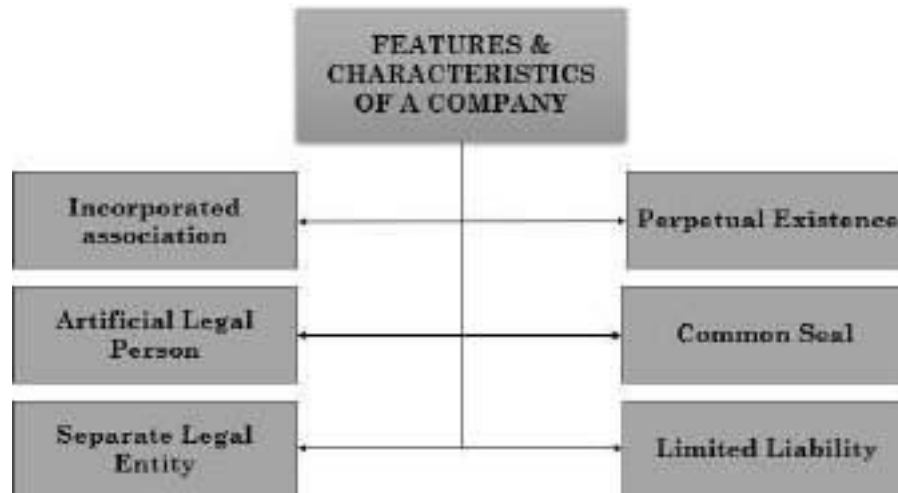
- Company act 1956 was replaced by Company Act 2013.
- It was signed by the President of India on 29<sup>th</sup> August 2013.
- Section 1 came into force on 30<sup>th</sup> August 2013.
- 98 different sections came into force on 12<sup>th</sup> September 2013 with few changes.
- A total of another 183 sections came into force from 1<sup>st</sup> April 2014.

#### COMPANY

- ✓ A company means a group of persons associated to achieve some common objective.

- ✓ *Indian Companies Act,1956 – Section2(20) – Company - “A company is a company formed and registered under this act or an existing company”.*
- ✓ *Prof.Haney – Company – “A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal”.*
- ✓ “Company” – amalgamation of Latin word “Com” and “Pains” here Com – with or together & Pains – bread; which means group of people having their meals together.

### FEATURES & CHARACTERISTICS OF A COMPANY



➤ **Incorporated association:**

A company comes into existence when it is registered under the Companies Act (or other equivalent act under the law). A company has to fulfil requirements in terms of documents (MOA, AOA), shareholders, directors, and share capital to be deemed as a legal association.

➤ **Artificial Legal Person:**

In the eyes of the law, A company is an artificial legal person which has the rights to acquire or dispose of any property, to enter into contracts in its own name, and to sue and be sued by others.

➤ **Separate Legal Entity:**

A company has a distinct entity and is independent of its members or people controlling it. A separate legal entity means that only the company is responsible to repay creditors and to get sued for its deeds. The individual members cannot be sued for actions performed by the company. Similarly, the company is not liable to pay personal debts of the members.

➤ **Perpetual Existence:**

Unlike other non-registered business entities, a company is a stable business organization. Its life doesn't depend on the life of its shareholders, directors, or employees. Members may come and go but the company goes on forever.

➤ **Common Seal:**

A company being an artificial legal person, uses its common seal (with the name of the company engraved on it) as a substitute for its signature. Any document bearing the common seal of the company will be legally binding on the company.

➤ **Limited Liability:**

A company may be limited by guarantee or limited by shares. In a company limited by shares, the liability of the shareholders is limited to the unpaid value of their shares. In a company limited by guarantee, the liability of the members is limited to the amount they had agreed upon to contribute to the assets of the company in the event of it being wound up.

**TYPES OF COMPANIES:**



## 1. Classification of Companies Based on Incorporation:

### ❖ Royal Chartered Company –

- ✓ These are companies formed under the Royal Charter of a company or by a special order of king or queen.
- ✓ E.g., East India Company formed by the Royal Charter of Great Britain.
- ✓ Such a company derives its nature on the basis of the charter under which they are formed.

### ❖ Statutory Company –

- ✓ It is incorporated by a special Act passed either by the Central or State legislature.
- ✓ Companies intended to carry on some businesses of national importance are formed this way to provide a service to its citizens.
- ✓ E.g., RBI formed under RBI Act 1934.

### ❖ Registered Companies –

- ✓ A company registered under the companies Act 2013 or any other existing Act.
- ✓ It is governed by the companies Act 2013.

## 2. Classification of Companies Based on Liability:

### ❖ Company limited by shares –

- ✓ It is a company in which the liability of the members (shareholders) limited i.e.; they are only liable for the unpaid value of shares held by the member.
- ✓ The unpaid amount can be called upon any time during the life time or winding up of the company.
- ✓ If the shares of a member are fully paid up then his liability will be nil.

### ❖ Company limited by Guarantee –

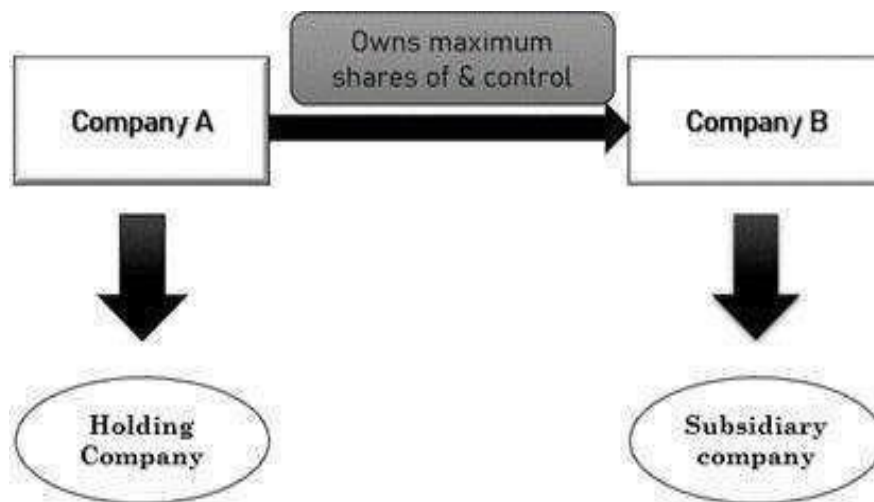
- ✓ In such a company the Liability of shareholders is limited up to the amount guaranteed or invested by the shareholder towards the assets of the company in the event of its being wound up.
- ✓ The amount guaranteed can be only demanded at the time of its wound up, hence it is a reserve capital.

- ✓ Such companies are generally formed to promote art, science, commerce, sports etc. and are not for profit making.

❖ **Unlimited companies –**

- ✓ A company having no limit on the liability of its Shareholders is an unlimited company.
- ✓ Thus, the liability may extend to the personal property of the Shareholders in case the company is not able to satisfy its claims at the time of winding up.
- ✓ This liability of members is like a partnership where they have to contribute according to the ratio of amount invested in the company.

**3. Classification of Companies Based on Control:**



❖ **Holding Company:**

- ✓ It is also known as Parent Company.
- ✓ Holding Company owns and controls other company.
- ✓ Usually doesn't produce goods and services itself.

❖ **Subsidiary company:**

- ✓ Subsidiary company is owned or controlled by a parent or holding company.
- ✓ Here the parent company owns more than 50% of subsidiary company.

**4. Classification of Companies Based on Transferability of Shares:**

❖ **Private Company –**

- ✓ Private Company has minimum paid up share capital of Rs.1 Lakh.

- ✓ Maximum number of members are 50
- ✓ Minimum number of directors are 2
- ✓ **Section 2(68) of Companies Act,2013** – “Companies with the minimum paid-up share capital of one lakh rupees or higher as may be prescribed is said to be a Private Company”.

❖ **Public Company –**

- ✓ Public Company has minimum paid up share capital of Rs.5 Lakh.
- ✓ **Section 2(71) of Companies Act,2013** – Public Company is a company which
  - a) Is not a private company.
  - b) Has minimum capital of Rs.5 Lakh or such higher paid-up capital as may be prescribed.
  - c) Is a private company which is a subsidiary public company.

**5. Classification of Companies Based on Nationality:**

❖ **Domestic company –**

- ✓ A company which is based in India registered under the Companies Act 2013.
- ✓ The head Office and its business operations are conducted within the country. It can either be private or public.

❖ **Foreign company –**

- ✓ A Foreign company is a company incorporated outside India which establishes its business operations within India under the Companies Act 2013.

## FORMATION OF A COMPANY

### STEPS IN FORMATION OF A COMPANY



#### ❖ **Promotion Stage:**

Promotion is the first step in the formation of a company. In this phase, the idea of starting a business is converted into reality with the help of promoters of the business idea.

In this stage the ideas are executed. The promotion stage consists of the following steps:

1. Identify the business opportunity and decide on the type of business that needs to be done.
2. Perform a feasibility study and determine the economic, technical and legal aspect of executing the business.
3. Interest shown by promoters towards the business idea and supply of capital and other necessary procedures to start the business.

#### ❖ **Registration stage:**

Registration stage is the second part of the formation process. In this stage, the company gets registered, which brings the company into existence.

A company is said to be in existence, if it is registered as per the Companies Act, 2013. In order to get a company registered, some documents need to be provided to the Registrar of Companies.

There are several steps involved in the registration phase, and are as follows:

1. Memorandum of Association: A memorandum of association (MoA) must be signed by the founders of the company. A minimum of 7 members are required in case of a public company and 2 in case of a private company. The MoA must be properly registered and stamped.
2. Article of Association: Article of Association (AoA) is also required to be signed and submitted. All members who previously signed MoA, should also be signing the AoA.
3. The next step is preparing a list of directors which should be filed with the Registrar of Companies.
4. Directors of the company should provide a written consent agreeing to be directors, should be filed with the Registrar of Companies (RoC).
5. The notice of address of the office needs to be filed.
6. A statutory declaration should be made by any advocate of either the High Court or Supreme Court, or a person of the capacity of Director, Secretary or Managing Director. This declaration shall be filed with the RoC.

❖ **Certificate of Incorporation:**

Certificate of incorporation is issued when the registrar is satisfied with the documents provided. This certificate validates the establishment of the company in the records.

❖ **Certificate of commencement of business:**

Certificate of commencement of business is required for a public company to start doing business, while a private company can start business once it has received the certificate of incorporation. Public companies receiving the certificate of incorporation can issue prospectus in order to make the public subscribe to the share for raising capital. Once all the minimum number of required shares have been subscribed, a letter should be sent to the registrar along with a bank document stating the receiving of the money.

The registrar will issue a certificate upon finding the provided documents satisfactory. This certificate is known as certificate of commencement of business. The company can start business activities from the date of issue of the certificate and the business shall be done as per rules laid down in the MoA (Memorandum of Association).

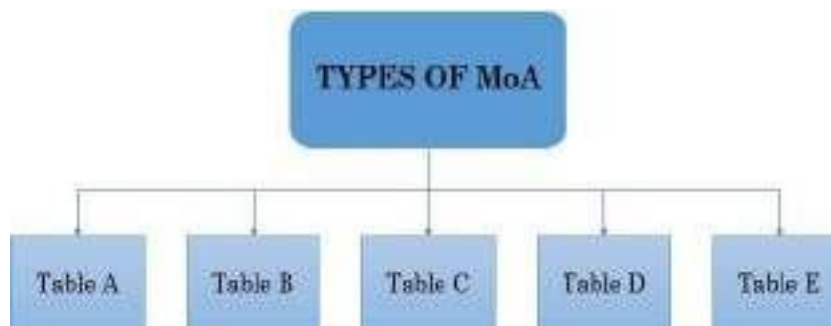
## COMPANY DOCUMENTS:



### ➤ MEMORANDUM OF ASSOCIATION (MOA)

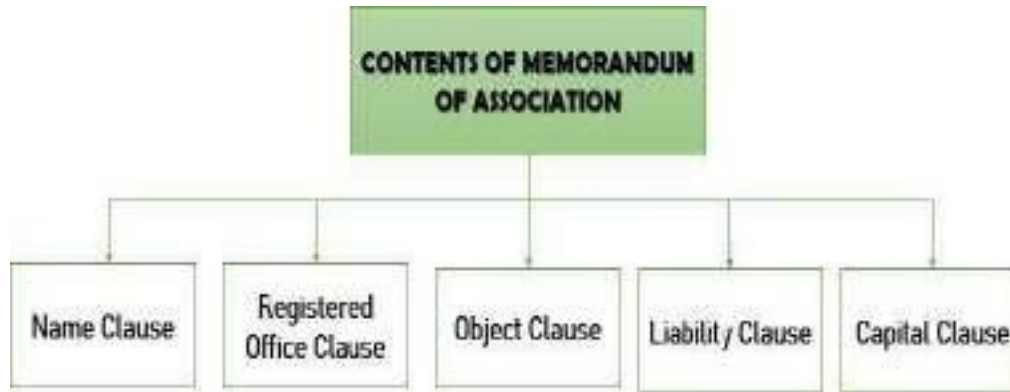
- A legal document that explains why the organization was founded.
- The first step in the formation of a company is to prepare a document called the Memorandum of Association (MoA)
- *Section 2(56) of Companies Act, 2013, - “‘memorandum ‘means the memorandum of association of a company as originally framed and altered, from time to time, in pursuance of any previous company law or this act”.*

### TYPES OF MoA:



- ✓ **Table A** – It is applicable to companies with a share capital.
- ✓ **Table B** – It is applicable to a company limited by guarantee but does not have a share capital.
- ✓ **Table C** – It is applicable to a company limited by guarantee having a share capital.
- ✓ **Table D** – It is applicable to an unlimited company but does not have a share capital.
- ✓ **Table E** – It is applicable to an unlimited company with a share capital.

## CONTENTS OF MEMORANDUM OF ASSOCIATION



The memorandum of association clauses/contents are as follows:

### **1. Name Clause:**

This clause specifies the name of the company. The name of the company should not be identical to any existing company. Also, if it is a private company, then it should have the word 'Private Limited' at the end. In the case of a public company, then it should add the word "Limited" at the end of its name. For example, ABC Private Limited in the case of the private, and ABC Ltd for a public company. The name should be in compliance with the provisions laid down in the Companies Act and Rules.

### **2. Registered Office Clause:**

This clause specifies the name of the State in which the registered office of the company is situated. It helps to determine the jurisdiction of the Registrar of Companies. The company must inform the registered office location and address to the Registrar of Companies within 30 days from the date of incorporation or commencement of the company. The registered office is the official office of the company. All communications, legal notices and documents will be sent to the registered office address.

### **3. Object Clause:**

This clause states the objective with which the company is formed. The company must carry out its business activities to fulfill the objectives mentioned in this clause. It helps to protect the interests of the stakeholders since the company must operate within the scope of its object clause

and should not engage in any activities not specified in this clause. The objectives can be further divided into the following 3 subcategories:

- ✓ Main Objective: It states the main business of the company
- ✓ Incidental Objective: These are the objects ancillary to the attainment of main objects of the company
- ✓ Other objectives: Any other objects which the company may pursue and are not covered in above (a) and (b)

#### **4. Liability Clause:**

It states the nature of liability of the members of the company in case of any loss or debts incurred by it. In the case of an unlimited company, the liability of the members is unlimited. Whereas, in the case of a company limited by shares, the liability of the members is restricted by the amount unpaid on their share. For a company limited by guarantee, the liability of the members is restricted by the amount each member has agreed to contribute.

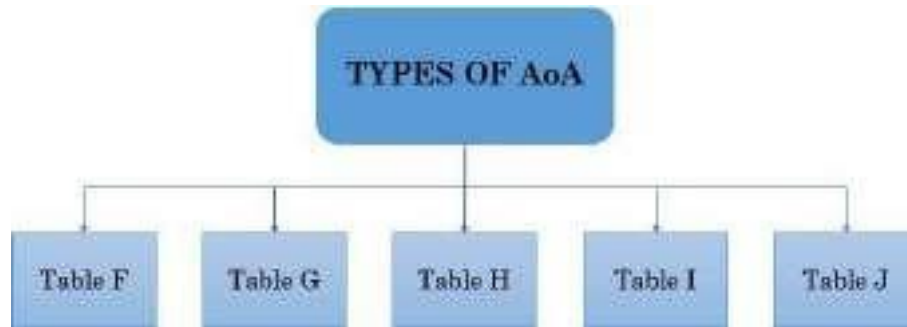
#### **5. Capital Clause:**

This clause details the maximum capital a company can raise, also called the authorized/nominal capital of the company. It provides the maximum amount of capital that can be issued to the company shareholders. It also explains the division of such capital amount into the number of shares of a fixed amount each. It should also specify the type of shares the company is authorized to issue, i.e., equity shares, preference shares, or debentures.

#### ➤ **ARTICLE OF ASSOCIATION(AoA)**

- Also known as “Rule Book” of the company.
- A document that specifies the regulations for a company’s operations and defines the company’s purpose.
- Section 2(5) of Companies Act 2013 – Article of Association have been defined as “The Article of Association (AoA) of a company originally framed or altered or applied in pursuance of any previous company law or this act”.*

## FORMS OF AoA:



- **Table F:** AoA of a company limited by shares
- **Table G:** AoA of a company limited by Guarantee and having a share capital.
- **Table H:** AoA of a company limited by Guarantee and not having a share capital.
- **Table I:** AoA of an unlimited company and having a share capital.
- **Table J:** AoA of an unlimited company and not having a share capital.

## CONTENTS OF AOA:



### ➤ **Company Details**

The first one is the details of the company. All basic information is provided under this separate section of the AOA, from the name of the entity to the name of the incorporators and their addresses. As far as the company's name is concerned, every government has a different format that the corporate entities need to follow. Thus, they must name it per the standards.

### ➤ **Purpose**

When a business is incorporated, it is done with a purpose. The AOA has this section for the incorporators to mention the business goals. It is an important segment of the document, which the government authorities look into in detail. Thus, the owners must outline how the business would carry out the day-to-day tasks.

As the operational aspect of the company is likely to be noticed with much attention, this section keeps everything clear. This, in turn, shows the clarity in the incorporators' minds, which makes the document easy to read and understand for further approval from the authorities

### ➤ **Duration**

The duration of the purpose or company formation also requires specific mention. Some entities form themselves for a specific reason, and once that is fulfilled, they pull it out. Here, the companies mention whether the incorporation is seasonal or for one particular objective for a limited period, or permanent.

### ➤ **Power Distribution**

Delegation of power is necessary for companies if they aspire to run in an organized manner. Hence, they have a hierarchy of staff from the management to anyone working there. The distribution of powers is the section that deals with this aspect of incorporation. The hierarchy-wise roles and responsibilities of individuals are mentioned in this segment.

➤ **Company Organization**

The AOA gives details about the number of employees and directors, along with other information related to the company's organization. In addition, the details of the shareholders, founders, investors, auditors, etc., are found in this section.

➤ **Share Capital**

The rights they all enjoy in the company are briefed herein. Thus, the AOA lets the authorities understand the management of the share capital by the companies. Also, it includes the information regarding the alteration that occurs in the share capital, calls on shares, shareholders' rights, voting rights, preference shares, etc.

➤ **Shareholder Meeting**

This section contains the requirements of the general or director meetings. In addition, the rules that govern the annual meeting of shareholders are found here, along with the notices, resolutions, and votes.

## **DIFFERENCE BETWEEN MoA AND AoA:**

<b>MoA</b>	<b>AoA</b>
<ul style="list-style-type: none"><li>• Memorandum of Association</li></ul>	<ul style="list-style-type: none"><li>• Article of Association</li></ul>
<ul style="list-style-type: none"><li>• Define the objectives of a company and the conditions of its incorporation.</li></ul>	<ul style="list-style-type: none"><li>• Define the rules and regulations that govern the internal management of the company.</li></ul>
<ul style="list-style-type: none"><li>• Defines the relationship of the company with external parties.</li></ul>	<ul style="list-style-type: none"><li>• Defines the relationship between the members of the company.</li></ul>
<ul style="list-style-type: none"><li>• Can be altered only under special condition</li></ul>	<ul style="list-style-type: none"><li>• Can be altered by passing special resolution</li></ul>
<ul style="list-style-type: none"><li>• Contains five clauses</li></ul>	<ul style="list-style-type: none"><li>• Can be framed as per the discretion of the company</li></ul>
<ul style="list-style-type: none"><li>• Registration is mandatory</li></ul>	<ul style="list-style-type: none"><li>• Registration is not mandatory</li></ul>
<ul style="list-style-type: none"><li>• Stated under Section 2(56) of Companies Act</li></ul>	<ul style="list-style-type: none"><li>• Stated under Section 2(5) of Companies Act</li></ul>
<ul style="list-style-type: none"><li>• Subordinates to Companies Act, 2013</li></ul>	<ul style="list-style-type: none"><li>• Subordinates to MoA</li></ul>
<ul style="list-style-type: none"><li>• It is a fundamental document</li></ul>	<ul style="list-style-type: none"><li>• It is a complementary document</li></ul>
<ul style="list-style-type: none"><li>• Alteration of clauses is difficult</li></ul>	<ul style="list-style-type: none"><li>• Alteration of articles is easy</li></ul>

## **PROSPECTUS**

- A legal document that a company issues to the public giving details of an offer for investment.
- Provides information about the company to the public.
- For example, joining an educational institution for higher studies, Prospectus is provided to each and every candidate which states all important information provided from the organization.
- Prospectus is not an advertisement; it may be a circular or even a notice.

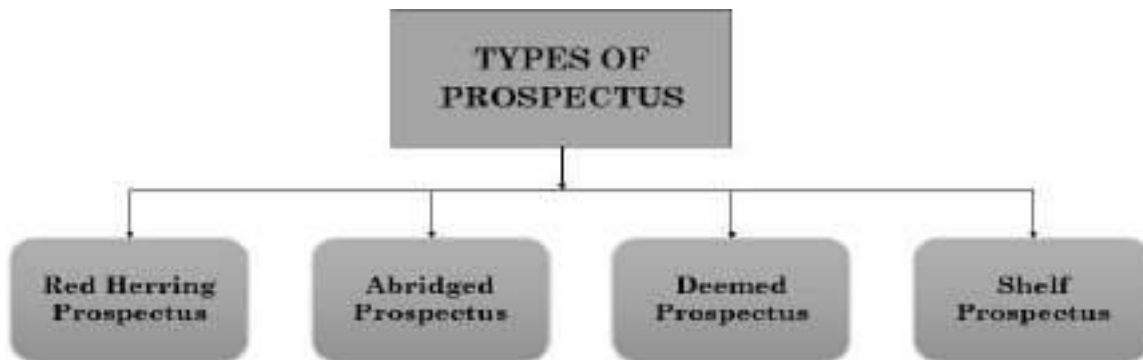
- **Section 2(36) of Indian Companies Act,1956** – “Prospectus means document described or issued as prospectus and includes any notice, circular, advertisement, or other documents inviting offers from the public for the subscription or purchase of any shares or debentures of a body corporate”.

### **CONTENTS OF PROSPECTUS**

The document contents are as follows:

- The types of investment options offered.
- The issue date for the offer.
- The maturity date.
- It will state the method of interest payment and the denomination of the offer.
- It details how the company will utilize the amount raised.
- A brief company description.
- It shows the company’s financial information and condition.
- Its principles, mission, vision, and years in the market.
- The management information, experience, and contribution to the business are given.
- It gives the name of banks or financial institutions involved in the offering.

### **TYPES OF PROSPECTUS**



- **Red Herring Prospectus** – The entity has to file it with the registrar before issuing the offer for investment. Generally, this document does not contain details like quantity or the price of the security offered.

- **Abridged Prospectus** – It is a brief description or a summary stating all the materially helpful details about the offer that are filed with the registrar. It is necessary to include all documents used for purchasing the security that the company issues.
- **Deemed Prospectus** – The document becomes deemed if it contains details of the company's investment offer to the general public.
- **Shelf Prospectus** – A document that any bank, company, or financial institution distributes to the public containing details of more than a single type of investment.

### **DIRECTOR:**

- ✓ A director is someone elected or appointed to manage a company's business and affairs.
- ✓ Every registered company must have at least one director.
- ✓ The role of a company director is to handle the daily operations of the organization.
- ✓ **Section 2(34) of Companies Act, 2013** – “*Director means a director appointed to the Board of a company*”.
- ✓ **What is the minimum number of directors in a company?**

As per the Companies Act, 2013, the minimum number of directors in a company is as follows,

- Private Limited Company – 2
- Public Limited Company – 3
- One Person Company – 1
- ✓ Maximum number of directors that can be appointed in a company is 15.

### **FUNCTIONS OF A DIRECTOR**

The Board of Directors is primarily accountable for:

- the appointment of senior management;
- deciding and shaping the company's strategies & objectives;
- governing & guiding the company towards achieving its aim;
- company's accounts and finances, etc.

## CLASSIFICATION OF DIRECTORS:



### **1. Residential Director**

Section 149(3) of the Companies Act, 2013, states that every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

### **2. Independent Director**

According to Section 149(6), an independent director is a director other than a Managing Director or Whole Time Director or Nominee Director. According to Rule 4 of Companies (Appointment and qualifications of Directors) Rules, 2013, the following type of companies have to appoint a minimum of 2 independent directors:

- Public Companies which have paid-up share capital of Rs.10 Crores or more;
- Public Companies which have a turnover of Rs.100 Crores or more;
- Public Companies which have total outstanding loans, debenture, and deposits of Rs. 50 Crores or more.

### **3. Additional Director**

As per Section 161(1) of the Companies Act, 2013, any Individual can be appointed as an Additional Director by a company.

### **4. Alternate Director**

As per Section 161 (2) of the Act, an alternate Director can be appointed by a company, if its articles confer such power to it or if a resolution is passed; in eventuality if a director is absent for more than three months from India.

### **5. Women Director**

According to Section 149 (1) (a) of the Companies Act, there are certain companies that should have at least one woman as a director on their Board.

Such companies are: -

- A listed company, or
- Any public company having
  - ✓ a turnover of Rs. 300 crore or more, or
  - ✓ paid-up capital of Rs. 100 crore or more.

### **6. Small Shareholders Director**

All listed companies may have one small shareholders director that means a director elected by people possessing shares of nominal value.

The Act mandates that such listed companies may by notice to not less than a thousand or one-tenth of the total shareholders, whichever is lower, shall appoint one small shareholder's director.

### **7. Shadow Director**

A Shadow Director is a person who is not actually appointed as a director but on whose directions the board is accustomed to act, and can be deemed to be Director of a company.

## **8. Nominee Director**

These can be nominated by shareholders, third parties through contracts, leading public financial institutions or banks, or by the Central Government in case of mismanagement.

### **POWERS OF DIRECTORS**

According to Companies Act 2013, the Board of Directors of a Company has the following powers in the Company.

- ✓ Power to make calls in respect of money unpaid on shares
- ✓ Call meetings on suo moto basis.
- ✓ Issue shares, debentures, or any other instruments in respect of the Company.
- ✓ Borrow and invest funds for the Company
- ✓ Approve Financial Statements and Board Report
- ✓ Approve bonus to employees
- ✓ Declare dividend in the Company
- ✓ Power to grant loans or give guarantee in respect of loans
- ✓ Authorize buy back of securities
- ✓ Approve Amalgamation/Merger/ Takeover
- ✓ Diversify the business of the Company

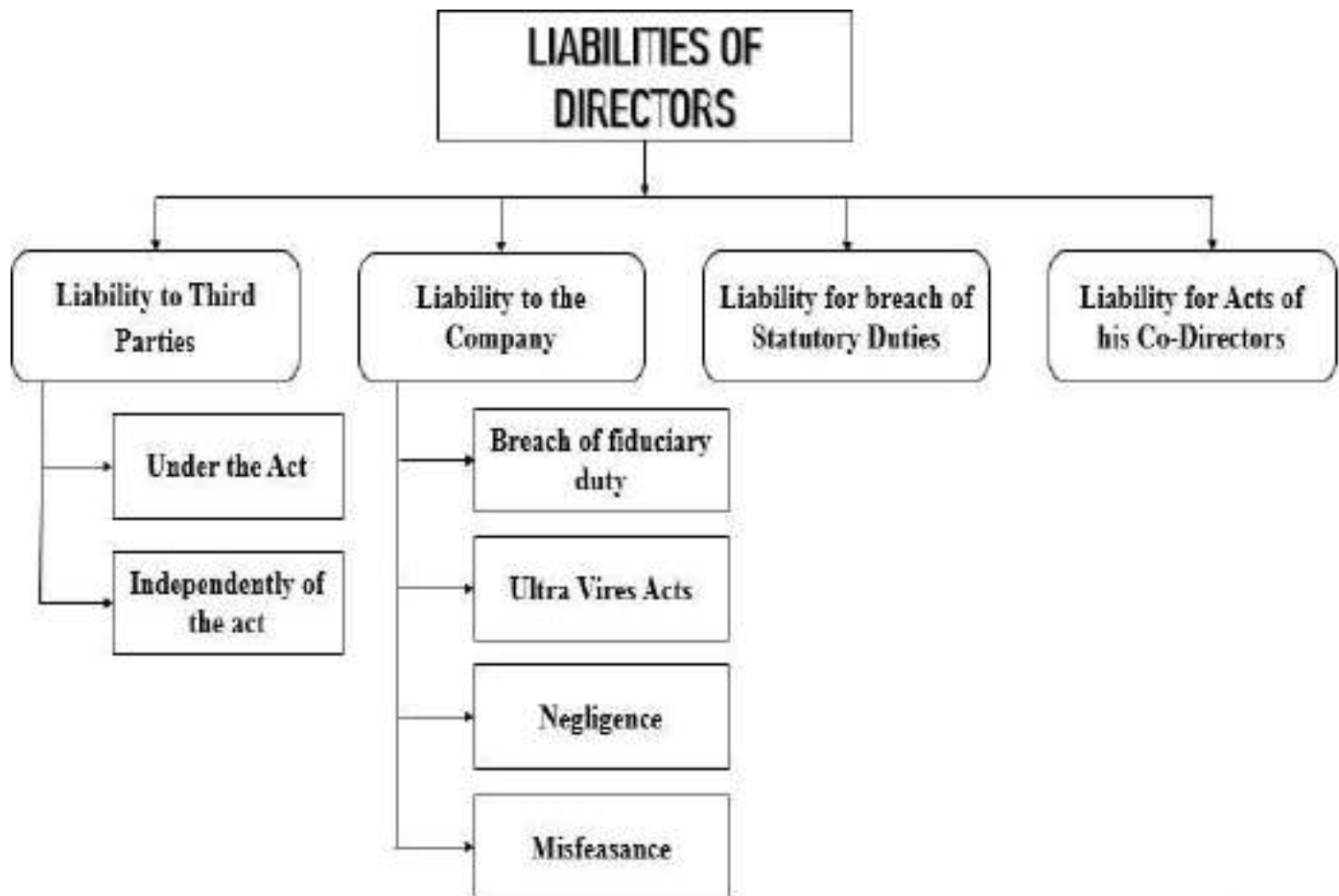
### **DUTIES OF DIRECTORS**

Board of Directors acts as agent of the Company. However, while acting for Company, Director needs to take care of his duties which are as follows: -

- ✓ To act in good faith
- ✓ Act in accordance with the Articles of Association of the Company
- ✓ To act so as to promote the objects of the Company
- ✓ Act in best interest of the Company and its stakeholders
- ✓ Exercise duties with due and reasonable care
- ✓ To exercise independent judgement

- ✓ Not to get involved in a situation where his interest conflicts with the interest of the Company
- ✓ He cannot assign his office to any other person.
- ✓ Not to achieve undue gain or advantage

### **LIABILITIES OF DIRECTORS**



**(1) Liability to Third Parties:**

**(a) Under the Act:**

- ❖ Liability of directors to third party may arise in connection with the issue of a prospectus which does not contain the particular required by the act or which contains material misrepresentation.

**(b) Independently of the act:**

- ❖ Directors as agent of a company are not personally liable on contracts entered

into as agents on behalf of the company.

## **(2) Liability to the Company:**

### **(a) Breach of fiduciary duty:**

- ❖ Director acts dishonestly in disregard to the interests of the company, he will be held liable for breach of fiduciary duty.

### **(b) Ultra Vires Acts**

- ❖ Directors are supposed to act within the parameters of the provisions of the Companies Act, MoA and AoA since these lay down the limits to the activities of the company and accordingly to the powers of the BoD.

### **(c) Negligence**

- ❖ The directors shall be deemed to have acted negligently in discharge of their duties and consequently liable for any loss or damage resulting therefrom where they fail to exercise reasonable care, skill and diligence.

### **(d) Misfeasance**

- ❖ Directors are also liable to the company for misfeasance which means 'misconduct' of Directors for which they may be sued in a Law court.

## **(3) Liability for breach of Statutory Duties:**

- ❖ There are numerous provisions of the Companies Act which is the duty of the Directors to carry out.

## **(4) Liability for Acts of his Co-Directors:**

- ❖ A director is not liable for the acts of his co-Directors of which he has no knowledge and in which he has not taken any part.

## **WINDING UP OF A COMPANY**

- Winding – up is a process whereby the life of a company is ended and property is administered for the benefit of shareholders and creditors.
- *Halsbury's Law of England* – “Winding up is a proceeding by means of which the dissolution of a company is brought about and in the course of which its assets are collected and realized; and applied in payment of its debts; and when these are satisfied, the

*remaining amount is applied for returning to its members the sums which they have contributed to the company in accordance with articles of the accompany”.*

- Winding up is the process of liquidating a company.

### **WAYS OF WINDING UP:**



#### ➤ **Voluntary winding up of a company**

- A voluntary liquidation is a self-imposed wind-up and dissolution of a company that has been approved by its shareholders. Such a decision will happen once a company’s leadership decides that the company has no reason to continue operating. It is not ordered by a court (not compulsory).

#### ➤ **Compulsory winding up of a company**

- A company can be legally forced to wind up by a court order. In such cases, the company is ordered to appoint a liquidator to manage the sale of assets and distribution of the proceeds to creditors.
- The court order is often triggered by a suit brought by the company’s creditors. They are often the first to realize that a company is insolvent because their bills have remained unpaid. In other cases, the winding-up is the final conclusion of a bankruptcy proceeding, which can involve creditors trying to recoup money owed by the company.

## REASONS FOR WINDING UP OF A COMPANY

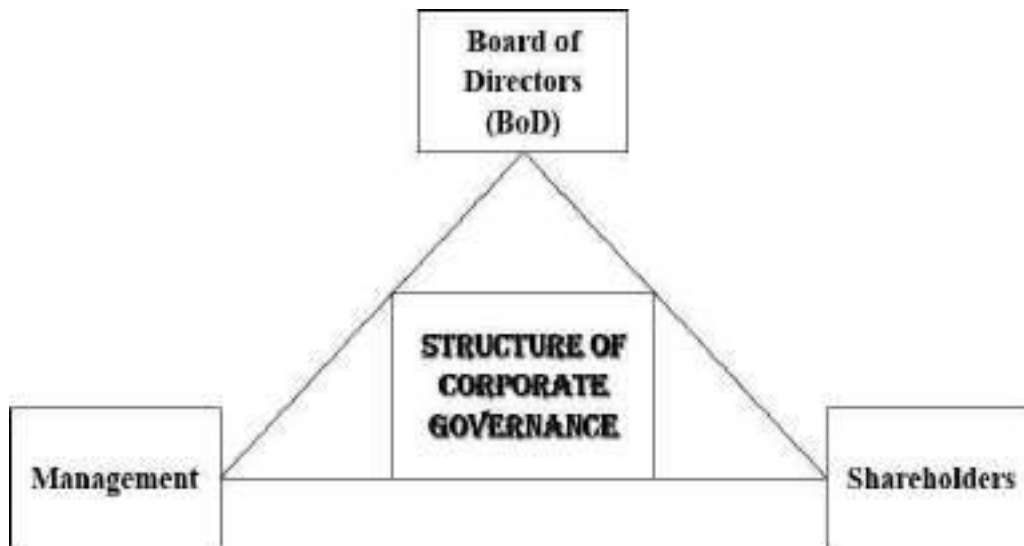
There are some following reasons for winding up a company:

- Cash flow problems
- Lack of accurate accounting
- Lack of leadership
- Disagreements among key partners
- Insolvency

## CORPORATE GOVERNANCE

- Corporate Governance is the structure of rules, practices and processes used to direct and manage a company
- *Cadbury Committee* – “Corporate Governance is defined as the system by which companies are directed and controlled”.

## STRUCTURE OF CORPORATE GOVERNANCE



### ➤ Board of Directors:

- Takes crucial decisions to attain long-term business objectives.
- They are also referred to as “Those Charged with Governance” (TCWG).

➤ **Management:**

- The management is a subset of the BOD led by the Chief Executive Officer (CEO) of the company.
- The CEO is responsible for business operation, formulation of strategies, and evaluation of associated risks.

➤ **Shareholders:**

- The stockholders are investors who put their hard-earned money into the company anticipating positive returns.
- They cannot track corporate affairs on a daily basis, and therefore, rely on the directors.
- Further, shareholders appoint auditors to dig into the business's financial affairs provide the audit report.

**PRINCIPLES OF CORPORATE GOVERNANCE**



## **1. Leadership**

- BOD and CEO should be competent in decision making.

## **2. Risk Management**

- Should be robust risk management mechanism for handling uncertainties

## **3. Transparency**

- Management should disclose the complete financial information of company

## **4. Responsibility**

- BOD is responsible for running business on behalf of shareholders

## **5. Accountability**

- BOD and CEO is accountable to the shareholders for their actions and their style of governance

## **6. Fairness**

- Stakeholders should be treated equally

## **7. Effectiveness and Efficiency**

- Policies and procedures should be clear and uniform
- Well communicated

## **8. Independence**

- Shareholders should be free to vote
- Auditors give access to financial data
- Auditors given freedom to prepare transparent audit reports

## **9. Responsiveness**

- Crucial information should be communicated to vendors, customers, financiers and employees.

## **COMPETITION ACT, 2002**

### **INTRODUCTION:**

- Indian law prohibiting activities limiting market competition and protecting consumers.
- Primary objective of enacting this act is to promote fair business practices and healthy competition in the market.
- Competition Act was passed by the Parliament of India in 2002
- Replaced by Monopolies and Restrictive Trade Practices, 1969 (MRTP, 1969)
- Governed by Indian Competition Law.
- Assented to 13 January 2003
- Commenced on 31 March 2003
- Introduced by Arun Jaitley
- Introduced in Lok Sabha on 6<sup>th</sup> August 2001
- Extended to whole of India except Jammu and Kashmir

### **DEFINITIONS UNDER COMPETITION ACT:**

#### **□ ACQUISITION [Sec 2(a)]**

*"Acquisition" means, directly or indirectly, acquiring or agreeing to acquire--*

*(i) shares, voting rights or assets of any enterprise; or*

*(ii) control over management or control over assets of any enterprise;*

#### **□ AGREEMENT [Sec 2(b)]**

*"Agreement" includes any arrangement or understanding or action in concert, --*

*(i) whether or not, such arrangement, understanding or action is formal or in writing; or*

*(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;*

□ **APPELLATE TRIBUNAL [Sec2(ba)]**

"Appellate Tribunal" means the National Company Law Appellate Tribunal referred to in sub-section (1) of section 53A

□ **CARTEL [Sec2(c)]**

*"Cartel" includes an association of producers, sellers, 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;*

□ **CHAIRPERSON[Sec2(d)]**

"Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 8;

□ **COMMISSION[Sec2(e)]**

"Commission" means the Competition Commission of India established under sub-section (1) of section 7;

□ **COMMITMENT[Sec2(ea)]**

"Commitment" means the commitment referred to in section 48B;

□ **CONSUMER[Sec2(f)]**

*"Consumer" means any person who-*

*(i) 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, whether such purchase of goods is for resale or for any commercial purpose or for personal use;*

*(ii) 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 whether such hiring or availing of services is for any commercial purpose or for personal use;*

□ **DIRECTOR GENERAL[Sec2(g)]**

"Director General" means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

□ **ENTERPRISE[Sec2(h)]**

*"Enterprise" means a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the 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 of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space.*

□ **ACTIVITY [Sec2(ha)]**

"Activity" includes profession or occupation

□ **ARTICLE [Sec 2(hb)]**

"Article" includes a new article and "service" includes a new service;

□ **UNIT OR DIVISION [Sec 2(hc)]**

"Unit" or "division", in relation to an enterprise, includes--

- (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
- (ii) any branch or office established for the provision of any service;

□ **GOODS [Sec 2(i)]**

*"Goods" means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes--*

- (A) products manufactured, processed or mined;*
- (B) debentures, stocks and shares after allotment;*
- (C) in relation to goods supplied, distributed or controlled in India, goods imported into India;*

□ **MEMBER [Sec 2(j)]**

"Member" means a Member of the Commission appointed under sub-section (1) of section 8 and includes the Chairperson.

□ **NOTIFICATION [Sec 2(k)]**

"Notification" means a notification published in the Official Gazette;

□ **PARTY [Sec 2(ka)]**

"Party" includes a consumer or an enterprise or a person or an information provider, or a consumer association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings.

□ **PERSON [Sec 2(l)]**

"Person" includes--

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) a company;
- (iv) a firm;
- (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in 6[clause (45) of section 2 of 7[the Companies Act, 2013 (18 of 2013)]];
- (vii) anybody corporate incorporated by or under the laws of a country outside India;
- (viii) a co-operative society registered under any law relating to co-operative societies;
- (ix) a local authority;
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

□ **PRACTICE [Sec 2(m)]**

"Practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;

□ **PRESCRIBED [Sec 2(n)]**

"Prescribed" means prescribed by rules made under this Act;

□ **PRICE [Sec 2(o)]**

"Price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration

which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

☐ **PUBLIC FINANCIAL INSTITUTION [Sec 2(p)]**

"Public financial institution" means public financial institution as defined in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013) and includes a State Financial Corporation, State Industrial Corporation or State Investment Corporation

☐ **REGULATIONS [Sec 2(q)]**

"Regulations" means the regulations made by the Commission under section 64;

☐ **RELEVANT MARKET [Sec 2(r)]**

"Relevant market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

☐ **RELEVANT GEOGRAPHIC MARKET [Sec 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 the conditions prevailing in the neighboring areas;

☐ **RELEVANT PRODUCT MARKET [Sec 2(t)]**

"Relevant product market" means a market comprising of all those products or services--

(i) which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or

(ii) the production or supply of, which are regarded as interchangeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and

marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices.

□ **SERVICE [Sec 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;

□ **SETTLEMENT [Sec 2(ua)]**

"Settlement" means the settlement referred to in section 48A;

□ **SHARES [Sec 2(v)]**

"Shares" means shares in the share capital of a company carrying voting rights and includes--

- (i) any security which entitles the holder to receive shares with voting rights;
- (ii) stock except where a distinction between stock and share is expressed or implied;

□ **STATUTORY AUTHORITY [Sec 2(w)]**

"Statutory authority" 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 therefor or any matter connected therewith or incidental thereto.

□ **TRADE [Sec 2(x)]**

"Trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services.

□ **TURNOVER [Sec 2(y)]**

"Turnover" includes value of sale of goods or services;

**OBJECTIVES OF COMPETITION ACT:**

- To prevent practices having adverse effect on competition.
- To promote and sustain competition in market.
- To protect the interest of consumer.
- To ensure freedom of trade carried on by other participants in markets in India.

**PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATION:**

**PROHIBITION OF CERTAIN AGREEMENTS**

➤ **ANTI-COMPETITIVE AGREEMENT**

*Section 3 of Competition Act, 2002 – “No enterprise or person shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which cause or is like to cause an appreciable adverse effect on competition in India”.*

**ADVERSE EFFECT ON COMPETITION**

Any agreement entered into between competitors which,

- a) Directly or indirectly determines purchase or sale prices.
- b) Limits or controls production, supply, markets, technical development, investment or provision of services.
- c) Shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way
- d) Directly or indirectly results in bid rigging or collusive bidding.

shall be presumed to have an appreciable adverse effect on competition.

## **AGREEMENT THAT CAUSES ADVERSE EFFECT ON COMPETITION**

### ✓ **Tie-in Agreement**

- Any agreement requiring a purchaser of goods, as a condition of such purchase to purchase some other goods.
- Example: Kinder Joy + Toy

### ✓ **Exclusive supply agreement**

- Any agreement restricting in any manner the purchaser in the course of his trade from acquiring any goods other than those of seller.
- Example: Railway, Currency etc.

### ✓ **Exclusive distribution agreement**

- Dealer is not allowed to distribute his products in an area other than the one allotted to them.
- Example: TNEB

### ✓ **Refusal to deal**

- Any agreement which restricts by any methods the persons or classes of persons to whom goods are sold or from whom goods are bought.
- Example: A dominant grocery shop refuse to buy breads from any other shop in order to maintain monopoly in the market.

### ✓ **Resale price maintenance**

- Any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the price stipulated by the seller.

## ➤ **PROHIBITION OF ABUSE OF DOMINANT POSITION**

### **DOMINANT POSITION**

- *Section 4 of Competition act 2002 – “Dominant Position means a position of strength, enjoyed by an enterprise or group in the relevant market which enables it to operate independently of competitive forces or affects its competitors or consumers in its favor”.*

## **ABUSE OF DOMINANT POSITION:**

- ❖ If an enterprise imposes unfair or discriminatory condition in price in purchase of goods or services.
- ❖ Limits or restricts production of goods or provision of services.
- ❖ Indulges in practices resulting in denial of market access.
- ❖ Uses its dominant position to enter one market or protect other market.

### ➤ **COMBINATION**

✓ *Section 5 of Competition Act, 2002 – “The acquisition of one or more enterprise by one or more persons or merger or amalgamation of enterprise shall be treated as ‘Combination ‘of such enterprise “.*

✓ Combination includes,

#### ▪ **MERGER**

- Business deal where two existing, independent companies combine to form a new, singular legal entity.
- Example: Vodafone + Idea = VI

#### ▪ **ACQUISITION**

- Business transaction that occurs when one company purchases and gains control over another company
- Example: Google's acquisition of Android for 50 million Dollar in 2005.

#### ▪ **AMALGAMATION**

- When two or more corporations unite to establish a new company, this is called Amalgamation
- Company A + Company B = New Company C
- Example: Maruti Motors in India and Suzuki Motors in Japan joined together to form a new company named as Maruti Suzuki India Limited.

## **COMPETITION COMMISSION OF INDIA (CCI)**

- CCI is the Chief competition regulator in India
- It is a statutory body within the Ministry of Corporate Affairs
- It is responsible for enforcing the Competition Act, 2002
- The commission was established on 14<sup>th</sup> October 2003.
- It became fully functional in May 2009 with Dhanendra Kumar as its first chairman.
- The current chairperson of CCI is Ravneet Kaur, who was appointed in 2003.

## **OBJECTIVES OF CCI (OR) DUTIES OF CCI**

- To prevent practices that harm the competition
- To promote and sustain competition in market
- To protect the interest of consumers
- To ensure freedom of trade

## **MEMBERS OF CCI**

- Members of CCI is appointed by the Central Government
- The commission consist of one chairperson and a minimum of two members and maximum of six members
- The chairperson and members are usually full-time members

## **ELIGIBILITY OF CCI**

- All members of CCI shall be a person of ability and integrity
- Has been or is qualified to be Judge of a High Court
- Professional experience not less than fifteen years in international trade, Economics, Business, Commerce, Law, Finance, Accountancy, Management, Industry, Public Affairs and Administration

## **FUNCTIONS OF CCI**

- Ensuring the benefit and welfare of the customers are maintained
- Ensuring fair and healthy competition in the economics activity of nation
- Ensuring efficient utilization of nation's resources through execution of competition Policies.

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# **LEGAL ASPECTS OF BUSINESS**

## **UNIT III**

### **INDUSTRIAL LAW**

## UNIT III

### INDUSTRIAL LAW

#### **SYLLABUS**

An Overview of Factories Act - Payment of Wages Act - Payment of Bonus Act - Industrial Disputes Act.

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### **FACTORIES ACT, 1948**

#### **INTRODUCTION**

- This act may be called as factories act, 1948
- Extended to whole of India
- Came into force on 1<sup>st</sup> day of April, 1949
- Enacted by Parliament of India
- Enacted on 23<sup>rd</sup> September 1948
- Set the safety standards of workers employed in factories
- **Factory:**
  - ✓ A building or group of buildings where goods are made in large quantities by machine.
  - ✓ **Black Law Dictionary** – “*Factory is a term that includes all buildings and premises wherein, or within the cartilage of which, steam water or any mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing cotton wool hair, silk flax, hemp jute or tow*”.
- Extended to the State of Jammu and Kashmir in the year 1970

## **DEFINITION UNDER FACTORIES ACT, 1948**

- ❖ **Adult (Sec 2(a)):** An ‘Adult’ means a person who has completed his eighteenth year of age.
- ❖ **Adolescent (Sec 2(b)):** An “Adolescent” means a person, who completes his fifteenth year of age but not his eighteenth year.
- ❖ **Calendar Year (Sec 2(bb)):** ‘Calendar Year’ means the period of 12 months beginning with the first day of January in any year.
- ❖ **Child (Sec 2(c)):** A ‘child’ means a person who has not completed his 15<sup>th</sup> year of age.
- ❖ **Competent Person (Sec 2(ca)):** A “competent person”, in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory
- ❖ **Young Person (Sec 2(d)):** ‘Young Person’ means a person who is either a child or adolescent
- ❖ **Day (Sec 2(e)):** It means a period of 24 hours beginning at midnight.
- ❖ **Week (Sec 2(f)):** It means a period of seven days beginning at midnight on Saturday night or such other night
- ❖ **Prime Mover (Sec 2(h)):** “prime mover” means any engine, motor or other appliance which generates or otherwise provides power;
- ❖ **Transmission Machinery (Sec 2(i)):** “transmission machinery” means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;
- ❖ **Machinery (Sec 2(j)):** “machinery” includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;
- ❖ **Manufacturing Process (Sec 2(k)):**  
“Manufacturing process” means any process for—

- i. Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- ii. pumping oil, water, sewage or any other substance; or
- iii. Generating, transforming or transmitting power; or
- iv. composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
- v. constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
- vi. preserving or storing any article in cold storage;

❖ **Worker(Sec 2(l)):** “worker” means a person 6[employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process 5[but does not include any member of the armed forces of the Union];

❖ **Power (Sec 2(g)):** “power” means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

❖ **Factory (Sec 2(m)):**

“Factory” means any premises including the precincts thereof—

- (i) Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,--But does not include a mine subject to the operation of 7[the Mines Act,

1952 (35 of 1952)], or 8[a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place].

- ❖ **Occupier (Sec 2(n)):** “occupier” of a factory means the person who has ultimate control over the affairs of the factory
- ❖ **Shift and Relay (Sec 2(r)):** Where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 17[“group” or “relay”] and each of such periods is called a shift.

### **OBJECTIVES OF FACTORIES ACT,1948**

- Protect health and safety of workers
- Ensure that Factories adhere to global best practices in the Factories
- Provide a fair and decent livelihood for all working-class people
- Reduce any social or industrial tensions

### **PROVISIONS RELATED TO HEALTH, SAFETY AND WELFARES IN FACTORIES ACT,1948**



## PROVISIONS RELATED TO HEALTH IN FACTORIES ACT,1948



Sec 11: Cleanliness  
Sec12: Disposal of Wastes Effluents  
Sec 13: Ventilation and Temperature  
Sec 14: Dust and Fumes  
Sec 15: Artificial Humidification  
Sec 16: Overcrowding  
Sec 17: Lighting  
Sec 18: Drinking Water  
Sec 19: Latrine and Urinals  
Sec 20: Spittoons

### ➤ **Sec 11: Cleanliness**

This section basically specifies the issues of cleanliness at the workplace. It is mentioned in the provision that every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance. This includes that there should be no accumulation of dirt and refuse and should be removed daily and entire area should be kept clean.

### ➤ **Sec12: Disposal of Wastes Effluents**

This section specifies on disposal of wastes and effluents. That every factory should make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous and for their disposal.

### ➤ **Sec 13: Ventilation and Temperature**

This section focuses on ventilation and temperature maintenance at workplace. Every factory should work on proper arrangements for adequate ventilation and circulation of fresh air.

### ➤ **Sec 14: Dust and Fumes**

This section details on the proper exhaustion of dust and fume in the Factory. In this it is mentioned that factory which deals on manufacturing process should take care of the proper exhaustion of dust, fume and other impurities from its origin point.

➤ **Sec 15: Artificial Humidification**

This section specifies regarding the artificial humidification in factories. In this the humidity level of air in factories are artificially increased as per the provision prescribed by the State Government.

➤ **Sec 16: Overcrowding**

Overcrowding is also an important issue which is specified in this section. In this it is mentioned that no room in the factory shall be overcrowded to an extent that can be injurious to the health of workers employed herein.

➤ **Sec 17: Lighting**

Proper lighting arrangements must be made in order to avoid eye-strain of the workers. Lighting should be natural, artificial or both. Every factory must use glazed windows and skylights for lighting.

➤ **Sec 18: Drinking Water**

This section specifies regarding arrangements for sufficient and pure drinking water for the workers. There are also some specified provisions for suitable point for drinking water supply. As in that drinking water point should not be within 6 meters range of any washing place, urinal, latrine, spittoon, open drainage carrying effluents. In addition to this a factory where there are more than 250 workers provisions for cooling drinking water during hot temperature should be made.

➤ **Sec 19: Latrine and Urinals**

This section provides details relating to urinals and latrine construction at factories. It mentions that in every factory there should be sufficient accommodation for urinals which should be provided at conveniently situated place. It should be kept clean and maintained. There is provision to provide separate urinals for both male and female workers.

➤ **Sec 20: Spittoons**

This section specifies regarding proper arrangements of spittoons in the factory. It is mentioned that in every factory there should be sufficient number of spittoons situated at convenient places and should be properly maintained and cleaned and kept in hygienic condition.

**PROVISIONS RELATED TO SAFETY IN FACTORIES ACT,1948**

Section 21: Fencing of Machinery  
Section 22: Work on or near Machinery in motion  
Section 23: Employment of Young persons on dangerous machine  
Section 24: Striking gear and devices for cutting off power  
Section 25: Self-acting machines  
Section 26: Casing of new machinery  
Section 27: Women and Children near Cotton Openers  
Section 28 & 29: Hoists, Lifts, Chains etc  
Section 30: Revolving Machinery  
Section 31: Pressure plant  
Section 32: Floors, Stairs and means of access



Section 33: Pits, Sumps, Openings in Floor etc.  
Section 34: Excessive weights  
Section 35: Protection of eyes  
Section 36 & 36A: Precautions against dangerous fumes  
Section 37: Explosive or inflammable Gas etc.  
Section 38: Precaution in case of fire  
Section 39 & 40: Specifications of defectives etc. and Safety of buildings and Machinery  
Section 40A: Maintenance of Buildings  
Section 40B: Safety Officers  
Section 41: Rules

❖ **Section 21: Fencing of Machinery**

This section specifies that fencing of machinery is necessary. That any moving part of the machinery or machinery that is dangerous in kind should be properly fenced.

❖ **Section 22: Work on or near Machinery in motion**

Working near Machinery in motion must be carried out by specially trained adult wearing tightly fitting clothes.

❖ **Section 23: Employment of Young persons on dangerous machine**

This section prescribes that employment of young person on dangerous machinery is not allowed. In the case where he is been fully instructed in the usage of the machinery and working under the supervision, he might be allowed to work on it.

❖ **Section 24: Striking gear and devices for cutting off power**

This section provides provision of striking gear and devices for cutting off power in case of emergency. Every factory should have special devices for cutting off of power in emergencies from running machinery. Suitable striking gear appliances should be provided and maintained for moving belts.

❖ **Section 25: Self-acting machines**

Self-acting machine: Machine which is made to perform itself. Self-acting machine must not be allowed to come within 45cms.

❖ **Section 26: Casing of new machinery**

Certain parts of machinery must be sunk, encased or otherwise effectively guarded. E.g.: Screw, Bolt, Toothed gearing etc.

❖ **Section 27: Women and Children near Cotton Openers**

This section prohibits working of women and children on specific machinery. As per this section women and children should not be appointed for any part of factory working on cotton pressing.

❖ **Section 28&29: Hoists, Lifts, Chains etc**

Hoists and Lifts must be constructed to be safe.

❖ **Section 30: Revolving Machinery**

Grinding must be carried on the maximum safe working speed.

### ❖ **Section 31: Pressure plant**

Steps must be taken to ensure safe working pressure. Operations must not be carried out at higher atmospheric pressure.

### ❖ **Section 32: Floors, Stairs and means of access**

In this section it has been specified that all floors, stairs, passages and gangways should be properly constructed and maintained, so that there are no chances of slips or fall.

### ❖ **Section 33: Pits, Sumps, Openings in Floor etc.**

Pits, Sumps, Openings in floors etc must be securely covered or fenced.

### ❖ **Section 34: Excessive weights**

This section specifies that no person in any factory shall be employed to lift, carry or move any load so heavy that might cause in injury. State Government may specify maximum amount of weight to be carried by workers.

### ❖ **Section 35: Protection of eyes**

This section provides specification regarding safety and protection of eyes of workers. It mentions that factory should provide specific goggles or screens to the workers who are involved in manufacturing work that may cause them injury to eyes.

### ❖ **Section 36 & 36A: Precautions against dangerous fumes**

As per this section it is provided that no worker shall be forced to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby.

### ❖ **Section 37: Explosive or inflammable gas etc.**

Steps must be taken to enclose the machine concerned, prevent the accumulation of inflammable gas and exclude all possible sources of ignition.

❖ **Section 38: Precaution in case of fire**

As per this section there should be proper precautionary measures built for fire. There should be safe mean to escape in case of fire, and also necessary equipment and facilities to extinguish fire.

❖ **Section 39 & 40: Specifications of defectives etc. and Safety of buildings and Machinery**

Use of building & machine in case of immediate danger must be prohibited. Inspector of factory must test for defective or dangerous condition.

❖ **Section 40A: Maintenance of Buildings**

If inspector of factories thinks any building or any part is repair, the occupier must take measure to be done before specified date.

❖ **Section 40B: Safety Officers**

State Government notify the occupier to employ a safety officer.

❖ **Section 41: Rules**

State Government make rules for providing such further devices for safety.

## PROVISIONS RELATED TO WELFARE IN FACTORIES ACT,1948

### PROVISIONS RELATED TO WELFARE IN FACTORIES ACT,1948

**Section 42:** Washing facilities  
**Section 43:** Facilities for storing  
and drying clothes  
**Section 44:** Facilities for sitting  
**Section 45:** First-aid-appliance  
**Section 46:** Canteens  
**Section 47:** Shelters, rest-rooms,  
and lunch-rooms  
**Section 48:** Creches  
**Section 49:** Welfare Officers  
**Section 50:** Power to make Rules

#### **Section 42: Washing facilities**

This section states that every factory should:

- ❖ Firstly, provide and maintain satisfactory and suitable facilities for washing for all the workers in the factory
- ❖ Secondly, provide separate and adequately screened facilities separately for men and women
- ❖ Thirdly, make accessible all the facilities to all the workers

#### **Section 43: Facilities for storing and drying clothes**

- ❖ This section contests some powers with the State Government. It states that the State Government has the powers to direct the factories regarding the place of storing the clothes of the workers
- ❖ Moreover, they can also direct them regarding the manner of drying the clothes of the workers. It applies to the situation when workers are not wearing their working clothes

#### □ **Section 44: Facilities for sitting**

There are various kinds of jobs in a factory some of them require the workers to stand for a longer period of time. There is no doubt that human power to stand has limits. Looking at such case, this section states:

- ❖ Firstly, the factory should provide suitable arrangements for sitting for the workers. This is important because whenever the worker gets some free time, he/she may be able to take some rest by sitting. This will also enhance their efficiency
- ❖ Secondly, if the Chief Inspector finds that any worker can do his work more efficiently while sitting, then he can direct the factory officials to arrange sitting arrangements for him

#### □ **Section 45: First-aid-appliance**

Injuries are somehow an inescapable part of life for the workers especially working in the factories

- ❖ The factory should provide and maintain proper first-aid boxes at every workroom. Under this Act, the number of boxes should not be less than one for every 100 or 50 workers. Moreover, the first-aid boxes should have all the relevant contents according to the Act
- ❖ There should be nothing except the prescribed contents in a first-aid box
- ❖ Each box should be under the control of a first aid in-charge who will handle all its requirements and its utilization. The in-charge should be an expert in First-aid field
- ❖ In case the number of workers exceeds 500, then the factory should arrange an ‘Ambulance Room’ with the availability of all necessary equipment

#### □ **Section 46: Canteens**

Every factory where the number of workers exceeds 250, then the State Government may direct the factory owners to provide and maintain a canteen for the workers

Moreover, the government may lay down certain conditions in the construction of canteen, like:

- ❖ The standard in respect of construction, accommodation, furniture and other equipment of the canteen
- ❖ The foodstuffs to be served therein
- ❖ The date by which such canteen shall be provided
- ❖ The constitution of a managing committee for the canteen
- ❖ The delegation to Chief Inspector subject to such conditions as may be prescribed

□ **Section 47: Shelters, rest-rooms, and lunch-rooms**

- ❖ If the number of workers in a factory crosses 150, then the factory owners should construct and maintain shelters, rest-rooms, and lunchrooms for the workers. It allows the workers to eat the food which they bring along with them
- ❖ The shelters, rest-rooms, and lunchrooms should be properly ventilated and lighted

□ **Section 48: Creches**

Due to workforce diversity nowadays, women's participation is increasing in all the sectors especially the industrial sector.

One of the factors that stop women to work in factories or any other sector is the lack of care for their children during their working hours. In order to solve this problem and increase the engagement of women in factories, section 48 states:

- ❖ Where numbers of women workers exceed 30, then the factory should arrange a special room for the worker's kids who are below the age of 6 years
- ❖ The room should be properly lighted and ventilated

□ **Section 49: Welfare Officers**

Welfare officers must be employed in factory where more five hundred employees are employed.

□ **Section 50: Power to make Rules**

State Government make such rules for providing welfare to workers.

## PAYMENT OF WAGES ACT,1936

### INTRODUCTION:

- The payment of Wages Act,1936 was passed to regulate the payment of wages to certain classes of persons employed in Industry.
- The act extended to the whole of India.
- It was extended to Jammu and Kashmir by the Central Labour Laws Act,1970.
- It is primarily intended to help industrial workers who do not earn a lot of money.
- It covers all employees who work in a factory, through a subcontractor or directly with the railway administration, and also those who operated in the industrial sector.
- **Wage:**
  - ✓ Payment made by an employer to an employee for work done in a specific period of time.
  - ✓ *Benham – Wage – “A wage may be defined as the sum of money paid under contract by an employer to worker for service rendered”.*

### OBJECTIVES OF PAYMENT OF WAGES ACT:

- ✓ To avoid delays in paying wages.
- ✓ To prevent unauthorized deduction from wages.
- ✓ To prevent arbitrary fines being imposed on the employed person.
- ✓ To ensure regular and timely payment of wages to the employed person.

### DEFINITIONS UNDER PAYMENT OF WAGES ACT,1936

- ❖ **Appropriate Government [Sec 2(i)]:** “Appropriate Government” means, in relation to railways, air transport services, mines and oilfields, the Central Government and, in relation to all other cases, the State Government
- ❖ **Employed Person [Sec 2(ia)]:** “Employed Person” includes the legal representative of a deceased employed person.

❖ **Employer [Sec 2(ib)]:** "employer" includes the legal representative of a deceased employer.

[when there is a manager who is entrusted with the affairs of a company, the director of the company cannot be said to be employer]

❖ **Factory [Sec 2(ic)]:** "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof;]

❖ **Industrial or other establishment [Sec 2(ii)]:**

"Industrial or other establishment" means] any

(a) tramway service, or motor transport service engaged in carrying passenger or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;]

(b) dock, wharf or jetty;

(C) inland vessel, mechanically propelled:

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operation connected with navigation, irrigation, development or maintenance of buildings roads, bridges or mission and distribution of electricity or any other form of power is being carried on](h) any other establishment or class of establishment which the Central

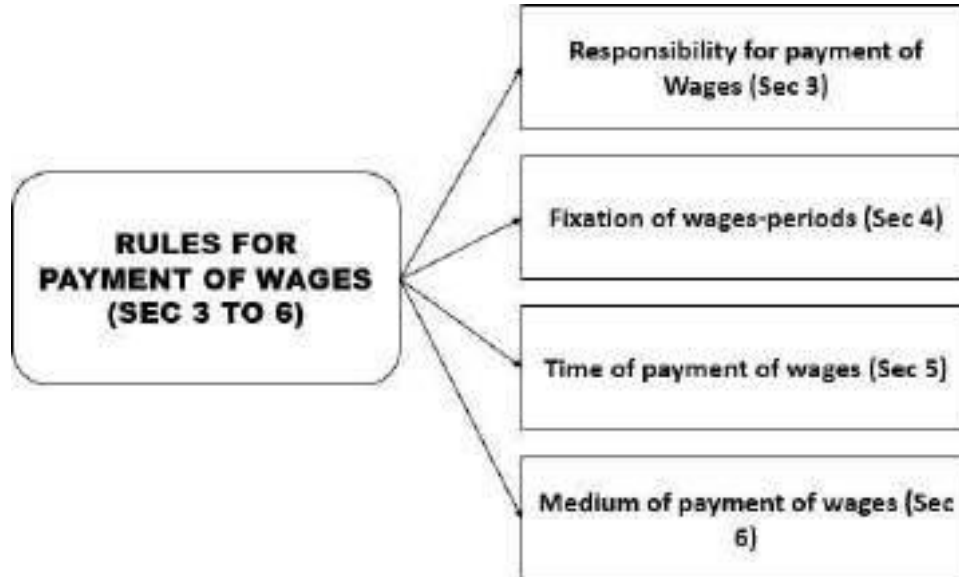
Government or a State Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette;

- ❖ **Mine [Sec 2(ia)]:** It has meaning assigned to it in Sec 2(1)(j) of the Mines Act,1952
- ❖ **Plantation [Sec 2(iii)]:** It has the meaning assigned to it Sec 2(f) of the plantation Labour Act,1951.
- ❖ **Wages [Sec 2(vi)]:** ‘wages’ means all remuneration (whether by way of salary, allowance or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. Simply stated, ‘wages’ means all remuneration due to any worker or employee if the terms of contract of employment are fulfilled

**Wages Do not include:**

- ✓ Any bonus
- ✓ The value of any house accommodation or of the supply of light, water, medical attendance.
- ✓ Any contribution paid by the employer to any pension or provident fund.
- ✓ Any travelling allowance.
- ✓ Any gratuity payable on the termination of employment.

## RULES FOR PAYMENT OF WAGES (SEC 3 TO 6)



### **1. Responsibility for payment of Wages (Sec 3)**

- ✓ Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the payment of Wages Act.

### **2. Fixation of wages-periods (Sec 4)**

- ✓ Every person responsible for the payment of wages under Sec.3 shall fix periods known as wage period, in respect of which such wages shall be payable.
- ✓ A wage period shall not exceed one month.

### **3. Time of payment of wages (Sec 5)**

- ✓ The rules relating to time of payment of wages are as follows,

#### **➤ Wages to be paid before 7th or 10th day**

- The wages of Every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than 1000 persons are employed shall be paid before the expiry of 7th day of the following wage-period
- In case the number of workers exceeds 1000 the wages shall be paid before the expiry of the 10th day of the following wage-period.

➤ **Wages in case of termination of employment**

- Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the 2nd working day from the day on which his employment is terminated.

➤ **Exemption**

- The Appropriate Government may by General or Special order exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases.

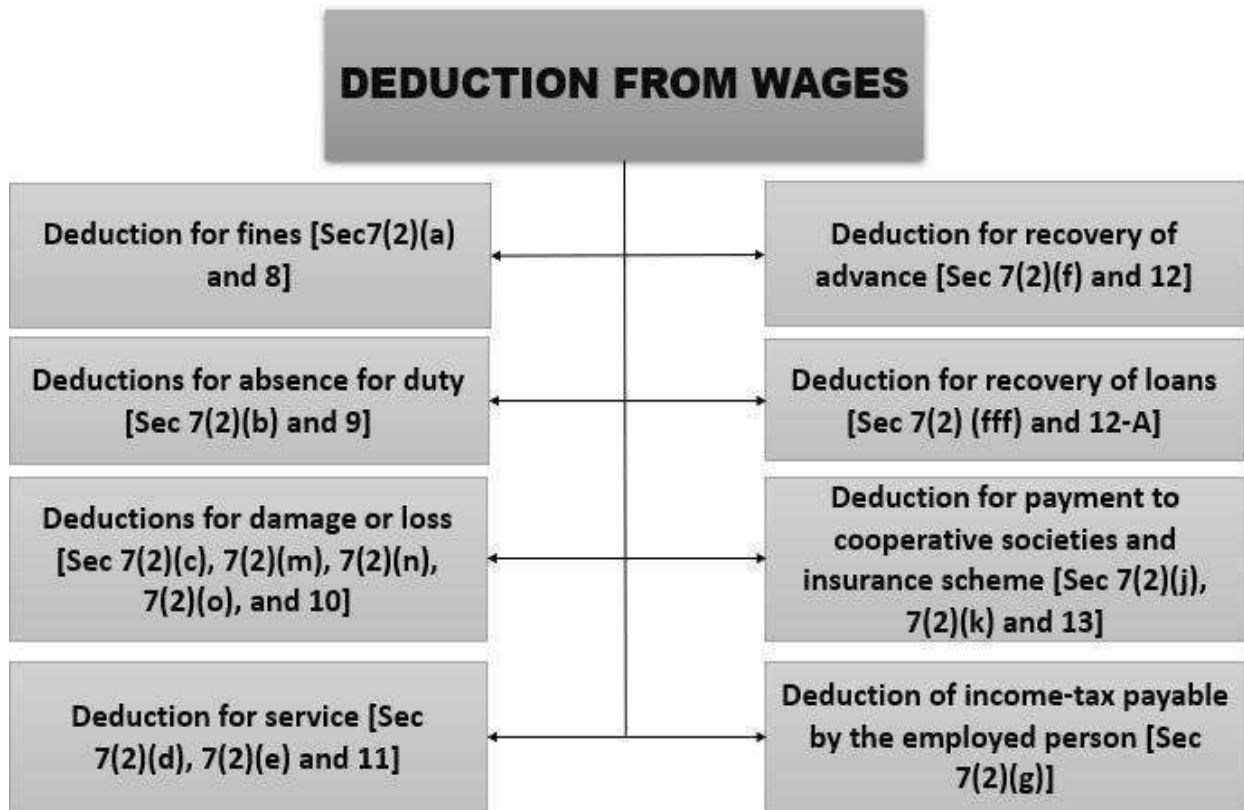
➤ **Wages to be paid on a working day**

- All payment of wages shall be made on a working day

**4. Medium of payment of wages (Sec 6)**

- ✓ All wages shall be paid in current coin or currency notes or both.
- ✓ According to Payment of Wages (Amendment) Act 1976 the employer may after obtaining the written authorisation of the employed person, pay him the wages either by Cheque or by crediting the wages in his bank account

## DEDUCTION FROM WAGES



### **1. Deduction for fines [Sec 7(2)(a) and 8]**

- No fines shall be imposed on any employed person save in respect of such acts or omissions on his part as the employer
- The notice specifying the acts and omissions for which fines may be imposed shall be exhibited in the prescribed manner on the premises in which the employment is carried on
- No fines shall be imposed on an employed person until he has been given an opportunity of showing cause against the fine
- The total amount of fine which may be imposed in any one wage period on any employed person shall not exceed 3% of the wages payable to him
- All fines thereof shall be recorded in a register to be kept by the person responsible for the payment of wages.

### **2. Deductions for absence for duty [Sec 7(2)(b) and 9]**

- Deduction may be made on account of the absence of an employed person from duty

- The absence may be for the whole or any part of the period during which he is so required to work.
- In a strike by workers in a public utility like transport service, if employees absent for a part of the day without notice, Deduction of full days wages would not be unjustified or illegal

### **3. Deductions for damage or loss [Sec 7(2)(c), 7(2)(m), 7(2)(n), 7(2)(o), and 10]**

- A Deduction for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person

### **4. Deduction for service [Sec 7(2)(d), 7(2)(e) and 11]**

- A Deduction for house accommodation and such amenities and service supplied by the employer as have been authorised by the Appropriate Government shall not be made from the wages of an employed person unless such services have been accepted by him as a term of employment

### **5. Deduction for recovery of advance [Sec 7(2)(f) and 12]**

- Recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of complete wage-period, but no recovery can be made of such advance given for traveling expenses
- Recovery of an advance of money given after employment began shall be subject to such conditions as the Appropriate Government may impose

### **6. Deduction for recovery of loans [Sec 7(2) (fff) and 12-A]**

- Deduction for loans granted for house building or other purposes and the interest due in respect thereof

**7. Deduction for payment to cooperative societies and insurance scheme [Sec 7(2)(j), 7(2)(k) and 13]**

- Deduction for payment to a scheme of insurance maintained by the Indian Post Office
- Deduction for the payments of any premium on his life insurance policy to the Life Insurance Corporation of India (LIC)

**8. Deduction of income-tax payable by the employed person [Sec 7(2)(g)]**

**LIMITS ON DEDUCTION:**

As per Section 7(3) of the Payment of Wages Act,1936, the total amount of deductions cannot exceed:

- 75% of the wages when the deductions are wholly or partly for payment to cooperative societies.
- 50% of wages in every other cases.

## **PAYMENT OF BONUS ACT**

- Payment of Bonus Act aims to regulate the amount of bonus to be paid to the persons employed in establishments based on its profit & productivity.
- The act applies to the whole of India for all establishments which had Twenty or more persons employed on any day during the year.
- **Bonus**
  - ✓ A bonus is a financial compensation that is above and beyond the normal payment expectations of its recipients.
  - ✓ Bonus may be awarded by a Company as an incentive or to reward good performance.
  - ✓ *New English Dictionary – Bonus – “A boon or gift over and above what is normally due as remuneration to the receiver and which is holy to the good”*

### **Quantum of Bonus:**

- ✓ The minimum bonus will be 8.33% of the salary during the year.
- ✓ The maximum bonus is 20% of the salary during the accounting year.

### **Definitions under Payment of Bonus Act, 1965**

#### **A. Accounting Year**

“Accounting year” means -

- (i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced.
- (ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;
- (iii) in any other case -
  - (a) the year commencing on the 1st day of April; or

(b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31<sup>st</sup> day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.

## **B. Allocable Surplus**

“Allocable surplus” means-

(a) in relation to an employer, being a company [(other than a banking company)] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent of the available surplus in an accounting; year;

(b) in any other case, sixty percent of such available surplus;

## **C. Appropriate Government**

“Appropriate Government” means-

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;

**D. Available Surplus:** available surplus means the available surplus computed under section 5;

**E. Award:** "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), or by any other authority constituted under any corresponding law relating to investigation and settlement of

industrial disputes in force in a State and includes an arbitration award made under section 10A of that Act or under that law;

**F. Banking Company:** "banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), 3 [any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), 1 [any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980),] any co-operative bank as defined in clause (vii) of section 2 of the Reserve bank of India Act, 1934 (2 of 1934),]and any other banking institution which may be notified in this behalf by the Central Government;

**G. Company:** "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), and includes a foreign company within the meaning of section 591 of that Act;

**H. Co-Operative Society:** "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State relating to co-operating societies;

**I. Corporation:** "corporation" means anybody corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society;

**J. Direct Tax**

"Direct tax" means--

(a) any tax chargeable under--

(i) the Income-tax Act;

(ii) the Super Profits Tax Act, 1963 (14 of 1963);

(iii) the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(iv) the agricultural income-tax law; and

(b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act;

**K. Employee:** "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding 4 [twenty-one thousand rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;

**L. Employer**

"employer" includes--

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

**M. Establishment In Private Sector:** "establishment in private sector" means any establishment other than an establishment in public sector;

**N. Establishment In Public Sector**

"Establishment in public sector" means an establishment owned, controlled or managed by--

(a) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(b) a corporation in which not less than forty per cent. of its capital is held (whether singly or taken together) by--

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation owned by the Government or the Reserve Bank of India;

**O. Factory:** "factory" shall have the same meaning as in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

**P. Gross Profits:** "gross profits" means the gross profits calculated under section 4;

**Q. Income-Tax Act:** "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);

**R. Salary Or Wage:** " salary or wage" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include--

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;

(vii) any commission payable to the employee.

### **ELIGIBILITY FOR BONUS:**

- ❖ Bonus is payable to the employee by the employer who has worked in the establishment for not less than 30 working day in that accounting year.
- ❖ Where an employee has not worked for all the working days in any accounting year, the bonus payable to him shall be proportionately reduced.

### **DISQUALIFICATION FOR BONUS:**

An employee shall be disqualified from receiving bonus, if he is dismissed from service for –

- i. Fraud
- ii. Riotous or violent behaviour while on the premises of the establishment
- iii. Theft, misappropriation or Sabotage of any property of the establishment.

### **DETERMINATION OF BONUS:**

- Bonus, under the payment of Bonus Act,1965 cannot be claimed by workers as a matter of right.
- The steps in determination of bonus are,



### (i) Calculation of the Gross Profit

- ✓ Gross profit is the profit a business makes after subtracting all the costs that are related to manufacturing and selling its products or services.
- ✓ *Gross profit = Revenue – Cost of Goods sold.*
- ✓ The starting point in the computation of the gross profits in the case of a banking company and non-banking establishments is the net profit as shown in the Profit & Loss account.

### (ii) Determination of Available Surplus:

- ✓ Next step is the determination of available surplus in respect of any accounting year shall be the gross profit for that year after deducting there from the sums referred.
- ✓ The following sums are deductible from the gross profits as prior changes,
  - Depreciation
  - Investment allowance
  - Direct Tax

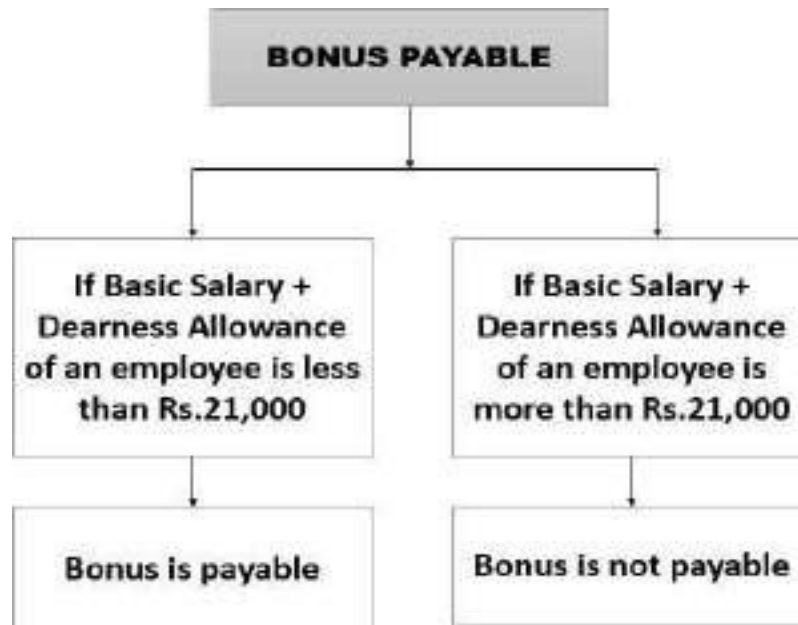
### (iii) Determination of Allocable Surplus:

- ✓ Allocable surplus is equal to 60% of the available surplus.
- ✓ This allocable surplus has to be distributed as bonus among employees during the year.
- ✓ However, this is subject to minimum 8.33% and maximum 25%

### (iv) Distribution of Bonus:

- ✓ Bonus formula provides for the payment of minimum and maximum bonus to the employees in the accounting year.
- ✓ If the gross earning of employees is below Rs.21,000 employers are liable to pay bonus.

✓ Calculation of bonus will be as follows,



$$Bonus = Salary * \frac{8.33}{100}$$

✓ If the salary is equal to or less than Rs.7000 then the bonus is calculated on the actual amount by using the formula:

$$Bonus = Salary * \frac{8.33}{100}$$

✓ If the salary is more than Rs.7000 then the bonus is calculated on Rs.7000 by using the formula:

$$Bonus = Salary * \frac{8.33}{100}$$

✓ **Example 1:** If Mr, X's Salary is Rs.6000 the bonus payable to Mr.X is

$$Bonus = 6000 * \frac{8.33}{100} = 500 \text{ per month}$$

✓ **Example 2:** If Mrs, Y's Salary is Rs.15,000 the bonus payable to Mrs.Y is

$$Bonus = 7000 * \frac{8.33}{100} = 583 \text{ per month}$$

## **INDUSTRY DISPUTE ACT,1947**

- Industry Dispute Act,1947 extended to the whole of India and regulated Indian Labour law.
- Enacted on 11<sup>th</sup> March 1947
- It came into force on 1<sup>st</sup> April,1947
- It was replaced by the Industrial Relations Code,2020
- Enacted by the Central Legislative Assembly
- The main aim of Industrial Dispute aact,1947 is to maintain a balance between labours and industry welfare by ensuring industrial peace and harmony.

### **Important Definitions Under Industrial Disputes Act,1947 [Section 2]**

#### **1. Appropriate Government [Section 2(a)]:**

“Appropriate Government” means the Central Government in relation to:

- i) Any industry carried-on:
  - a) By or under the authority of the Central Government, or
  - b) By a railway company, or
  - c) Concerning any such controlled industry as may be specified in this behalf by the Central Government.
- ii) Any industrial dispute concerning:
  - a) A Dock Labour Board established under the Dock Workers (Regulation of Employment) Act, 1948, or
  - b) The Industrial Finance Corporation of India established under Section 3 of the Industrial Finance Corporation Act, 1948, or
  - c) The Employees’ State Insurance Corporation established under Section 3 of the Employees’ State Insurance Act, 1948, or

- d) The Board of Trustees constituted under Section 3-A of the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948, or
- e) The Central Board of Trustees and State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, or
- f) The Indian Airlines' and 'Air India' Corporations established under Section 3 of the Air Corporations Act, 1952, or
- g) The Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956, or
- h) The Oil and Natural Gas Commission established under Section 3 of the Oil and Natural Gas Commission Act, 1959, or
- i) The Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, or
- j) The Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962, or
- k) ) The Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963, or
- l) The Food Corporation of India established under Section 3, or a Board of Management established for 2 or more contiguous States under Section 16 of the Food Corporation Act, 1964, or
- m) The International Airports Authority of India constituted under Section 3 of the International Airports Authority of India Act, 1971, or

- n) A Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976, or
- o) The Export Credit and Guarantee Corporation Limited, or
- p) The Industrial Reconstruction Bank of India, or
- q) The Banking Service Commission established under Section 3 of the Banking Service Commission Act, 1975, or
- r) A banking or an insurance company, or
- s) A mine, or
- t) An oil-field, or
- u) A Cantonment Board, or major port, or
- v) Any company in which not less than fifty-one per cent, of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament or the Central public sector undertaking, subsidiary companies set-up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government and; In relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set-up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government. It is provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the Appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.

**2. Arbitrator [Section 2(aa)]:** “Arbitrator” includes an umpire.

**3. Average Pay [Section 2(aaa)]:**

“Average Pay” means the average of monthly Paid workman:

- i) In the case of monthly paid workman, in the three complete calendar months;
- ii) In the case of weekly paid workman, in the four complete weeks
- iii) In the case of daily paid workman, in the twelve full working days, Preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked

**4. Award [Section 2(b)]:**” Award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A.

**5. Board (Section 2c):** “Board” means a Board of Conciliation constituted under the Act.

**6. Closure [Section 2(cc)]:** Section 2(cc) of the Industrial Disputes Act, 1947, defines “closure” as the permanent closing down of a place of employment or thereof.

**7. Conciliation Officer [Section 2(d)]:** “Conciliation Officer” means a Conciliation Officer appointed under the Act.

**8. Conciliation Proceeding [Section 2e]:** “Conciliation proceeding” means any proceeding held by a Conciliation Officer or Board of Conciliation under the Act.

**9. Court [Section 2 (f)]:** “Court” means a Court of Inquiry constituted under the Act.

**10. Employer [Section 2(g)]:**

“Employer” means in relation to an industry:

- i) Carried-on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf; Or where no authority is prescribed, the head of the department;
- ii) Carried-on by or on behalf of a local authority, the chief executive officer of that authority.

**11. Independent [Section 2(i)]:**

A person shall be deemed to be “independent” for the purpose of his appointment as the Chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such Dispute:

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the Appropriate Government the nature and extent of the shares held by him in such company.

**12. Lay-Off [Section 2(kkk)]:** “Lay-off” (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power, or raw materials or the accumulation of stock or the breakdown of machinery (or natural calamity or for any other connected reason) to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been Retrenched.

**13. Lock-Out [Section 2(l)]:** “Lock-out” means the temporary closing of a place of Employment or the suspension of work, or the refusal by an employer to continue to employ any number of person employed by him.

**14. Prescribed [Section 2(m)]:** “Prescribed” means prescribed by rules made under this Act.

**15. Public Utility Service [Section (n)]:**

“Public utility service” means:

- i) Any railway service or any transport service for the carriage of passengers or Goods by air,
- ia) Any service in, or in connection with the working of, any major port or dock;
- iii) Any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- iv) Any postal, telegraph or telephone service,
- v) Any industry which supplies power, light or water to the public;
- vi) Any system of public conservancy or sanitation;
- vii) Any industry specified in the First Schedule which the Appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the Appropriate Government, public emergency or public interest requires such extension.

**16. Railway Company [Section (o)]:** “Railway Company” means a railway company as defined in Section 3 of the Indian Railways Act, 1890.

**17. Retrenchment [Section 2(oo)]:**

“Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

- i) Voluntary retirement of the workman; or
- ii) Retirement of the workman or reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- iii) Termination of the service of the workman as the result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- iv) Termination of the service of a workman on the ground of continued ill-health.

**18. Settlement [Section 2(p)]:** “Settlement” means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the Appropriate Government and the Conciliation Officer.

**19. Strike [Section 2(q)]:** “Strike” means a cessation of work by a body of persons Employed in any industry acting in combination, or a concerted refusal under a Common understanding of a number of persons who are or have been so Employed to continue to work or to accept employment.

**20. Trade Union [Section 2(qq)]:** It means a trade union registered under the Trade Union Act, 1926, (16 of 1926).

21. **Tribunal [Section 2r]:** It means an Industrial Tribunal constituted under section 7-A and includes an Industrial Tribunal constituted before the 10<sup>th</sup> day of March, 1957, under this Act.

22. **Unfair Labour Practice Tribunal [Section 2(ra)]:** It means any of the practices specified in the Fifth Schedule.

**23. Wages [Section 2(rr)]:**

“Wages” means a remuneration capable of being Expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes:

- i) Such allowances (including dearness allowance) as the workman is for the time being entitled to;
- ii) The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
- iii) Any travelling concession
- iv) Any Commission payable on the promotion of sales or business’s or both; but does not include:
  - a) Any bonus
  - b) Any contribution paid or payable by the employer to any pension fund or Provident Fund or for the benefit of the workman under any law for the time being in force; and
  - c) Any gratuity payable on the termination of his service

## 24. Workman [Section 2(s)]:

“Workman” means any person (including an Apprentice) employed in any industrial establishment to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such Person:

- i) Who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy Act, 1957; or
- ii) Who is employed in the police service or as an officer or other employees of a prison; or
- iii) Who is employed mainly in a managerial or administrative capacity; or
- iv) Who, being employed in a supervisory capacity, draws wages exceeding ten Thousand rupees per mensem (every month) or exercises either by the nature of the duties attached to the office or by reason of the power vested in him, functions mainly of a managerial nature.

### **INDUSTRY:**

- Industry is a group of productive enterprises or organizations that produce or supply goods, services, or sources of income.
- An industry is a group of manufacturers or businesses that produce a particular kind of goods or services.
- The 3 major types of industries are primary industry, secondary industry and tertiary industry.
- The industries which are involved in extraction of raw materials like the mining industry are categorized as the primary industry.

- The manufacturing companies are categorized into secondary industries and most of the companies involved in the services sector are categorized into tertiary industries.
- **Michael Porter (1979)** - *“A group of competitors producing substitutes that are close enough that the behaviour of any firm affects each of the others either directly or indirectly.”*

### **INDUSTRIAL DISPUTE:**

- An industrial dispute can be viewed as friction or disagreement between two or more parties involved, due to the difference in their perceptions, opinions, mindsets, attitudes and values.
- In an organization, the parties engage in such disputes can be:
  - ✓ Employer and employee;
  - ✓ employee and employee or;
  - ✓ employer and employer.
- **According to the Industrial Disputes Act, 1947, Section 2(k)**, *“Industrial disputes means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or terms of employment or with the conditions of labour of any person.”*

### **AIM OF THE INDUSTRIAL DISPUTES ACT, 1947**

- This Act was passed with a key objective of “Maintenance of Peaceful work culture in the Industry in India”
- The main aim of the Industrial Disputes Act, 1947 is to maintain a balance between labour and industry welfare by ensuring industrial peace and harmony. It focusses on the mechanism and procedure for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication which is provided under the statute.

## **OBJECTIVES OF THE INDUSTRIAL DISPUTES ACT, 1947**

- To make provisions for the investigation and settlement of industrial dispute
- To secure amity and good relations between employer and workmen
- To investigate and settle industrial dispute
- To have a right of representation by trade union.
- To prevent illegal strikes and lockouts.
- To provide relief to workmen for lay off and retrenchment
- To promote the collective bargaining system.

## **TYPES OF INDUSTRIAL DISPUTES**



### **❖ Interest Disputes**

The interest here refers to gains. Therefore, the conflicts concerning the economic or non-economic interests of the employees, such as increasing the remuneration, working conditions, job security and other benefits are called interest disputes.

### **❖ Recognition Disputes**

The trade unions often enter into a dispute with the management during negotiation or collective bargaining for the benefit of its member employees.

Sometimes, for these negotiations, the management denies identifying the trade unions. Even when there are many trade unions in an organization, each one of them struggles to get recognized by

the management.

### ❖ **Grievance Disputes or Rights Disputes**

The conflicts concerning the employee's rights and legal issues with the management are termed as grievance disputes. It includes promotions, work duration, leaves allowed, over time, fringe benefits, safety and security.

### ❖ **Unfair Labour Practices Disputes**

The disputes over the unethical treatment of the management towards the labour such as discriminating them for holding membership of trade union, restricting communication, employing new workers during strikes and denial to bargain are called unfair labour practices disputes.

## **CAUSES OF INDUSTRIAL DISPUTES**



### ❖ **Economic Causes**

The ultimate aim of the labour is to earn their livings and meet their economic ends. Whereas, for the business, it is generating profits. Therefore, on the non-fulfilment of these needs, industrial disputes can take place between the management and the labour.

It includes demanding a higher wage, increasing the profits, bonus and allowances, replacing

machinery, improving working conditions, duration and other necessary facilities.

### ❖ **Managerial Causes**

Lack of administrative support and attention towards labour leads to industrial disputes.

Following are the various managerial causes of industrial disputes:

- ✓ Retrenchment or layoff of the workers without any reason;
- ✓ the inefficiency of the management to initiate leadership in the organization;
- ✓ poorly built and dissatisfying recruitment policies and practices;
- ✓ the employer does not comply with the agreement and codes such as code of discipline and collective bargaining;
- ✓ the management does not acknowledge the trade unions as a representative of the union members, i.e., the workmen.

### ❖ **Government Machinery**

At times, the government lacks a suitable strategy to address industrial disputes. Some of the drawbacks of the government machinery which lead to industrial conflicts are as follows:

- ✓ The need for growth and development is not considered seriously;
- ✓ difficulties in dealing with industrial culture and climate challenges;
- ✓ the employers meagrely apply this settlement machinery;
- ✓ there is a low level of trust of the employers and the employees, over the government's settlement machinery.

### ❖ **Voluntary Arbitration**

The word arbitration refers to the settlement of any dispute mutually with the help of an arbitrator.

Thus, in voluntary arbitration, there is a third party involved in the settlement process. Its decision can be biased or unacceptable by either of the parties, which can result in further conflicts.

### ❖ **Wage Boards**

The Indian government has set up wage boards for determining the suitable wages of the workmen or labourers.

When the workmen are dissatisfied with their remuneration, there arises a condition of an industrial dispute.

#### ❖ **Joint Management Councils (JMC)**

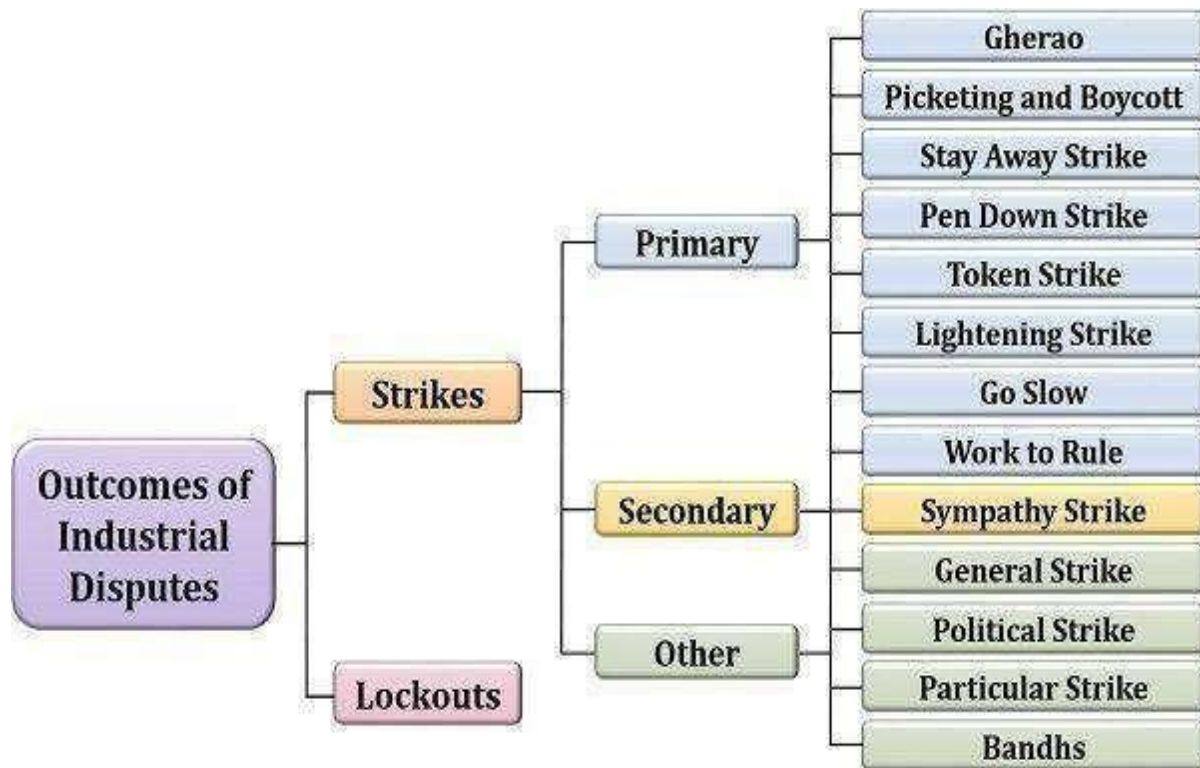
The government created Joint Management Councils, which consist of equal representatives of both the parties to deal with the worker's problems, but the idea failed due to lack of efficiency and progress.

#### ❖ **Other Causes**

The various other causes of industrial disputes are stated below:

- ✓ Weak and multiple trade unions result in more conflicts;
- ✓ influence of the political party in power, supporting a particular trade union leads to conflicts;
- ✓ the adverse effect of the relationship with the central and state governments, unstable political conditions and everyday responsibilities results in industrial disputes;
- ✓ in some organizations, collective bargaining is not allowed since the workmen are not even permitted to make trade unions;
- ✓ other reasons can be corruption, apparent consumption, role conflicts, etc.

## OUTCOMES OF INDUSTRIAL DISPUTE:



### 1. Strikes

It is a way through which a group of workmen exercise pressure on the management by stopping the work and protesting against the employers to get their demands fulfilled.

Following are the different types of strikes:

(a) **Primary Strikes:** The strikes which are directly projected against the employers are called as primary strikes. Some of the most common primary strikes are as follows:

- **Gherao:** Gherao refers to physically encircling the managers by the workmen to create a restricted area where no one can move in or out. The targeted managers are humiliated through; abuses also they are restricted move in or out.
- **Picketing:** Picketing is the process of putting up signboards, play cards and banners by the workmen to display their protest or dispute in front of the public. To involve maximum workers in the strike, some union members are made to stand at the factory gate to influence others too.

- **Boycott:** As the name suggests, boycott refers to interrupting business operations. It requests the other labourers to temporarily pull back their co-operation with the management and contribute to the strike.
- **Stay Away Strike:** In a stay-away strike, the workmen organize a protest in the form of demonstrations, marches, rallies, apart from the workplace.
- **Pen Down Strike:** It is also known as the sit-down strike or tools down strike. Though the workmen come to the workplace daily and also avails the work facilities, they sit idle and stop working.
- **Token Strike:** A token strike is a short form of protest where the workmen stop their work for a definite period. It is usually for as short as 24 hours, to hamper a day's production or so and get their demands fulfilled by the management.
- **Lightning Strike:** The lightning strike is that form of strikes where the workmen call off the work immediately without giving any prior information or warning to the management. It is also termed as a catcall strike.
- **Go Slow Strike:** This is another harmful way of protesting against the management where the workmen secretly plan to decrease their work speed so that the production is hampered. However, in front of the management, they pretend to be highly committed towards their job.
- **Work to Rule:** In this type of strike, the employees strictly follow their job rules or contract and stops performing any additional task, other than what all is mentioned in their agreement.
- **Hunger Strike:** One of the most common forms of a strike is the hunger strike. The workmen go on fasting for an indefinite period and sit nearby the workplace or the employer's house to project their demands.

(b) **Secondary Strikes:** The other name for the secondary strike is the sympathy strike. In this, the force is applied against the third person having sound trade relations with the

organization to indirectly incur a loss to the employer and the business. The third person does not have any other role to play in such a strike.

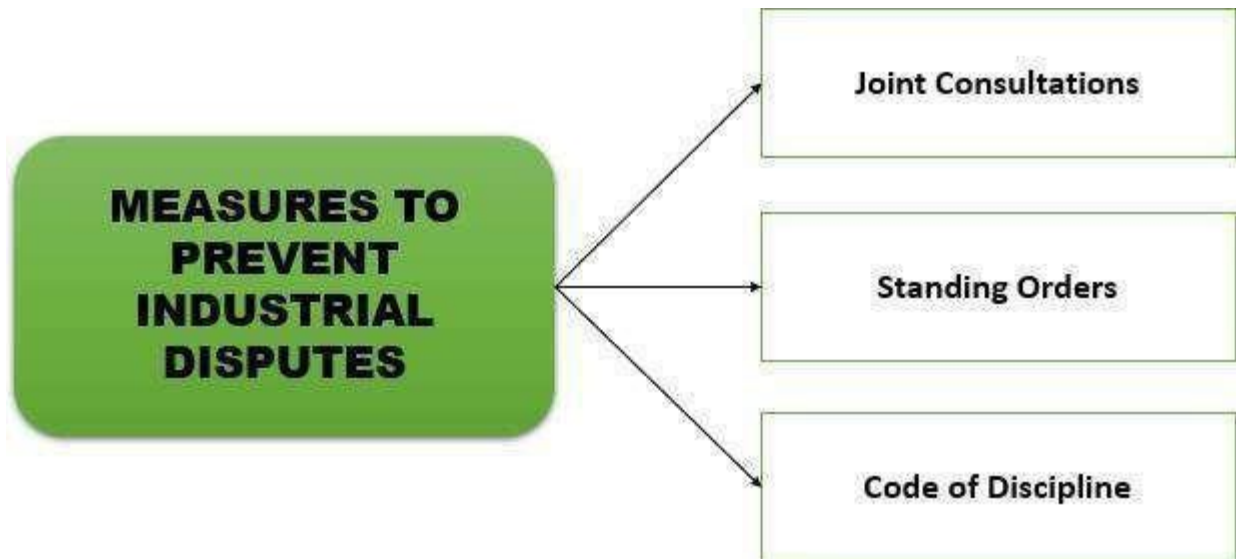
(c) **Other Strikes:** There are undoubtedly other forms of strike too, which takes place on a vast level involving and affecting a large number of people. These are as follows:

- ❑ **General Strike:** The strikes which are conducted on a mass level, i.e., in the whole country or state or city instead of just a single organization for fulfilment of a demand unanimously like job permanency or an increase in pay, etc.
- ❑ **Political Strike:** Any law or act proposed by the government for making changes to the working terms or conditions when unaccepted by the workers is protested through political strike on a massive level.
- ❑ **Particular Strike:** The protest against a specific issue or person within a city, state or country and take up a colossal form is termed as a particular strike.
- ❑ **Bandhs:** Bandh is adopted in countries like Nepal and India where a specific community or a political party calls for a general strike across the city or state or country. It is a form of civil disobedience and sometimes become violent, even involving stone attacks or arson attacks at times.

## 2. Lockouts

- ❑ This form of an industrial dispute is raised by the employers to impose specific terms and conditions on the workers. It is very different from layoff, retrenchment, termination or prohibition of employees.
- ❑ In lockouts, the employer temporarily closes down the workplace or stops the work or takes action like suspending the workers to force them to follow the new terms and conditions.

## MEASURES TO PREVENT INDUSTRIAL DISPUTES



### **1. Joint Consultations:**

There are two important consultative arrangements made to prevent industrial disputes. These are working committees and joint management councils.

#### **Works Committees.**

As per the provisions of the Industrial Disputes Act, 1947, organisations employing 100 or more persons have to set up works committees at unit level. These committees have equal number of representatives from the workers and the employers. Works committees are purely consultative in nature and have been regarded as the most effective agency for the prevention of industrial disputes.

The objectives of works committees are to:

1. Remove the causes of friction in the day-to-day work situation.
2. Foster amity and harmonious relationship between the parties.
3. Create an atmosphere for voluntary settlement of disputes and frictions.

Issues relating to wages, benefits, bonus, terms and conditions of employment, hours of work, welfare measures, training, development, promotion, transfer, etc. fall under the purview of works committees. In countries like Britain and the USA, works committees have been very popular agencies to prevent industrial disputes. In India, works committees are set up through legislation.

In India, TISCO was the first to set up works committee way back in 1920. By 1952, 2075 works committees came into existence in the country. However, only 530 works committees were operational due to various reasons at the end of 1987. Reasons like vagueness regarding their exact scope, functions, inter-union rivalries, union opposition and employees' reluctance to utilize these for prevention of disputes rendered works committees ineffective.

### **Joint Management Councils (JMC):**

In India, the joint management council (JMC) came into existence due to the provisions in this regard made by the Industrial Policy Resolution, 1956. These councils were set up to enable workers to participate in management and infuse a spirit of co-operation between the workers and the management.

The salient features of the JMCs are as follows:

- (i) The scheme is a voluntary one
- (ii) The minimum and maximum number of its members are 6 and 12 respectively consisting of equal number of representatives of workers and employers.
- (iii) The JMCs deal with matters like information sharing, consultative, and administrative.
- (iv) The decisions taken by the JMC should be unanimous ones.
- (v) The JMCs can be set up in the units employing 500 or more persons and having strong trade unions.

In India, industrial units like Hindustan Insecticides, HMT, Indian Airlines, Air India, in the public sector and TISCO, Arvind Mills, Modi Spinners and Weaving Mills, in the private sector, have been pioneers to introduce the JMC scheme. Past experience indicates that whenever the JMC

schemes have been setup, there have been better industrial relations, more satisfied work force, increase in productivity, better profits, etc.

This scheme has been introduced at the shop floor and plant level in 236 public sector undertakings by September 1994. However, like the works committees, the functioning of the JMCs in India is also plagued by the factors like reluctance of workers, union rivalries, the management's lukewarm attitude, etc.

## **2. Standing Orders:**

The very purpose of having Standing Orders in the organisation is to regulate industrial relations. Essentially, the term 'Standing Orders' refers to the rules and regulations which govern the conditions of employment of workers. These standing orders are binding on the employer and the employees.

The first legislative enactment, which incidentally sought to regulate the making of Standing Orders, was the Bombay Industrial Disputes Act, 1932. Recognizing the need for the standardised conditions of employment in factories to develop industrial peace in the country, the Industrial Employment (Standing Orders) Act was passed in 1946.

This Act provides for the framing of standing orders in all industrial undertakings employing 100 or more workers. The Act covers employment matters like classification of employees, i.e., permanent, temporary, probationers, etc., shift working, hours of work; attendance and absence rules; leave rules; termination, suspension, and disciplinary action, etc. The Labour Commissioner or the Deputy Labour Commissioner or the Regional Labour Commissioner certifies the Standing Rules.

Once the Standing Orders are certified, it is binding on the employees and the employers to abide by these Orders. Violation of Orders mentioned therein invites Penalties. The Industrial Employment (Standing Orders) Act, 1946 has been amended from time to time. As per the recent amendment made in the Act in 1982, there has been a provision for the payment of a subsistence allowance to workers who are kept under suspension.

### **3. Code of Discipline:**

Over the years, a number of measures have been adopted in India to maintain and promote discipline and harmony between the employees and the employers. With this in view, the Second Five Year Plan suggested that a voluntary code of discipline must formulate and then abide by the same. Following this, the Indian Labour Conference in its fifteenth session held in 1958 evolved a Code of Discipline in industry.

This code was duly ratified by the national labour organisations like INTUC, AITUC, HMS, and UTUC and also by the employers' associations such as EFI, AIOE and AIMO with effect from June 1, 1958. According to the Code of Discipline, both employees and employers voluntarily agree to maintain and create an atmosphere of mutual trust and co-operation in the industry.

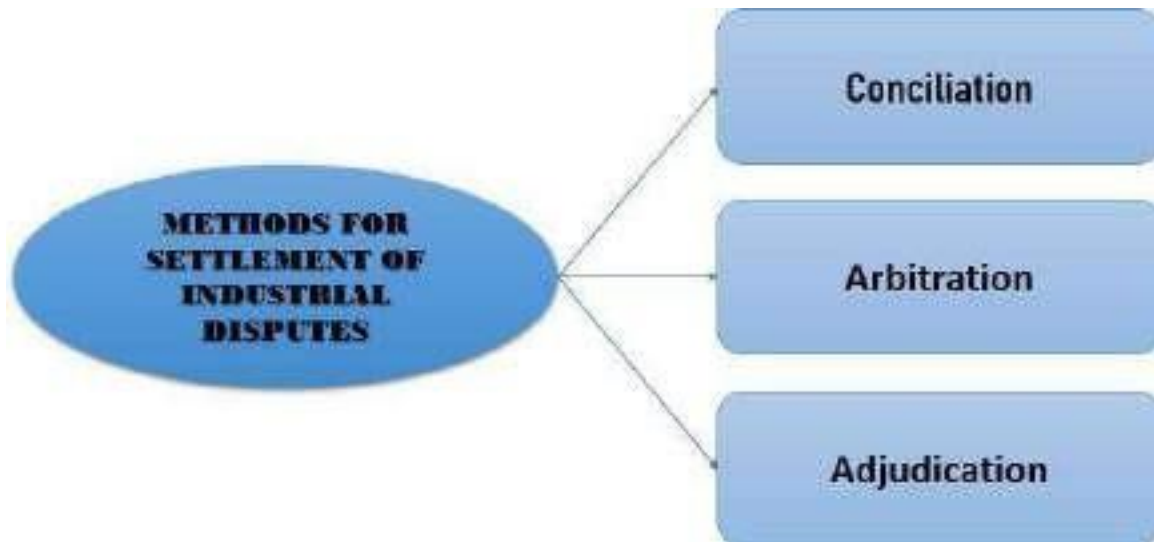
The code of Discipline provides for that:

- (i) Strikes and lockouts cannot be declared without prior notice.
- (ii) No party should take any direct action without consulting the other.
- (iii) The existing machinery for the settlement of disputes should be followed.

In India, the Ministry of Labour and Employment has evolved a comprehensive code of Discipline to maintain discipline and harmony in the industries. However, the code does not have any legal sanction. Only moral sanctions are behind it. By now, the Code of Discipline has been accepted by 200 employers and 170 trade unions.

When industrial disputes could not be prevented even after adopting various preventive measures, as just discussed, disputes occurred need to be settled at the earliest possible so as its impending costs are minimized. This calls for a discussion on "settlement of industrial disputes".

## METHODS FOR SETTLEMENT OF INDUSTRIAL DISPUTES



### **1. Conciliation:**

In simple sense, conciliation means reconciliation of differences between persons. Conciliation refers to the process by which representatives of workers and employers are brought together before a third party with a view to persuading them to arrive at an agreement by mutual discussion between them. The alternative name which is used for conciliation is mediation. The third party may be one individual or a group of people.

In view of its objective to settle disputes as quickly as possible, conciliation is characterised by the following features:

- (i) The conciliator or mediator tries to remove the difference between the parties.
- (ii) He/she persuades the parties to think over the matter with a problem-solving approach, i.e., with a give and take approach.
- (iii) He/she only persuades the disputants to reach a solution and never imposes his/her own viewpoint.
- (iv) The conciliator may change his approach from case to case as he/she finds fit depending on other factors.

According to the Industrial Disputes Act 1947, the conciliation machinery in India consists of the following:

1. Conciliation Officer
2. Board of Conciliation
3. Court of Enquiry

A brief description of each of these follows:

**Conciliation Officer:**

The Industrial Disputes Act, 1947, under its Section 4, provides for the appropriate government to appoint such number of persons as it thinks fit to be conciliation officers. Here, the appropriate government means one in whose jurisdiction the disputes fall.

While the Com-missioner /additional commissioner/deputy commissioner is appointed as conciliation officer for undertakings employing 20 or more persons, at the State level, officers from central Labour Commis-sion office are appointed as conciliation officers, in the case of Central government. The conciliation officer enjoys the powers of a civil court. He is expected to give judgment within 14 days of the commencement of the conciliation proceedings. The judgement given by him is binding on the parties to the dispute.

**Board of Conciliation:**

In case the conciliation officer fails to resolve the dispute between the disputants, under Section 5 of the Industrial Disputes Act, 1947, the appropriate government can appoint a Board of Conciliation. Thus, the Board of Conciliation is not a permanent institution like conciliation officer. It is an adhoc body consisting of a chairman and two or four other members nominated in equal numbers by the parties to the dispute.

The Board enjoys the powers of civil court. The Board admits disputes only referred to it by the government. It follows the same conciliation proceedings as is followed by the conciliation officer. The Board is expected to give its judgment within two months of the date on which the

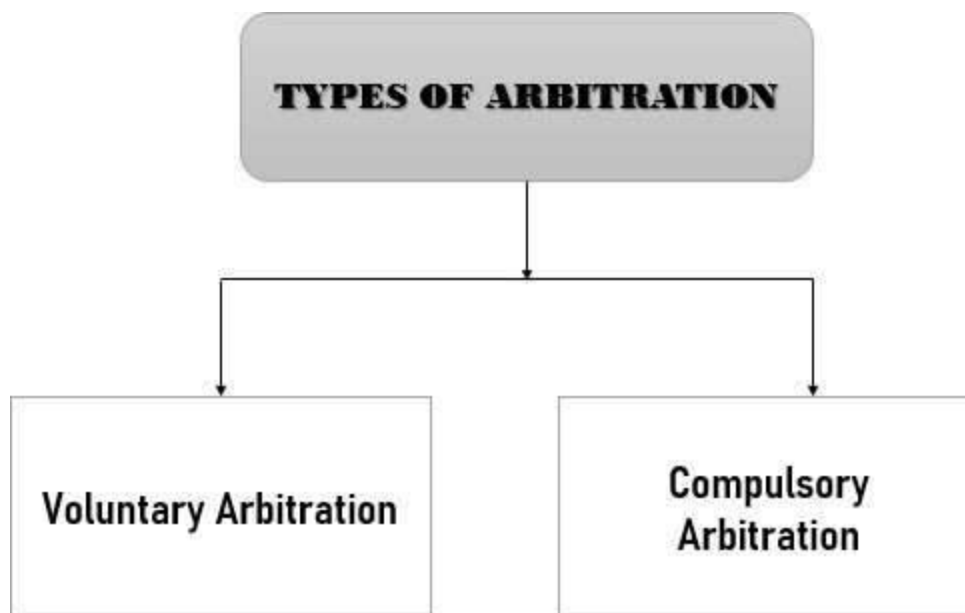
dispute was referred to it.

In India, appointment of the Board of Conciliation is rare for the settlement of disputes. In practice, settling disputes through a conciliation officer is more common and flexible.

## **2. Arbitration:**

Arbitration is a process in which the conflicting parties agree to refer their dispute to a neutral third party known as 'Arbitrator'. Arbitration differs from conciliation in the sense that in arbitration the arbitrator gives his judgment on a dispute while in conciliation, the conciliator disputing parties to reach at a decision.

The arbitrator does not enjoy any judicial powers. The arbitrator listens to the view points of the conflicting parties and then gives his decision which is binding on all the parties. The judgment on the dispute is sent to the government. The government publishes the judgment within 30 days of its submission and the same becomes enforceable after 30 days of its publication. In India, there are two types of arbitration: Voluntary and Compulsory.



### **Voluntary Arbitration:**

In voluntary arbitration both the conflicting parties appoint a neutral third party as arbitrator. The arbitrator acts only when the dispute is referred to him/her. With a view to promote voluntary arbitration, the Government of India has constituted a tripartite National Arbitration Promotion

Board in July 1987, consisting of representatives of employees (trade employers and the Government. However, the voluntary arbitration could not be successful because the judgments given by it are not binding on the disputants. Yes, moral binding is exception to it.

### **Compulsory Arbitration:**

In compulsory arbitration, the government can force the disputing parties to go for compulsory arbitration. In other form, both the disputing parties can request the government to refer their dispute for arbitration. The judgment given by the arbitrator is binding on the parties of dispute.

### **3. Adjudication:**

The ultimate legal remedy for the settlement of an unresolved dispute is its reference to adjudication by the government. The government can refer the dispute to adjudication with or without the consent of the disputing parties. When the dispute is referred to adjudication with the consent of the disputing parties, it is called 'voluntary adjudication.' When the government herself refers the dispute to adjudication without consulting the concerned parties, it is known as 'compulsory adjudication.

The Industrial Disputes Act, 1947 provides three-tier machinery for the adjudication of industrial disputes:

#### **(A) Labour Court:**

Under Section 7 of the Industrial Disputes Act, 1947, the appropriate Government by notifying in the official Gazette, may constitute Labour Court for adjudication of the industrial disputes. The labour court consists of one independent person who is the presiding officer or has been a judge of a High Court, or has been a district judge or additional district judge for not less than 3 years, or has been a presiding officer of a labour court for not less than 5 years. The labour court deals with the matters specified in the second schedule of the Industrial Disputes Act, 1947.

These relate to:

1. The property or legality of an employer to pass an order under the standing orders.

2. The application and interpretation of standing orders.
3. Discharge or dismissal of workers including reinstatement or grant of relief to workmen wrongfully dismissed.
4. Withdrawal of any statutory concession or privilege.
5. Illegality or otherwise of a strike or lockout.
6. All matters other than those reserved for industrial tribunals.

**(B) Industrial Tribunal:**

Under Section 7A of the Act, the appropriate Government may constitute one or more Industrial tribunals for the adjudication of industrial disputes. Compared to labour court, industrial tribunals have a wider jurisdiction. An industrial tribunal is also constituted for a limited period for a particular dispute on an adhoc basis.

The matters that come within the jurisdiction of an industrial tribunal include the following:

1. Wages, including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest periods.
4. Leave with wages and holidays.
5. Bonus, profit sharing, provident fund, and gratuity.
6. Classification by grades.
7. Rules of discipline.
8. Rationalisation.
9. Retrenchment of employees and closure of an establishment or undertaking.
10. Any other matter that can be prescribed.

**(C) National Tribunal:**

This is the third one-man adjudicatory body appointed by the Central Government by notification in the Official Gazette for the adjudication of industrial disputes of national importance. The central Government may, if it thinks fit, appoint two persons as assessors to advise the National Tribunal. When a national tribunal has been referred to, no labour court or industrial tribunal shall have any jurisdiction to adjudicate upon such matter.

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# **LEGAL ASPECTS OF BUSINESS**

## ***UNIT IV***

### ***CORPORATE TAX & GST***

## **UNIT IV**

### **CORPORATE TAX & GST**

#### **SYLLABUS**

Corporate Tax Planning, Corporate Taxes and Overview of Latest Developments in Indirect tax Laws relating to GST: An introduction including constitutional aspects, Levy and collection of CGST& IGST, Basic concept of time and value of supply, Input tax credit, Computation of GST Liability, Registration, Tax Invoice, Credit & Debit Notes, Electronic Way bill, Returns, Payment of taxes including Reverse Charge

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#### **CORPORATE TAX PLANNING:**

- **Meaning:** Corporate tax planning refers to the process of arranging a company's financial affairs in a way that minimizes its tax liability while staying within the bounds of tax laws and regulations.
- **Definition:** Corporate tax planning refers to the process of arranging a company's financial affairs in a way that minimizes its tax liability while staying within the bounds of tax laws and regulations.

#### **Essential Features of Corporate Tax Planning**

- Corporate tax planning helps make plans for future earnings and tax savings. It is a future-oriented measure.
- Corporate tax planning lower taxes for individuals and companies. Tax saving is a necessary feature.
- Corporate tax planning induces companies to invest money in tax-free sources. It promotes investment habits for future company goals.
- Tax planning is dynamic and adaptable to the changes in tax laws.
- Corporate tax planning is a legal and ethical practice for reducing liabilities.
- Corporate tax planning helps realize goals in both the short and long term.

## Objectives of Corporate Tax Planning



### ➤ **Increase savings**

Companies can easily reduce their taxes and boost savings with corporate tax planning. It helps use this income for company growth. This money is also useful for creating funds for emergencies. The businesses can retain these funds or also distribute them among the shareholders.

### ➤ **Economic Stability**

Corporate taxes are essential for government revenue. Without this income, the government can face a major setback. The planning allows legal funds for the government every year. It promotes stability in the economy. Also, these taxes are necessary for infrastructure development.

### ➤ **Enhance Growth**

The company's growth is dependent on money. The profits are used to promote products, bring efficiency to production, or adopt the latest tools. The company can also introduce new lines. Saving money with corporate tax planning helps fulfill this goal.

### ➤ **Minimization of litigation**

Following legal measures of corporate tax planning helps lower income tax. It also avoids litigation from tax authorities. Following illegal measures can have the opposite effect and lead to fines for the business.



## ➤ **Productive investments**

The company will make investments in exempt domains to save taxes. These investments are beneficial for the company in the long run. The funds can be used for emergencies or future goals.

## **Scope of Corporate Tax Planning**

- Corporate tax planning is the analysis of company statements. It analyzes the company's financial needs.
- Tax planning is futuristic. It pertains to the future needs of the firm.
- Tax planning covers company income from all relevant sources. The taxpayer must report correct figures.
- Tax planning is essential for the company's goals. It includes plans like diversification and company structure.
- Tax planning is essential for a company's budget efficiency. The budget is affected by tax liabilities.
- The country's laws bind corporate tax planning.

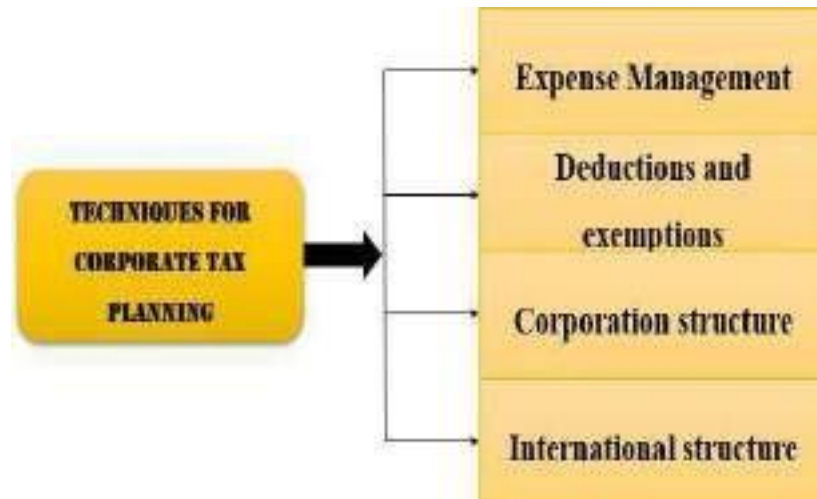
## **Types of Tax Planning**



- **Short-range and long-range Tax Planning:** The tax planning which is made every year to arrive at specific or limited objectives, is called short-range tax planning. Conversely, long-range tax planning alludes to such practices undertaken by the assessee which are not paid off immediately.

- **Permissive Tax Planning:** Tax planning, wherein the planning is made as per expressed provision of the taxation laws is termed as permissive tax planning.
- **Purposive Tax Planning:** Purposive tax planning refers to the tax planning method which misleads the law. Under this type, there is no expressed provision of the statute.

### Techniques for Corporate Tax Planning



There are several techniques a company has to follow for corporate tax planning.

- **Expense Management**

The company must have all records of expenses. Unorganized labor can be missed if there are no records for the same.

- **Deductions and exemptions**

The company must avail of the offered deductions and exemptions on time. It must be completed before the end of the financial year.

- **Corporation structure**

The company can adopt a structure like a limited liability company to lower taxes.

- **International structure**

The company can transfer funds to low-tax jurisdictions. It is possible for multinationals to save tax.

## **Indian Corporate Tax Rate**

The companies must follow the rules and pay the necessary taxes. These payments or tax-exempt investments must also follow a timeline. Find below the different tax rate rules for India.

### **➤ Tax rates for domestic companies**

Domestic companies in India are the ones registered by the Companies Act. The corporate tax planning rules include both public and private businesses. Their tax amount rates are mentioned below.

- ✓ Domestic businesses have a present tax rate of 30%.
- ✓ There is a 7% surcharge if the income is in the range of ₹1 Crore to ₹10 Crores. The surcharge is 12% for companies with revenue above ₹10 Crores.
- ✓ Section 115 BAA in 2019 led to changes in the effective tax rate for the companies. They have to pay a rate of 25.168%.
- ✓ The base tax rate is 22%, with a surcharge of 10%, and a Cess of 4% will lead to an effective rate of 25.168%. This tax cut is beneficial for companies.

### **➤ Tax rates for foreign companies**

Foreign companies in India must follow these rules for corporate tax planning. The following rules apply to the companies.

- ✓ If the company earns royalties and fees in India, it has to pay a 50% tax rate.
- ✓ For other types of income, the tax rate is 40%, including balances. If the income falls between ₹1 Crore and ₹10 Crores, there's a 2% extra charge. If the revenue is above ₹10 Crores, the extra charge is 5%.

### **➤ Additional Charges**

- ✓ Companies are bound to pay an extra health and education cess of 4%. This charge is applied to all companies, irrespective of their yearly incomes.
- ✓ Companies don't have to pay the Minimum Alternate Tax in Section 115JB when they avail of the benefits under Section 115 BAA.

## **Benefits of Corporate Tax Planning**

- It helps save money in taxes. The business can use the extra income for growth and diversification.
- Corporate tax planning allows investment for long-term benefits for the company. These investments can be used as emergency funds.
- Corporate tax planning offers legal and white tax revenue to the government. It helps promote economic growth and stability.
- Companies don't have to face disputes with corporate tax planning. They can follow legal measures to reduce taxes.
- Businesses can estimate and plan earnings for the year. It helps in the preparation and correct financial estimations.
- Read about types of budgetary control, here.

## **Limitations of Corporate Tax Planning**

- Corporate tax planning can tie up company funds. The business must invest in tax-exempt sources to reduce taxes.
- Businesses may resort to tax evasion by confusing the exemption laws.
- Tax-exempted investments often have a lower interest rate income.

## **INCOME TAX**

- Income tax is a tax charged on the annual income of an individual or business earned in a financial year.
- An income tax is a tax imposed on individuals or entities (taxpayers) in respect of the income or profits earned by them (commonly called taxable income). Income tax generally is computed as the product of a tax rate times the taxable income.

## **Objective of Income Tax:**

The main objectives of the Income Tax Act are promoting price stability, full employment, economic development, reduction of BOP difficulties, controlling cyclical fluctuations and non-revenue objectives.

## What type of income is taxable in India?

- **Income from salary/pension:** This includes basic salary, taxable allowances, perquisites, and profit in lieu of salary, as well as pension received by the person who himself/herself has retired from the service. Incomes from salary and pension are included in the computation of taxable income.
- **Income from business/profession:** This includes actual and presumptive incomes from business and professions that individuals do in their personal capacity and is added to taxable income after adjustment of the deductions allowed.
- **Income from house property:** An income tax assessee can own one or more house properties. These house properties can be self-occupied or rented out or even vacant. This head describes the rules relating to such ownership. The rules under this head describe how rent from one or more house properties is to be treated for the purpose of calculation of taxable income. It also describes how interest on home loan is to be accounted for in the case of self-occupied, rented out and vacant properties. An income tax assessee can claim certain deductions such as municipal taxes and a standard deduction for house maintenance in certain cases. The final net income or loss under this head is then added to or deducted from the income from the other heads.
- **Income from other sources:** This includes incomes like interest from a savings account, fixed deposits (FDs), family pension etc, which are included in the taxable income.
- **Income from Lottery, Betting, Race Horse etc.:** Such incomes are included in the total income, but excluded from taxable income as different tax rates are applicable on these types of income.
- **Capital Gain:** Capital gains arise at the time of selling capital assets like gold, house properties, stocks, securities, mutual fund units etc. Depending on the types of capital assets and the period of holding, gains on the sale of such assets are categorized as short-term and long-term capital gains. Although capital gains are part of income tax, they are not added to taxable income, because except short-term capital gains on the sale of debt funds, other gains are taxed at different rates.

## **Who is eligible for income tax?**

As income tax is based on one's ability to pay it, different tax rates are applied to different income slabs, which is revised by the government from time to time. Currently, there is zero per cent tax on taxable income up to Rs 2,50,000, 5 per cent tax is levied on taxable income between Rs 2.5 lakh and Rs 5 lakh, 20 per cent tax is levied on taxable income between Rs 5 lakh to Rs 10 lakh. For taxable income above Rs 10 lakh, 30 per cent is the applicable rate.

On the tax payable, 4 per cent Health and Education cess is also charged. Moreover, 10 per cent surcharge is levied on income between Rs 50 lakh and Rs 1 crore and 15 per cent surcharge is levied on income over Rs 1 crore. Tax rebate (under section 87A) up to Rs 12,500 is provided to the assessee having total income after Deductions up to Rs 5 lakh. However, usual tax computation will be applied in case the taxable income exceeds Rs 5 lakh limit.

## **How is income tax calculated in India?**

Income tax in India is calculated on the basis of tax rates determined by the government for an Assessment Year (AY). For example: For AY 2019-20 (Financial Year 2018-19), the tax payable may be calculated in the following way:

Once the gross total income is calculated by adding all the above sources, whichever applicable, deductions on account of tax-saving investments, allowed expenses, donations etc. are adjusted. The main sections under which Income Tax deductions in India are allowed include up to Rs 1.5 lakh under sections 80C, 80CCD, 80CCD (1), 80CCD (2) and 80CCG combined; up to Rs 50,000 u/s 80CCD(1B); up to Rs 1 lakh u/s 80D and 80E, 80EE, 80G, 80TTA.

After the entire eligible deduction amount is reduced from the gross income, the figure of taxable income is arrived at. The income tax amount that is payable is computed on the basis of taxable income. Now, suppose, if a person's taxable income is Rs 40 lakh, his tax payable for the AY 2019-20 (FY 2018-19) will be calculated as:

<b>Income (Rs)</b>	<b>Tax Rate (%)</b>	<b>Tax (Rs)</b>
0-2,50,000	0	0
2,50,000 – 5,00,000	5	12,500
5,00,000 – 10,00,000	20	1,00,000
10,00,000 – 40,00,000	30	9,00,000
Total Tax		10,12,500
Health & Education cess	4	40,500
Tax Payable		10,53,000

### **Income Tax Authorities**

Income tax authority [Explanation (a) to section 133A]: "Income-tax authority" means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer, and for the purposes of clause (i) of subsection (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax.

### **Types of Taxes in India**

In a broader term, there are two types of taxes namely,

1. Direct Taxes
2. Indirect Taxes

The implementation of both taxes differs. You pay some of them directly, like the cringed income tax, corporate tax, wealth tax, etc., while you pay some of the taxes indirectly, like sales tax, service tax, value added tax, etc.

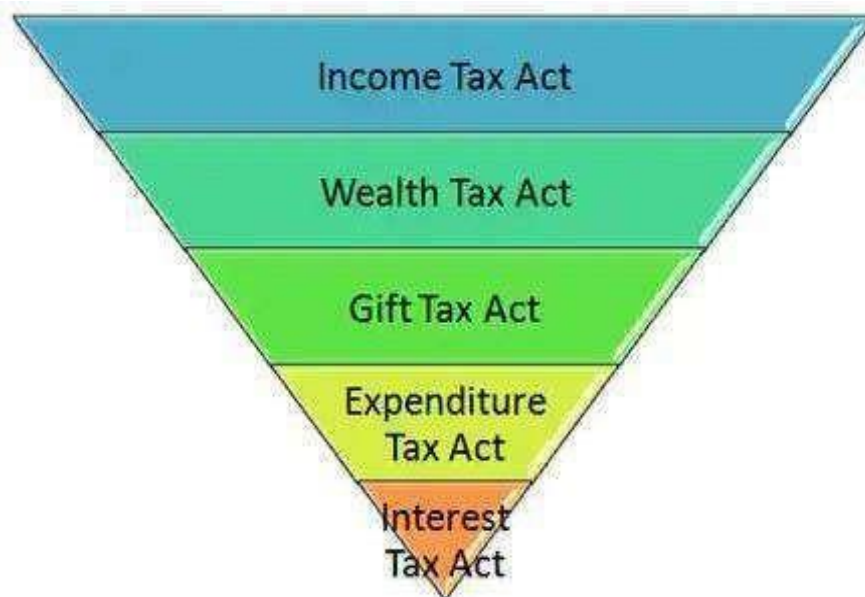


## Direct Tax:

### What Is Direct Tax?

As stated earlier, you pay these taxes directly. The government levies such taxes directly on an individual or an entity and it cannot get transferred to any other person or entity. There is only one such federation that winks at the direct taxes, i.e. the Central Board of Direct Taxes (CBDT) governed by the Department of Revenue. The CBDT has, to assist it with its sense of duties; the backup of several acts that preside over several aspects of the direct taxes.

### Types of direct taxes in India



#### 1. Income Tax Act:

Income Tax Act is also called the IT Act, 1961. Income Tax in India is governed by the rules set by this act. The income taxed by this act can be generated from any source such as profits received



from salaries and investments, owning a property or a house, a business, etc. The IT Act defines the tax benefit you can avail of on a life insurance premium or a fixed deposit. It also decides the savings from your income via investments and the tax slab for your income tax.

## **2. Wealth Tax Act:**

The Wealth Tax Act came into effect in the year 1951 and is in charge of the taxation linked with an individual's net wealth, a Hindu Unified Family (HUF), or a company. The easiest computation of wealth tax was:

If the net wealth of an individual exceeds Rs. 30 lakhs, then 1 percent of the exceeded amount is payable as a tax. It was put to an end in the budget that was announced in 2015. Since then, it has been substituted with a surcharge of 12 percent on the individuals that generate an income of more than Rs. 1 crore p.a. It is also pertinent to the companies, which have generated revenue of over Rs. 10 crores p.a. The fresh guidelines radically raised the sum the government would accumulate in taxes as disparate the amount they would accumulate via wealth tax.

## **3. Gift Tax Act:**

This Act was brought into existence in the year 1958 and assured that if a person received gifts or presents, valuables, or monetary, he has to pay a tax on those gifts. The tax on the aforementioned gifts was sustained at 30 percent but it was put to an end in the year 1998. Originally, if a gift was given, and it was somewhat like shares, jewelry, property, etc. it was subject to tax. As per the new rules, the present given by the members of the family like parents, spouses, uncles, aunts, sisters, and brothers is not subject to tax. Even presents you receive from the local authorities are also exempted from such taxes. If somebody, other than that of the exempted entities, presents you anything, which has a value beyond Rs. 50,000 then the whole gift amount is subject to tax.

## **4. Expenditure Tax Act:**

The Expenditure Tax Act came into existence in the year 1987 and cope with the expenditure made by you, as a person, may incur whilst you avail the services of a restaurant or a hotel. It is appropriate to the entire nation other than Jammu and Kashmir. It asserts that some expenses are

liable under the act if the amount is beyond Rs. 3,000 contingents upon a hotel and all the expenses drawn in a restaurant.

### **5. Interest Tax Act:**

This Act of 1974 copes with the tax, which was chargeable on interest produced in some specific situations. In the Act's last amendment, it is stated that this act does not apply to interest earned after March 2000.

### **Indirect Tax**

#### **What is Indirect Tax?**

The taxes levied on goods and services are referred to as indirect taxes. They are different from direct taxes as they are not imposed on an individual who shells out them directly to the Indian government, they are, as an alternative, imposed on the products and an intermediary, the individual selling the product, collects them. The most trivial examples of indirect taxes are Sales Tax, Taxes levied on imported goods, Value Added Tax (VAT), etc. Such taxes are imposed by summing them with the price of the product or service that is likely to push the price of the product up.

#### **Types of Indirect Taxes:**





## Types of Sales Tax

There are 5 types of sales tax broadly in India:

### Sales Tax:

The tax imposed on the sale of any product is called sales tax. This product can be anything produced in India itself or imported and can also cover services provided. The sales tax is levied on the product's seller who then passes it to the individual who buys the said product with this tax summated to the product's price. The constraint with this tax is that such a tax is imposed on a particular product that means if the product is re-sold; the seller cannot apply sales tax on it.

Fundamentally, all the states in India follow their individual Sales Tax Act, and a percentage native to them is charged. Besides this, other additional charges such as works transaction tax, turnover tax, purchase tax, and similar taxes are levied in a few states. This is also one reason that sales tax was considered as one of the largest revenue producers for a number of state governments. In addition, the sales tax is imposed under both the State and Central Legislation.

Sales Tax Type	Detail
Retail Sales Tax	Tax applicable on retail goods sale: Final consumer pays it Directly
Manufacturer's Sales Tax	Tax applicable on manufacturers of defined goods
Wholesale Sales Tax	Tax applicable on distributors of manufactured goods
Use Tax	Tax applicable on consumers below the tax paying jurisdiction
Value Added Tax (VAT)	Tax applicable on all kinds of sales levied by certain state Governments

### Service Tax:

Like sales tax, the service tax is also summated to the price of the product sold in the country. In Budget 2015, the FM announced that the rates of service tax will be elevated to 14 percent from 12.36 percent. It is not charged on goods but on the companies that offer services and once every quarter or every month it is collected on the way services are offered. If the organization is an



individual service provider, then the payment of service tax is made only once the bills are paid by the customer. However, for firms, the service tax is to be paid as soon as the invoice is raised, heedless of the payment of the bill by the customer.

You must remember that since the service offered at restaurants is a combo of the premises, the waiter, and the food, it is a tough point to decide who is eligible for service tax. To abolish haziness, in this regard, there was a declaration made that the restaurants will charge service tax on 40 percent of the total bill.

- **Goods and Service Tax-GST:**

The GST, i.e., Goods and Service Tax is the biggest reform in the structure of Indirect Tax in India since the market began unlocking 25 years back. The goods and services tax are a consumption-based tax because it is chargeable where the consumption is taking place. The GST is imposed on the value-added services and goods at every stage of consumption in the supply chain. The GST chargeable on the acquisition of the goods and services can be redeemed against the GST chargeable on the supply of the goods and services, the vendor will have to make payment of the GST on the applicable rate but he can claim it back via the tax credit method.

**Value Added Tax:**

Value Added Tax (VAT), popularly known as commercial tax is not chargeable on the commodities, which are zero rated for food and necessary drugs or those falling under exports. VAT is imposed at all the steps of the supply chain, from manufacturers to dealers to distributors to the end user.

The VAT was a tax imposed on the prudence of the state government of the country. Not all the states put it into practice when it was announced. The VAT is imposed on several goods that were sold in the state and the state itself decided the amount of tax.

**Customs Duty and Octroi:**

While you buy anything that requires being imported from abroad, you are applied a charge on it and that is known as the customs duty. It is applied to all the products, which come in via air, sea

or land. Although you can acquire products bought from different countries in India, you will be charged a customs duty. The intention of the customs duty is to make sure the goods that enter the country are taxed and are paid for. Like the customs duty makes sure that the goods for different countries are levied taxes, Octroi is supposed to make sure that the goods traversing the state borders inside India are appropriately taxed. The state government levies this and functions in almost the same way as that of the customs duty.

**Excise Duty:**

The excise duty is such a tax that is imposed on all the manufactured goods or the produced goods in India. This tax varies from customs duty as it is chargeable only on the things that are produced in India and is also called the Central Value Added Tax or CENVAT. The government collects this tax from the manufacturer of goods, also from the entities, which receive manufactured products and provide work for people to transport the products from the manufacturer to them.

The Central Excise Rule framed by the Central Government of India suggests that every individual that manufactures or produces any 'excisable goods or products', or who stockpile such products in a depot, will have to make payment of the duty chargeable on these goods. Under this scheme, no excisable products, on which some duty is payable will be permitted to move without making payment of duty from any point<sup>6</sup>, where they are manufactured or produced.

## Difference between Direct and Indirect Tax

<b>Direct Taxes</b>	<b>Indirect Taxes</b>
Applicable on income receipts	Applicable on expenses or sale of goods and service; i.e., adds to the outflow rather than reducing inflow unlike direct taxes
Investment in specified instruments or spending on specified activities allow you to reduce direct tax on income	No rebate for the consumer. However, it could apply to the sellers with turnover being the basis of it
Paid by the person receiving money directly to the Government	Paid by the person paying money but collected by the supplier
Three types of Direct Tax in India - Income Tax, Corporate Tax and Capital Gains Tax	Indirect Taxes in India include - GST, excise duty, customs duty and VAT

### **GOODS AND SERVICES TAX (GST):**

- The goods and services tax (GST) is an indirect federal sales tax that is applied to the cost of certain goods and services.
- The business adds the GST to the price of the product, and a customer who buys the product pays the sales price inclusive of the GST.
- The GST portion is collected by the business or seller and forwarded to the government.
- It is also referred to as Value-Added Tax (VAT) in some countries.
- In general, goods and services tax (GST) is paid by the consumers or buyers of goods or services.
- Some products, such as from the agricultural or healthcare sectors, may be exempt from GST depending on the jurisdiction.
- The goods and services tax (GST) is computed by simply multiplying the price of a good or service by the GST tax rate.
- For instance, if the GST is 5%, a \$1.00 candy bar would cost \$1.05.

## **Meaning and Definition:**

GST is known as the Goods and Services Tax. It is an indirect tax which has replaced many indirect taxes in India such as the excise duty, VAT, services tax, etc. The Goods and Service Tax Act was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017.

In other words, Goods and Service Tax (GST) is levied on the supply of goods and services. Goods and Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. GST is a single domestic indirect tax law for the entire country

## **Objectives of GST**

- **To achieve the ideology of ‘One Nation, One Tax’**

GST has replaced multiple indirect taxes, which were existing under the previous tax regime. The advantage of having one single tax means every state follows the same rate for a particular product or service. Tax administration is easier with the Central Government deciding the rates and policies. Common laws can be introduced, such as e-way bills for goods transport and e-invoicing for transaction reporting. Tax compliance is also better as taxpayers are not bogged down with multiple return forms and deadlines. Overall, it's a unified system of indirect tax compliance.

- **To subsume a majority of the indirect taxes in India**

India had several erstwhile indirect taxes such as service tax, Value Added Tax (VAT), Central Excise, etc., which used to be levied at multiple supply chain stages. Some taxes were governed by the states and some by the Centre. There was no unified and centralized tax on both goods and services. Hence, GST was introduced. Under GST, all the major indirect taxes were subsumed into one. It has greatly reduced the compliance burden on taxpayers and eased tax administration for the government.

- **To eliminate the cascading effect of taxes**

One of the primary objectives of GST was to remove the cascading effect of taxes. Previously, due to different indirect tax laws, taxpayers could not set off the tax credits of one tax against the other. For example, the excise duties paid during manufacture could not be set off against the

VAT payable during the sale. This led to a cascading effect of taxes. Under GST, the tax levy is only on the net value added at each stage of the supply chain. This has helped eliminate the cascading effect of taxes and contributed to the seamless flow of input tax credits across both goods and services.

- **To curb tax evasion**

GST laws in India are far more stringent compared to any of the erstwhile indirect tax laws. Under GST, taxpayers can claim an input tax credit only on invoices uploaded by their respective suppliers. This way, the chances of claiming input tax credits on fake invoices are minimal. The introduction of e-invoicing has further reinforced this objective. Also, due to GST being a nationwide tax and having a centralized surveillance system, the clampdown on defaulters is quicker and far more efficient. Hence, GST has curbed tax evasion and minimized tax fraud from taking place to a large extent.

- **To increase the taxpayer base**

GST has helped in widening the tax base in India. Previously, each of the tax laws had a different threshold limit for registration based on turnover. As GST is a consolidated tax levied on both goods and services both, it has increased tax-registered businesses. Besides, the stricter laws surrounding input tax credits have helped bring certain unorganized sectors under the tax net. For example, the construction industry in India.

- **Online procedures for ease of doing business**

Previously, taxpayers faced a lot of hardships dealing with different tax authorities under each tax law. Besides, while return filing was online, most of the assessment and refund procedures took place offline. Now, GST procedures are carried out almost entirely online. Everything is done with a click of a button, from registration to return filing to refunds to e-way bill generation. It has contributed to the overall ease of doing business in India and simplified taxpayer compliance to a massive extent. The government also plans to introduce a centralized portal soon for all indirect tax compliance such as e-invoicing, e-way bills and GST return filing.

- **An improved logistics and distribution system**

A single indirect tax system reduces the need for multiple documentation for the supply of goods. GST minimizes transportation cycle times, improves supply chain and turnaround time, and leads to warehouse consolidation, among other benefits. With the e-way bill system under GST, the removal of interstate checkpoints is most beneficial to the sector in improving transit and destination efficiency. Ultimately, it helps in cutting down the high logistics and warehousing costs.

- **To promote competitive pricing and increase consumption**

Introducing GST has also led to an increase in consumption and indirect tax revenues. Due to the cascading effect of taxes under the previous regime, the prices of goods in India were higher than in global markets. Even between states, the lower VAT rates in certain states led to an imbalance of purchases in these states. Having uniform GST rates have contributed to overall competitive pricing across India and on the global front. This has hence increased consumption and led to higher revenues, which has been another important objective achieved.

**Types / Components of GST:**



**1. Integrated Goods and Services Tax or IGST**

The Integrated Goods and Services Tax or IGST is a tax under the GST regime that is applied on the interstate (between 2 states) supply of goods and/or services as well as on imports and exports.

The IGST is governed by the IGST Act. Under IGST, the body responsible for collecting the taxes is the Central Government. After the collection of taxes, it is further divided among the respective states by the Central Government.

For instance, if a trader from West Bengal has sold goods to a customer in Karnataka worth Rs.5,000, then IGST will be applicable as the transaction is an interstate transaction. If the rate of GST charged on the goods is 18%, the trader will charge Rs.5,900 for the goods. The IGST collected is Rs.900, which will be going to the Central Government.

## **2. State Goods and Services Tax or SGST**

The State Goods and Services Tax or SGST is a tax under the GST regime that is applicable on intrastate (within the same state) transactions. In the case of an intrastate supply of goods and/or services, both State GST and Central GST are levied.

However, the State GST or SGST is levied by the state on the goods and/or services that are purchased or sold within the state. It is governed by the SGST Act. The revenue earned through SGST is solely claimed by the respective state government.

For instance, if a trader from West Bengal has sold goods to a customer in West Bengal worth Rs.5,000, then the GST applicable on the transaction will be partly CGST and partly SGST. If the rate of GST charged is 18%, it will be divided equally in the form of 9% CGST and 9% SGST. The total amount to be charged by the trader, in this case, will be Rs.5,900. Out of the revenue earned from GST under the head of SGST, i.e., Rs.450, will go to the West Bengal state government in the form of SGST.

## **3. Central Goods and Services Tax or CGST**

Just like State GST, the Central Goods and Services Tax of CGST is a tax under the GST regime that is applicable on intrastate (within the same state) transactions. The CGST is governed by the CGST Act. The revenue earned from CGST is collected by the Central Government.

As mentioned in the above instance, if a trader from West Bengal has sold goods to a customer in West Bengal worth Rs.5,000, then the GST applicable on the transaction will be partly CGST

and partly SGST. If the rate of GST charged is 18%, it will be divided equally in the form of 9% CGST and 9% SGST. The total amount to be charged by the trader, in this case, will be Rs.5,900. Out of the revenue earned from GST under the head of CGST, i.e., Rs.450, will go to the Central Government in the form of CGST.

#### **4. Union Territory Goods and Services Tax or UTGST**

The Union Territory Goods and Services Tax or UTGST is the counterpart of State Goods and Services Tax (SGST) which is levied on the supply of goods and/or services in the Union Territories (UTs) of India.

The UTGST is applicable on the supply of goods and/or services in Andaman and Nicobar Islands, Chandigarh, Daman Diu, Dadra, and Nagar Haveli, and Lakshadweep. The UTGST is governed by the UTGST Act. The revenue earned from UTGST is collected by the Union Territory government. The UTGST is a replacement for the SGST in Union Territories. Thus, the UTGST will be levied in addition to the CGST in Union Territories.

## Difference Between Types of GST

Types of GSTs	Authority which is benefitted	Priority of Tax Credit use	Who is it collected by?	Transactions which are applicable (Goods and Services)
CGST	Central Government	CGST IGST	Central Government	Within a single state, i.e., intrastate
SGST	State Government	SGST IGST	State Government	Within a single state, i.e., intrastate
IGST	Central Government and State Government	IGST CGST SGST	Central Government	Between two different states or a state and a Union Territory, i.e., interstate
UTGST/UGST	Union Territory (UT) Government	UTGST IGST	Union Territory (UT) Government	Within a single Union Territory (UT)

## Features of Goods and Services Tax (GST)



- **Comprehensive Tax:** GST is comprehensive in nature because it has substituted various indirect taxes in India, for example, Sales tax, Service Tax, Excise Duty, Entertainment tax, VAT, luxury tax, entry tax, etc.
- **Multistage Tax:** GST is imposed on each stage of the production process on the value addition made by each party. However, the input tax credit is available to all the parties, except the final consumer of the goods and services,
- **Destination based tax:** As GST is collected from the point of consumption, i.e. the final consumer, it is a destination-based tax.
- **Tax Credit:** GST offers an inclusive and continuous chain of the tax credit from the point of view of the producer or service provider. In this way, tax is levied only on the value addition at each stage.
- **Tax burden falls on the final consumer:** The supplier of goods or service provider can avail input tax credit at each stage, on the GST paid on inputs and set off the credit against the GST payable on the supply. In this way, it is the final consumer who bears the tax burden, on the GST charged by the last supplier in the supply chain.
- **Elimination of Cascading Effect:** In the previous tax regime, cascading effect, i.e., double taxation was the biggest issue due to which goods are taxed multiple times. But with the emergence of GST, as only the value-added at each stage is taxed, the cascading effect is eliminated completely.

### **What is not covered under GST?**

The following items are excluded from the purview of GST.

- **Alcohol for human consumption:** The State Government has the power to impose tax on Alcohol.
- **Petroleum Products:** The date from which GST will be imposed on five petroleum products, i.e., crude oil, diesel, petrol, natural gas and ATF, will be decided by the GST council.

- **Tobacco:** Excise duty is levied on the manufacturing of tobacco-based items like cigarettes, bidi, and other chewing tobacco products at different rates. However, additional cess is imposed on the tobacco-related products under GST.
- **Electricity:** The State Government has the power to impose tax on electricity.

### **Goods and Services Tax Council (GST Council)**

According to the Article 279A of the amended Constitution, the GST Council comprises the following members:

- ✓ **Chairperson:** Finance Minister
  - ☐ **Vice Chairperson:** He/she is chosen amongst the Ministers of State Government.
  - ✓ **Members:** The members of the GST Council are MoS (Finance) and all Ministers of Finance/Taxation of every state.
- Voting takes place when at least half of the members are assembled.
  - The Centre has one-third weightage, whereas the States have two-thirds of the total votes cast at the meeting.
  - The decision is taken by a 75% majority.
  - The Council shall make recommendations on anything related to the GST, including rules and rates, etc.

### **GST Rates**

The GST Council determines the GST rate slabs. The GST Council reviews the rate slabs for goods and services on a regular basis. GST rates are typically high for luxury items and low for necessities. GST rates in India for various goods and services are divided into four slabs: 5% GST, 12% GST, 18% GST, and 28% GST.



## Advantages of GST

### 1. GST eliminates the cascading effect of tax

GST is a comprehensive indirect tax that was designed to bring indirect taxation under one umbrella. More importantly, it is going to eliminate the cascading effect of tax that was evident earlier.

Cascading tax effect can be best described as 'Tax on Tax'. Let us take this example to understand what is Tax on Tax:

#### **Before GST regime**

A consultant offering services for say, Rs.50,000 and charged a service tax of 15%

(Rs.50,000 \* 15% = Rs.7,500).

Then say, he would buy office supplies for Rs.20,000 paying 5% as VAT

(Rs.20,000 \* 5% = Rs.1,000).

He had to pay Rs.7,500 output service tax without getting any deduction of

Rs.1,000 VAT already paid on stationery.

His total outflow is Rs.8,500.

#### **Under GST**

GST on service of Rs.50,000 @18%	9,000
Less: GST on office supplies (Rs 20,000*5%)	1,000
Net GST to pay	8,000

### 2. Higher threshold for registration

Earlier, in the VAT structure, any business with a turnover of more than Rs.5 lakh (in most states)

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was liable to pay VAT. Please note that this limit differed state-wise. Also, service tax was

exempted for service providers with a turnover of less than Rs.10 lakh.

Under GST regime, however, this threshold has been increased to Rs.20 lakh, which exempts many small traders and service providers.

Let us look at this table below:

<b>Tax</b>	<b>Threshold Limits</b>
Excise	1.5 crores
VAT	5 lakhs in most states
Service Tax	10 lakhs
GST	20 lakhs (10 lakhs for NE states)

### **3. Composition scheme for small businesses**

Under GST, small businesses (with a turnover of Rs.20 to 75 lakh) can benefit as it gives an option to lower taxes by utilizing the Composition scheme. This move has brought down the tax and compliance burden on many small businesses.

### **4. Simple and easy online procedure**

The entire process of GST (from GST registration to filing returns) is made online, and it is super simple. This has been beneficial for start-ups especially, as they do not have to run from pillar to post to get different registrations such as VAT, excise, and service tax.

and static auto-drafted returns with input tax credit details reported as available or not for a taxpayer during the tax period. The summary return in form GSTR-3B contains both sales and ITC information, any refund details as well as details of non-GST supplies for the tax period. This return is filed to report the taxes payable, ITC claimed and taxes paid for the tax period.

## **5. Special treatment for e-Commerce operators**

Before GST regime, supplying goods through the e-commerce sector did not have separate rules. It had variable VAT laws. Let us look at this example:

Online websites (like Flipkart and Amazon) delivering to Uttar Pradesh had to file a VAT declaration and mention the registration number of the delivery truck. Tax authorities could sometimes seize goods if the documents were not produced.

Again, these e-commerce brands were treated as facilitators or mediators by states like Kerala, Rajasthan, and West Bengal which did not require them to register for VAT.

All these differential treatments and confusing compliances have been removed under GST. For the first time, GST has clearly mapped out the common provisions applicable to the e-commerce sector across India and since these are applicable all over India, there should be no complication regarding the inter-state movement of goods anymore.

## **6. Improved efficiency of logistics**

Earlier, the logistics industry in India had to maintain multiple warehouses across states to avoid the Central Sales Tax and state entry taxes on inter-state movement. These warehouses were forced to operate below their capacity, giving room for increased operating costs.

Under GST, however, these restrictions on inter-state movement of goods have been lessened.

As an outcome of GST, warehouse operators and e-commerce aggregators players have shown interest in setting up their warehouses at strategic locations such as Nagpur (which is the zero-mile city of India), instead of every other city on their delivery route.

Reduction in unnecessary logistics costs is already increasing profits for businesses involved in the supply of goods through transportation.

## **7. Unorganized sector is regulated under GST**

In the pre-GST era, it was often seen that certain industries in India like construction and textile were largely unregulated and unorganized.

Under GST, however, there are provisions for online compliances and payments, and for availing of input credit only when the supplier has accepted the amount. This has brought in accountability and regulation to these industries.

### **Disadvantages of GST**

#### **1. Increased costs due to software purchase**

Businesses have to track GST updates regularly. They must ensure that their accounting or ERP software gets updated in real time for GST legal and portal updates. Else, they can go for a GST compliance solution to ensure continuous compliance. But both the options involve money to be invested and needs time commitment for training employees so that there is efficient utilization of the new GST software.

Clear has a ready-to-use, enterprise-grade GST solution- ClearGST software. Ensure compliance with latest GST laws and rules through AI-powered reconciliations, insightful reports, end-to-end GST return filing, automated Table-4 reporting in GSTR-3B and much more!

#### **2. Not being GST-compliant can attract penalties**

Many small businesses in India are adapting GST changes with every passing month. When the law was first introduced, they had learned to issue GST-complaint invoices, be compliant with digital record-keeping, and of course, file timely returns. This means that the GST-complaint invoice issued should have had mandatory details such as GSTIN, place of supply, HSN codes, and others.

These same invoices can be easily imported through various options for accurate return filing through the Clear GST platform.

### **3. GST brought about a rise in operational costs**

GST changed the way taxes are paid and returns are filed. Businesses needed to employ tax professionals who had expertise to stay GST-complaint. This gradually increased costs for small businesses as they had to bear the additional cost of hiring experts.

Also, businesses needed to train their employees in GST compliance, further increasing their overhead expenses. A plug-and-play, SaaS-based solution such as ClearGST allowed taxpayers to ensure compliance at reasonable cost.

### **4. GST came into effect in the middle of the financial year**

Initially, as GST was implemented on the 1st of July 2017, businesses followed the old tax structure for the first 3 months (April, May, and June), and GST for the rest of the financial year 2017-18.

Businesses found it hard to get adjusted to the GST regime, and some of them ran these tax systems parallelly, resulting in confusion and compliance issues.

### **5. Adapting to a complete online taxation system**

Unlike earlier, businesses are had to switch from pen and paper invoicing and filing to online return filing and making payments. This was tough for some smaller businesses to adapt to.

The process for GST returns filing on ClearGST is easy to follow. Business owners need to only upload their invoices through easy-import options, and the software will populate the return forms automatically with the information from the invoices for an error-free end-to-end filing. Any errors in invoices will be clearly identified by the software in real-time, thus increasing efficiency and timeliness.

### **6. SMEs have a higher tax burden**

Smaller businesses, especially in the manufacturing sector have faced difficulties under GST. Earlier, only businesses whose turnover exceeded Rs.1.5 crore had to pay excise duty. But now any business whose turnover exceeds Rs.20 lakh have to pay GST.

However, SMEs with a turnover up to Rs.75 lakh can opt for the composition scheme and pay only 1% tax on turnover in lieu of GST and enjoy lesser compliances. The catch though is these businesses will then not be able to claim any input tax credit. The decision to choose between higher taxes or the composition scheme (and thereby no ITC) continues to be a tough one for many SMEs.

### **VALUE-ADDED TAX (VAT)**

Value-added tax (VAT) is a flat tax levied on an item. It is similar to a sales tax in some respects, except that with a sales tax, the full amount owed to the government is paid by the consumer at the point of sale. With a VAT, portions of the tax amount are paid by different parties to a transaction.

**Definition:** Value-added tax (VAT) is an indirect tax that is charged at the time of consumption of goods and services and is levied when a value has been added over various stages of production/ distribution, right from the purchase of raw materials till the final products are sold to the retail consumers.

#### **Features of VAT in India**

- **Registration:** All businesses that have a taxable turnover of more than Rs. 20 lakhs (for the states of Jammu & Kashmir, Uttarakhand, and Himachal Pradesh, the registration threshold is Rs. 10 lakhs) are required to register for VAT.
- **Compliance:** Businesses must comply with the provisions of the State VAT Act and regulations by filing returns and paying taxes as per the prescribed dates.
- **Rates:** The rate of VAT varies from state to state and from product to product.
- **Input Tax Credit:** Input Tax Credit (ITC) is allowed to be claimed by registered dealers on the purchase of goods and services used in the course of business.
- **Exemptions:** Certain goods and services are exempted from VAT.
- **E-filing:** Many states allow businesses to file their VAT returns electronically.
- **Refunds:** Businesses can claim refunds on excess VAT paid or on goods exported out of the state.

## **VAT Calculation:**

Since now what is VAT has been explained above, now understand its components here.

VAT has two components, viz.

- ✓ Output VAT
- ✓ Input VAT

$VAT = Output\ Tax - Input\ Tax$

### ✓ **Output VAT**

It is charged to the customer on the taxable sales made by the dealer. Here, the dealer or seller can be either the manufacturer, wholesaler, or the retailer registered under VAT.

One has to register to make the sales above the prescribed limit. Once the dealer is registered, it is chargeable on all the taxable sales for a given tax period, usually every month

### ✓ **Input VAT**

Input VAT is the tax that is paid on the eligible purchases made by the dealer. Accordingly, when a dealer is registered under VAT, the VAT liability is to be paid in cash to the state government for a particular month.

However, registered dealers can normally claim a credit for VAT charged on most business purchases.

## **VAT Rates in India**

The guidelines and rules for value-added tax vary from state to state as the tax is collected by state governments. Types of VAT rate in India falls under 4 heads that are as follows, with value added tax examples as well-

### ✓ Nil VAT Rate

Items that are very basic in nature are sold without any VAT on them. These items are mainly those sold by the unorganized sector in their most basic or natural form. Examples of these types of items are salt, khadi etc.

### ✓ 1% VAT Rate

Items that tend to be highly expensive have a low percentage of VAT applicable. Items such as Gold, silver and other precious stones as well as precious jewelry fall under this category of goods. Most Indian states have fixed VAT for these items which is at 1% of the amount.

### ✓ 4-5% VAT Rate

Under this category of VAT, daily consumption goods have been put by several state governments. VAT charged on goods essentials such as oil, coffee, medicines etc. is around 4-5% for most of the states in India.

### ✓ General VAT Rate

General VAT rates are applicable to goods that cannot be segregated and put under any of the above-listed VAT categories. Goods such as liquor, cigarettes etc. are charged with high VAT rates of 12.5% or 14-15%.

There are a lot of state governments that follow a general rate of VAT for goods which cannot be categorized to the above list of classification. Goods like that are taxed at 12%, 13% or even 15% in various states.

## **Collection of Value Added Tax in India**

The VAT collection process can be predominantly categorized into two prime categories-

### **a) Based on the Method of Collection**

- **Account-based Collection of VAT**

Under the account-based collection method, instead of using sale receipts, tax is calculated on the value added. The difference between revenues and allowable purchases is the value-added tax.

- **Invoice-based Collection of VAT**

This method is used by almost all countries. Under the invoice-based VAT collection process, sale receipts or the invoice is used to compute the corresponding VAT. When the traders sell their goods and services, they offer invoices containing separate details of VAT collected.

**b) Based on the Timing of Collection**

- **Accrual -based Collection of VAT**

Under Accrual based collection, the revenue matches with the time period during which it was earned and matches the cost of raw materials and expenses to the time period during which they were made. Compared to the cash-based collection of VAT, this method is extremely complicated. However, it helps you get information about the business.

- **Cash-based Collection of VAT**

Cash-based accounting is much simpler than accrual-based calculation. The main thing that is checked is the cash that is being handled instead of checking the payment of the bills. Whenever any payment is received, that date is recorded as the date of receipt of funds.

Under Accrual based collection, the revenue matches with the time period during which it was earned and matches the cost of raw materials and expenses to the time period during which they were made. Compared to the cash-based collection of VAT, this method is extremely complicated. However, it helps you get information about the business.

Cash-based accounting is much simpler than accrual-based calculation. The main thing that is checked is the cash that is being handled instead of checking the payment of the bills. Whenever any payment is received, that date is recorded as the date of receipt of funds.

**Documents For VAT Registration**

These are the major documents that will be required of you to submit with your company's VAT registration:

- Incorporation Certificate of Company (in case of Companies)
- MoA & AoA (in case of Companies)

- Particulars of people involved in the firm.
- Address Proof of Director – Lease / Rental Agreement
- Company PAN Card / Individual PAN card in case of Proprietorship
- ID Proof of Director – Pan Card / Election Card/ Passport/ Driving License
- Rental Agreement/ Lease Agreement of Company / Proprietorship
- In case of Partnership firm- Partnership Deed
- Passport size Photograph of Director of the firm.

## **VAT Registration**

### **❖ Offline Registration process:**

The offline Value Added Tax registration process in India is as follows. Let's have a look at them.

- Obtain a Permanent Account Number (PAN): Any business entity looking to register for VAT must first obtain a Permanent Account Number (PAN) from the Income Tax Department.
- Apply for VAT Registration: After obtaining the PAN, the business has to fill out a VAT registration form and submit it to the local sales tax office.
- Submit Necessary Documents: The business has to submit documents such as PAN card, address proof, identity proof, etc.
- Get Approval: The sales tax office will approve or reject the registration application after verifying all the documents provided.
- Receive VAT Registration Certificate: Once the registration application is approved, the business will receive a VAT registration certificate from the sales tax office. This certificate must be kept safe as it is required for filing returns.

### **❖ Online Registration Process:**

The online Value Added Tax registration process in India is as follows:

1. Visit the official website of the Goods and Services Tax Network (GSTN) portal (<https://www.gst.gov.in/>).



2. Create an account by registering on the GSTN portal using your PAN, email address and mobile number.
3. After registering, a Temporary Reference Number (TRN) will be generated which you must use to proceed further.
4. Log in to the GSTN portal using the TRN.
5. Complete the online application form and upload the necessary documents.
6. On successful submission of the form, an application reference number will be generated.
7. You will be asked to verify your application using an Electronic Verification Code (EVC) sent to your registered email address or mobile number.
8. Once the verification is complete, your VAT registration will be processed and a Certificate of Registration will be issued to you.

#### **Advantages of VAT:**

- Revenue to the government under the VAT system will be constant as it is a consumption-based tax.
- It ensures better tax compliance and tax evasion is reduced to the extent possible due to its catch-up effect.
- Revenue earned by the government via VAT is huge, as it is a low tax rate that is applied to the consumption of goods.
- The VAT can be monitored and administered more efficiently compared to other taxes prevailing.
- It is considered a neutral tax as it is levied on all types of business.
- Its laws and rules are very transparent, and the tax is collected over various stages in smaller parts.
- This tax is levied on the value-added at each stage and not on the total price, so there is no cascading effect.
- There are a number of taxpayers
- under this system as it is levied on various stages, and all the end consumers pay the tax on consumption irrespective of their income.

- The advantage to the government is that even for the goods which remaining in stock either with the distributor or retailer, the government receives part of the tax.

**Disadvantages of VAT:**

- VAT is a little complicated as the identification of value-added in each stage is not an easy job.
- Its implementation across the billing system can be expensive.
- It can be considered effective only when the end consumers are aware of the tax system; otherwise, tax evasion is possible.
- The manufacturer and distributors have to pay tax in advance as the payment of tax cannot be postponed till the goods are sold to end-users.
- End consumer doesn't gain or lose anything in the VAT system as there is no credit for them.
- Since VAT is a tax on the expense, this tax is regressive
- in nature, and it affects the poor more than rich as they spend more proportion of their income.

**Difference between VAT and GST:**

<b>S No</b>	<b>Particulars</b>	<b>VAT (Value-Added Tax)</b>	<b>GST (Goods and Services Tax)</b>
1	Taxation Point	Sale of Goods	Supply of Goods and Services
2	Applicability	On goods only	Both Goods and Services
3	Registration Threshold	Compulsory if turnover exceeds Rs 10 lakhs	Compulsory if turnover exceeds Rs 40 lakhs
4	Collection of revenue	By selling state	GST is a destination or consumption-based tax hence ultimate buying state
5	Interstate tax credit	Not available (CENVAT applicable)	Can be taken
6	Compliances Required	Multiple compliances and registrations	Compliance procedure has been streamlined
7	Cascading effect	VAT was levied on value addition at each stage, hence resulting in double taxation in some cases.	The ill of Tax on Tax has been eradicated with the introduction of GST

8	Online Payment	Online tax payment was not mandatory	It is necessary to make online payment of GST
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### **Methods of computation of VAT**

VAT can be computed by adopting three different methods. These are (i) Addition method, (ii) Subtraction method, and (iii) Tax-credit method. These methods can be used to arrive at the VAT liability.

#### **1. Addition method:**

This method is based on the identification of value-added which can be estimated by summation of all the elements of value-added (i.e., wages, profits, rent and interest). This method is known as addition method or income approach. This is in line with the income method of calculating national income.

#### **2. Subtraction method:**

The subtraction method estimates value-added by means of difference between outputs and inputs [(i.e.,  $T = t(\text{output} - \text{input})$ )]. This is also known as product approach and has further variants in the way subtraction is attempted from among (a) direct subtraction method, (b) intermediate subtraction method and (c) indirect subtraction method. Direct subtraction method is equivalent to a business transfer tax whereby tax is levied on the difference between the aggregate tax-exclusive value of sales and aggregate tax-exclusive value of purchases. Intermediate subtraction method is based on deduction of the aggregate tax-inclusive value of purchases from the aggregate tax-inclusive value of sales and taxing the difference between them.

#### **3. Tax-credit method:**

The indirect subtraction method entails deduction of tax on inputs from tax on sales for each tax period, [i.e.,  $t(\text{output}) - t(\text{input})$ ]. This method is also known as tax credit method or invoice method. In practice, most countries use this method and employ net-consumption VAT.

## **Benefits of VAT**

VAT offers several advantages:

- **Facilitates trade:** The promotion of trade is facilitated through the implementation of uniform rates. Additionally, self-assessment procedures aim to reduce the necessity for taxpayers to visit tax departments physically.
- **Government efficiency:** Producers' self-assessment reduces the resources required by the government, allowing the revenue department to priorities collection over administrative tasks.
- **Customer savings:** By eliminating tax-on-tax, the end-users pay lower prices for products and services, resulting in customer savings. This approach ensures that customers can save money.

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# **LEGAL ASPECTS OF BUSINESS**

## **UNIT V**

### **CONSUMER PROTECTION ACT AND INTRODUCTION OF CYBER LAWS**

## UNIT V

### CONSUMER PROTECTION ACT AND INTRODUCTION OF CYBER LAWS

#### SYLLABUS

Consumer Protection Act – Consumer rights, Procedures for Consumer grievances redressal, Types of consumer Redressal Machineries and Forums-- Cyber-crimes, IT Act 2000 and 2002, Cyber Laws, Introduction of IPR Intellectual Property Laws- Introduction, Legal Aspects of Patents, Filing of Patent Applications, Rights from Patents, Infringement of Patents, Copyright and its Ownership, Infringement of Copyright, Civil Remedies for Infringement. – Copy rights, Trade marks, Patent Act. Introduction, Right to Information Act, 2005.

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#### \*\*\*\*\* **CONSUMER PROTECTION ACT**

- ❖ An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.
- ❖ The Consumer Protection Act, implemented in 1986, gives easy and fast compensation to consumer grievances.
- ❖ It safeguards and encourages consumers to speak against insufficiency and flaws in goods and services.
- ❖ If traders and manufacturers practice any illegal trade, this act protects their rights as a consumer.
- ❖ The primary motivation of this forum is to bestow aid to both the parties and eliminate lengthy lawsuits.
- ❖ This Protection Act covers all goods and services of all public, private, or cooperative sectors, except those exempted by the central government.

- ❖ The act provides a platform for a consumer where they can file their complaint, and the forum takes action against the concerned supplier and compensation is granted to the consumer for the hassle he/she has encountered.

### **MEANING OF THE WORD 'CONSUMER'**

- A consumer is an individual or group of individuals who purchase goods and services for their own personal use and not for the purpose of manufacturing or resale.
- *Section 2(7) of the Consumer Protection Act, 2019 defines a Consumer as any person who buys goods or services in exchange for consideration and utilizes such goods and services for personal use and for the purpose of resale or commercial use.*
- In the explanation of the definition of consumer, it has been distinctly stated that the term 'buys any goods' and 'hires or avails any services' also includes all online transactions conducted through electronic means or direct selling or teleshopping or multi-level marketing.

### **OBJECTIVE OF THE CONSUMER PROTECTION ACT, 2019**

The main objective of the Act is to protect the interests of the consumers and to establish a stable and strong mechanism for the settlement of consumer disputes.

The Act aims to:

- ❖ Protect against the marketing of products that are hazardous to life and property.
- ❖ Inform about the quality, potency, quantity, standard, purity, and price of goods to safeguard the consumers against unfair trade practices.
- ❖ Establish Consumer Protection Councils for protecting the rights and interests of the consumers.
- ❖ Assure, wherever possible, access to an authority of goods at competitive prices.

- ❖ Seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
- ❖ Protect the consumers by appointing authorities for timely and sufficient administration and settlement of consumers' disputes.
- ❖ Lay down the penalties for offences committed under the Act.
- ❖ Hear and ensure that consumers' welfare will receive due consideration at appropriate forums in case any problem or dispute arises.
- ❖ Provide consumer education, so that the consumers are able to be aware of their rights.
- ❖ Provide speedy and effective disposal of consumer complaints through alternate dispute resolution mechanisms.

### **CONSUMER RIGHTS AND RESPONSIBILITIES:**



## ❖ **The Rights of the Consumer**

- **Right to Safety-** Before buying, a consumer can insist on the quality and guarantee of the goods. They should ideally purchase a certified product like ISI or AGMARK.
- **Right to Choose-** Consumer should have the right to choose from a variety of goods and in a competitive price.
- **Right to be informed-** The buyers should be informed with all the necessary details of the product, make her/him act wise, and change the buying decision.
- **Right to Consumer Education-** Consumer should be aware of his/herrights and avoid exploitation. Ignorance can cost them more.
- **Right to be heard-** This means the consumer will get due attention to express their grievances at a suitable forum.
- **Right to seek compensation-** The defines that the consumer has the right to seek redress against unfair and inhumane practices or exploitation of the consumer.

## ❖ **The Responsibilities of the Consumer**

- **Responsibility to be aware –** A consumer has to be mindful of the safety and quality of products and services before purchasing.
- **Responsibility to think independently-** Consumer should be well concerned about what they want and need and therefore make independent choices.
- **Responsibility to speak out-** Buyer should be fearless to speak out their grievances and tell traders what they exactly want
- **Responsibility to complain-** It is the consumer's responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.
- **Responsibility to be an Ethical Consumer-** They should be fair and not engage themselves with any deceptive practice.

## **HOW TO FILE A COMPLAINT?**

- Within two years of purchasing the product or services, the complaint should be filled.
- In the complaint, the consumer should mention the details of the problem. This can be an exchange or replacement of the product, compensation for mental or physical torture. However, the declaration needs to be reasonable.
- All the relevant receipts, bills should be kept and attached to the complaint letter.
- A written complaint should be then sent to the consumer forum via email, registered post, fax or hand-delivered. Acknowledgement is important and should not be forgotten to receive.
- The complaint can be in any preferred language.
- The hiring of a lawyer not required.
- All the documents sent and received should be kept.

## **WHAT ARE UNFAIR TRADE PRACTICES UNDER CONSUMER PROTECTION ACT, 2019**

Section 2(47) of the Consumer Protection Act, 2019 defines the term 'unfair trade practices' which include:

- ✓ Manufacturing spurious goods or providing defective services.
- ✓ Not issuing cash memos or bills for the goods purchased or services rendered.
- ✓ Refusing to take back or withdraw the goods or services and not refunding the consideration taken for the purchase of the goods or services.
- ✓ Disclosing the personal information of the consumer.

## **HOW DO CONSUMERS BENEFIT FROM CONSUMER PROTECTION ACT, 2019**

The Consumer Protection Act, 2019 is a significant piece of legislation brought as it is beneficial for the consumers. The Act widens the scope of protection regarding the rights and interests of consumers.

- ❑ **Unfair contracts:** The Act introduced 'unfair contract' under Section 2(46) of the Act, which includes contracts requiring excessive security deposits to be given by the consumer for the performance of contractual obligations. However, the inclusion of unfair contracts in the Act would enable the consumer to file complaints in such cases and would also keep the fraudulent businesses in check.
- ❑ **Territorial jurisdiction:** The Act enables the consumers to file complaints where the complainant resides or personally works for gain thus it would benefit the consumers in seeking redressal for their grievances when their rights have been violated.
- ❑ **False and misleading advertisements:** The Act defines the term 'false and misleading advertisements' and also lays down strict penalties for such acts or omissions.
- ❑ **Product liability:** The term 'product liability' has been defined by this Act, which states that it is the duty of the product manufacturer, service provider or seller to compensate for any harm caused to a consumer by such defective product manufactured or service provided to the consumer.
- ❑ **Mediation and alternative dispute resolution:** The Act enables the consumer to opt for mediation and alternative dispute resolution mechanisms for speedy and effective settlement of consumer disputes.
- ❑ **E-filing of complaints:** The Act also facilitates e-filing of the complaints and seeking video conference hearings by the Commission. Thus, providing convenient means for the consumers to voice their grievances.

## **CHANGES INCORPORATED IN CONSUMER PROTECTION ACT, 2019**

The changes that were incorporated with the enactment of the Consumer Protection Act, 2019 are:

- a) The District Commissions will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller does not exceed 50 lakh rupees.
- b) State Commissions will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller exceeds 50 lakh rupees but does not exceed two crore rupees.
- c) The National Commission will have the jurisdiction to entertain complaints where the value of the goods, services or products paid as consideration to the seller exceeds two crore rupees.
- d) The Act further states that every complaint concerning consumer dispute shall be disposed of as expeditiously as possible. A complaint filed under this Act shall be decided within the period of three months from the date of receipt of notice by the opposite party in the cases the complaint does not require analysis or testing of the goods and services and within a period of 5 months, if it requires analysis or testing of the goods and services.
- e) The Consumer Protection Act, 2019 also facilitates the consumers to file complaints online. In this regard, the Central Government has set up the E-Daakhil Portal, which provides a convenient, speedy and inexpensive facility to the consumers all over India so that they are able to approach the relevant consumer forums in case of any dispute arises.
- f) The Act lays down the scope for e-commerce and direct selling.
- g) The Consumer Protection Act, 2019 lays down provisions for mediation and alternative dispute resolution so that the parties are able to dispose of the case conveniently without going through the trouble of litigation.

- h) The Consumer Protection Act, 2019 contains provisions for product liability, unfair contracts and it also includes three new unfair trade practices. In contrast, the old Act just stated six types of unfair trade practices.
- i) The Act of 2019 acts as the advisory body for the promotion and protection of consumer rights.
- j) Under the Consumer Protection Act, 2019 there is no scope for selection committees, the Act authorizes the Central Government to appoint the members.

Therefore, with the changes in the digital era, the Indian Parliament enacted and brought the Consumer Protection Act, 2019 in force to include the provisions for e-commerce as digitalization has facilitated convenient payment mechanisms, variety of choices, improved services, etc.

### **OFFENCES AND PENALTIES UNDER CONSUMER PROTECTION ACT, 2019**

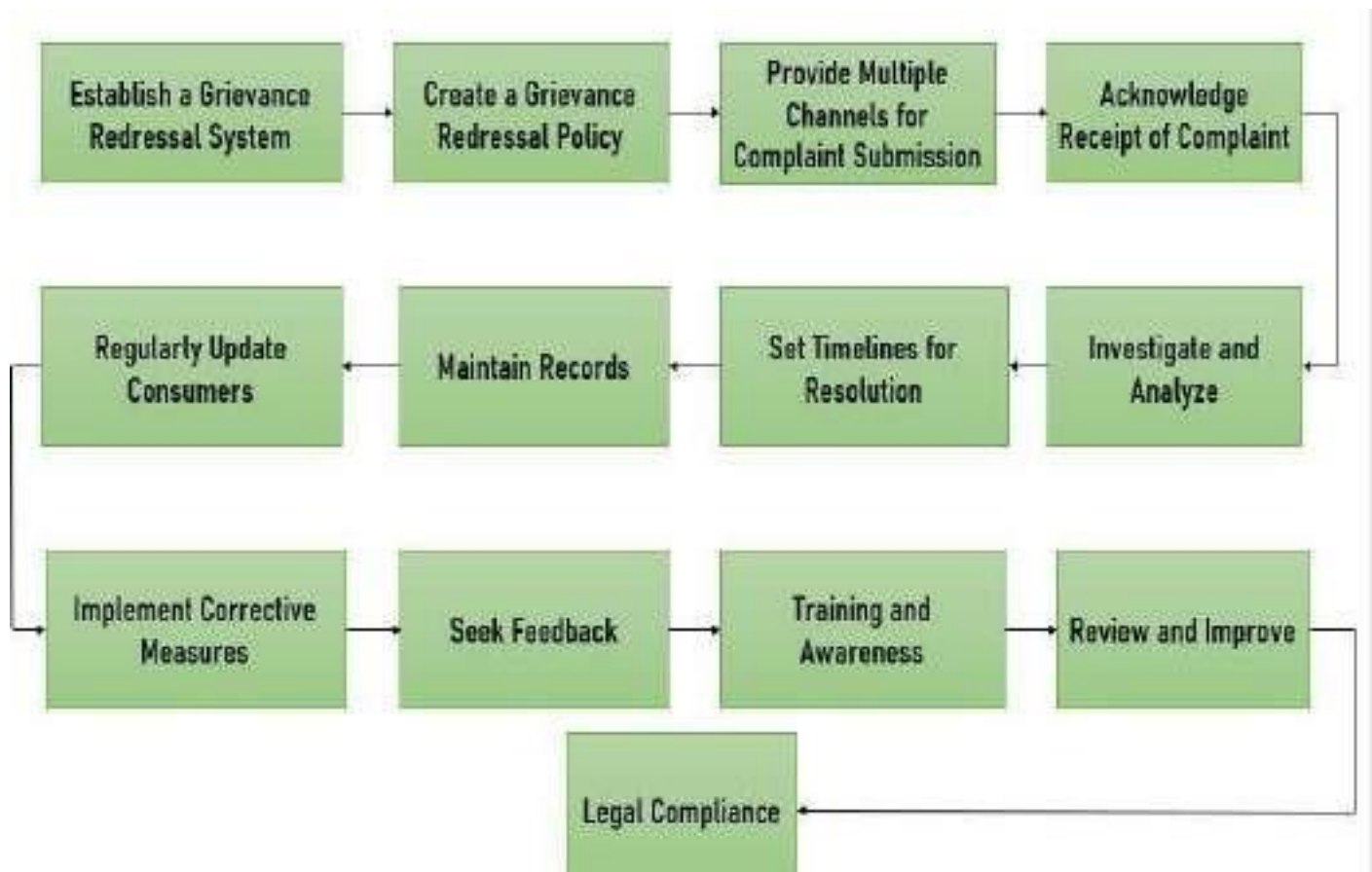
The offences and penalties listed under this Act are mentioned as follows.

1. **Punishment for false and misleading advertisements:** Under Section 89 of the Act any manufacturer or service provider who promotes false or misleading advertisements will be punished with imprisonment for a term that may extend to two years and with fine that may extend to ten lakh rupees.
2. **Punishment for manufacturing, selling, distributing products containing adulterants:** Under Section 90 of the Consumer Protection Act, 2019 any person who sells, manufactures, distributes products containing adulterants shall be penalized in case of the following circumstances;
  - √ If the adulterated product does not cause any injury to the consumer, then the term for imprisonment will extend to a period of six months and fine which may extend to one lakh rupees,

- ✓ If the product containing adulterant causes injury not amounting to grievous hurt then the term for imprisonment will extend to a period of one year and fine which may extend to three lakh rupees,
- ✓ If the product containing adulterant causes injury amounting to grievous hurt then the term for imprisonment will extend to a period of seven years and fine which may extend to five lakh rupees,
- ✓ If the product results in causing death to the consumer, then the term for imprisonment will be for a period of seven years which may extend to life imprisonment and fine not less than ten lakh rupees.

**3. Punishment for manufacturing, selling, and distributing spurious products:** Section 91 states that any person who sells, manufactures, or distributes spurious products shall be punished for such acts.

### PROCEDURES FOR CONSUMER GRIEVANCES REDRESSAL



Consumer grievance redressal is a crucial aspect of ensuring customer satisfaction and maintaining a positive reputation for businesses. Establishing effective procedures for handling consumer grievances can help resolve issues in a timely and satisfactory manner. Here's a general guide on procedures for consumer grievances redressal:

### **1. Establish a Grievance Redressal System:**

- ✓ Designate a dedicated department or individual responsible for handling consumer grievances.
- ✓ Ensure there is a formal system in place to receive, document, and track complaints.

### **2. Create a Grievance Redressal Policy:**

- ✓ Develop a comprehensive grievance redressal policy outlining the process, timelines, and responsibilities.
- ✓ Clearly communicate the policy to employees, customers, and other stakeholders.

### **3. Provide Multiple Channels for Complaint Submission:**

- ✓ Offer various channels for consumers to submit their grievances, such as online forms, email, helpline numbers, and physical complaint boxes.

### **4. Acknowledge Receipt of Complaint:**

- ✓ Send an acknowledgment to the consumer as soon as the complaint is received, assuring them that the matter is under investigation.

### **5. Investigate and Analyze:**

- ✓ Thoroughly investigate the consumer complaint, gathering all relevant information.
- ✓ Analyze the root cause of the grievance to prevent similar issues in the future.

## **6. Set Timelines for Resolution:**

- ✓ Clearly define timelines for resolving complaints and communicate them to the consumer.
- ✓ Ensure that resolutions are provided within the stipulated time frame.

## **7. Maintain Records:**

- ✓ Keep detailed records of all consumer complaints, including the nature of the grievance, actions taken, and resolutions provided.

## **8. Regularly Update Consumers:**

- ✓ Provide regular updates to consumers about the status of their complaints, especially if the resolution process is expected to take an extended period.

## **9. Implement Corrective Measures:**

- ✓ If the grievance reveals systemic issues, implement corrective measures to prevent similar problems in the future.

## **10. Seek Feedback:**

- ✓ After resolving the grievance, seek feedback from the consumer to ensure satisfaction with the resolution process and use their input for continuous improvement.

## **11. Training and Awareness:**

- ✓ Train employees involved in the grievance redressal process on effective communication, problem-solving, and customer service skills.
- ✓ Create awareness among employees about the importance of consumer satisfaction.

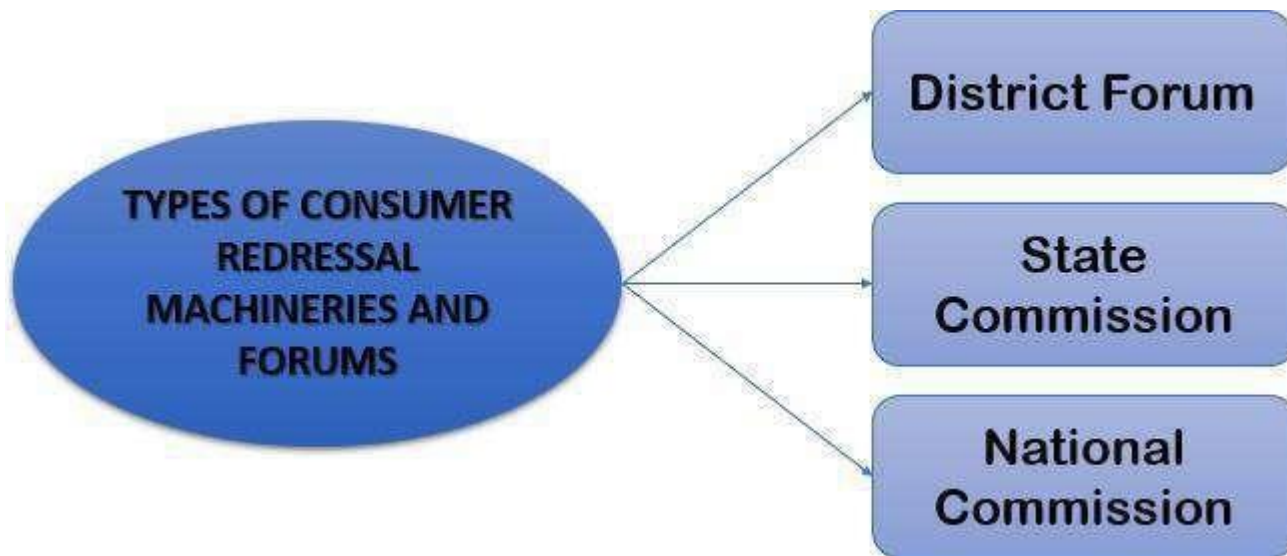
## **12. Review and Improve:**

- ✓ Periodically review the grievance redressal process to identify areas for improvement and make necessary adjustments.

### 13. Legal Compliance:

- ✓ Ensure that the grievance redressal process complies with relevant consumer protection laws and regulations.

#### **TYPES OF CONSUMER REDRESSAL MACHINERIES AND FORUMS**



Under the Consumer Protection Act, a three-tier machinery has been set for the redressal of consumer grievances and complaints. The machinery works at the district level, State level and National level and are known as District Consumer Dispute Redressal Forum (or District Forum), State Consumer Dispute Redressal Commission (State Commission) and National Consumer Dispute Redressal Commission (National Commission) respectively. The following is a brief explanation of the machinery under the Consumer Protection Act.

#### **1. District Forum**

District Forum is set up in each district by the concerned State Government. It comprises of a president and two or more members, one of whom should be a woman. A consumer can file a complaint in a District forum in case the value of goods in question, along with the compensation that is claimed is less than Rs 20 lakh. As the Forum receives the complaint, it refers it to the concerned party against whom the complaint is registered. After considering the tests and reports and on hearing both

the concerned parties, the forum passes a judgement order. Moreover, in case the party filing the complaint is not satisfied with the order, an appeal can be filed in the State Commission within 30 days of passing the judgment.

## **2. State Commission**

The State Government sets up State Commission for the redressal of consumer grievances. Alike District Forum, State Commission also comprises of a President and two or more members one of whom should be a woman. In State Commission, a complaint can to be filed by a consumer in case the value of goods /services in question along with the compensation claimed is more than Rs 20 lakh but is less than Rs 1crore. After receiving the complaint, the commission refers the complaint to the party against whom the compliant is registered. If necessary, the sample of the good are sent for testing in the laboratory. After considering the tests of the reports and on hearing the concerned parties, the commission passes an order. An appeal can be filed against the order of the Commission before the National commission within 30 days of judgement.

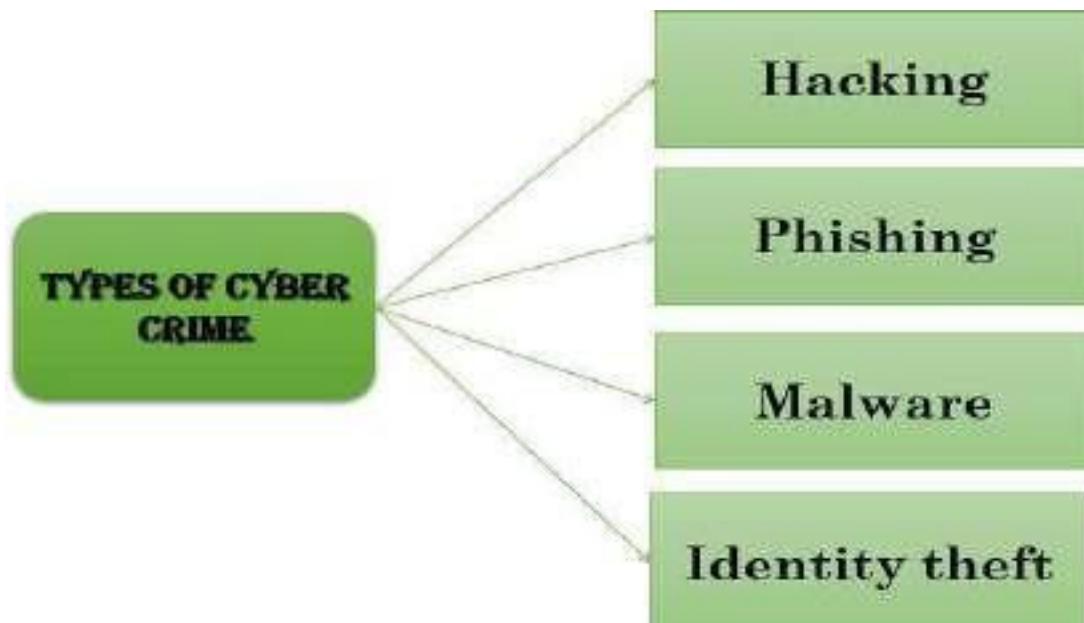
## **3. National Commission**

The National Commission is set up by the Central Government. It consists of a President and four or more members one of whom is a woman. A consumer can filea complaint in the National Commission in case the value of goods in question along with the compensation claimed is more than Rs 1 crore. After referring to the sample proofs and on hearing the concerned party, the commission passes an order. In case the aggrieved party is not satisfied with the order, an appeal can be filed before the Supreme Court.

## CYBERCRIME

Cybercrime is any criminal activity that involves a computer, networked device or a network. While most cybercrimes are carried out in order to generate profit for the cybercriminals, some cybercrimes are carried out against computers or devices directly to damage or disable them.

### TYPES OF CYBER CRIME



The different types of cyber-crime include:

- ✓ **Hacking:** Gaining unauthorized access to a computer system or account, often to inflict further damage on the target
- ✓ **Phishing:** Impersonating legitimate companies or individuals to trick users into revealing sensitive information
- ✓ **Malware:** Spreading malicious software such as viruses, worms, Trojans, and ransomware within a device or network
- ✓ **Identity theft:** Stealing personal data such as names, addresses, and social security numbers to fraudulently assume someone's identity

## **OFFENSES COVERED UNDER CYBER LAW**

Cyberlaw intends to remove all types of cyber offenses. Following offenses are covered under Cyber Law:

- Identity theft
- Unauthorized access to any system and internet
- Online gambling
- Defamation
- Sale of Illegal articles by posting information on the internet and websites
- Cyber Pornography
- Breach of privacy and Confidentiality
- Theft of Computer hardware
- Violation of Privacy
- Cyber terrorism
- Hacking with a computer system and data alteration.
- Credit card/Debit card issue
- Cyber Defamation

## COMMON COMPUTER AND INTERNET CYBER CRIMES

### COMMON COMPUTER AND INTERNET CYBER CRIMES

- Phishing
- Harassment
- Ransomware
- Child Pornography & Solicitation
- Intellectual Property Theft
- Account Hacking
- Drug Trafficking
- Credit Card Fraud

### 1) Phishing

Phishing is when criminals send fraudulent emails pretending to be from legitimate businesses, in an attempt to collect sensitive, personal information. Often, any links in the email will redirect to a website owned by the scammer, so always be careful about what information you give out on the Internet.

### 2) Harassment

Cyberstalks use electronic communication, such as email, social media, or websites to stalk and harass people. Forms of online harassment include slander, libel, false accusations, threats, or any other behavior that demeans or embarrasses someone. Sentences for cyberstalking can include jail time and hefty fines.

### 3) Ransomware

Cyber criminals can install malicious software on your system that will essentially hold your important information hostage until you meet their demands. A common ransomware attack will shut down a victim's computer or encrypt their files,

agreeing to release them only if the victim pays a ransom. All too often, however, the files are never recovered.

#### **4) Child Pornography & Solicitation**

The National Center for Missing and Exploited Children received over 10 million reports of suspected child sexual exploitation in the last year alone. Perpetrators will use the Internet to gain access to sexually explicit images of children, and sometimes even arrange for a face-to-face meeting.

#### **5) Intellectual Property Theft**

More commonly known as piracy, the Internet abounds with books, music, movies, and more that have been illegally obtained and made available for free download. Despite what some people say, piracy is not a victimless crime. Not only do artists and creators lose out, but many illegal downloads also contain hidden malware that can destroy your computer.

#### **6) Account Hacking**

We all know how important it is to guard our passwords – think about the damage someone could do if they gained access to your email account containing all your most personal information. If someone logs into your email, social media, or computer without authorization, they could potentially face jail time.

#### **7) Drug Trafficking**

With the rise of cryptocurrency, the online drug trade has increased significantly over the past few years. Illegal drugs such as marijuana, cocaine, meth, ecstasy, and heroin are all just a few clicks away – and according to research by the Rand Corporation, over 35% of worldwide revenues from online drug trafficking are based in the United States.

## 8) Credit Card Fraud

Half of all credit card fraud begins with spyware, malicious software unknowingly installed on a victim's computer or handheld device. Spyware runs in the background, collecting your data and sending it back to the criminal, who then uses your card to make fraudulent purchases.

### IMPACT OF CYBER CRIME

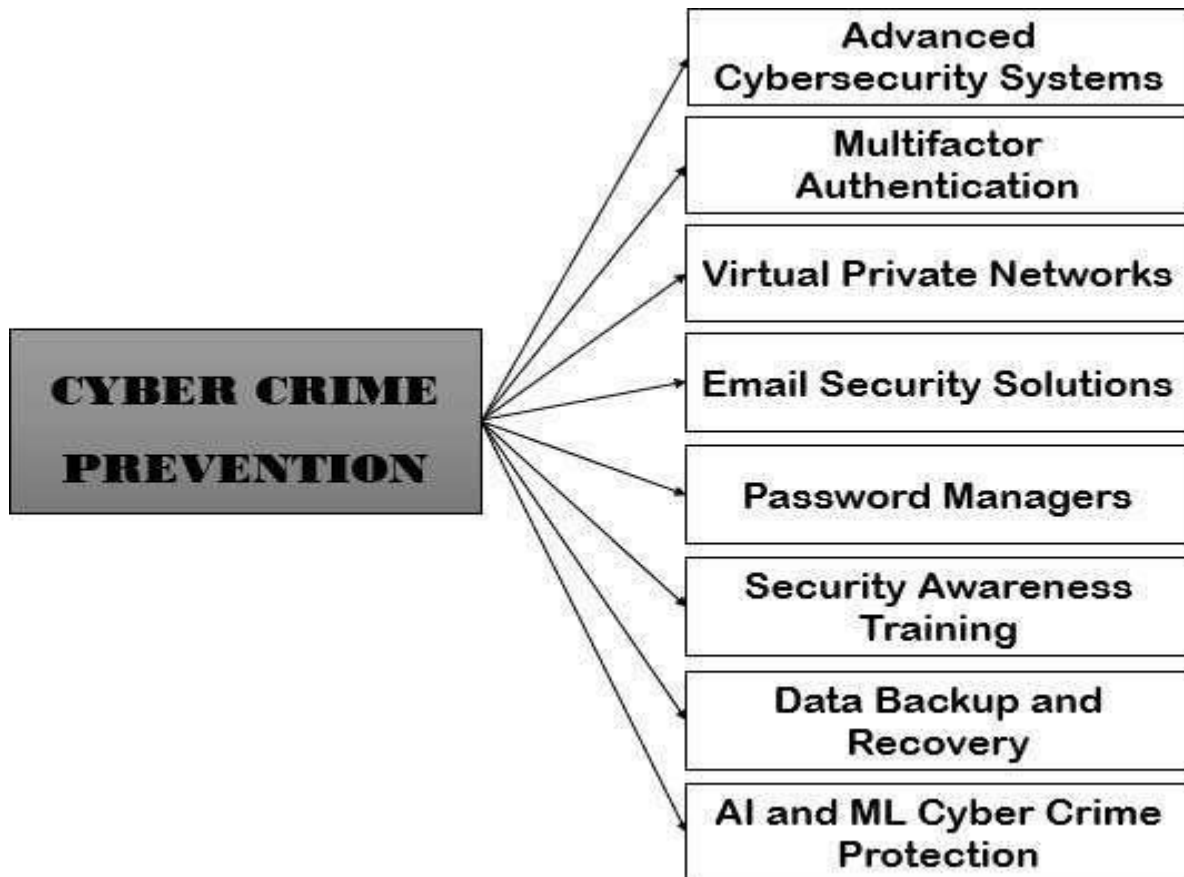
- ❖ **Financial losses:** Both individuals and businesses can suffer economic damage due to cybercrime. For example, a cyber-attack that steals payment card information can lead to credit card fraud and identity theft.
- ❖ **Personal effects:** After a cyber-attack, individuals may need to spend time protecting themselves and preventing further damage. Becoming a cybercrime victim can also be psychologically detrimental, resulting in anxiety and stress.
- ❖ **Business disruption:** Some cybercrimes, such as denial of service (DoS) attacks, are designed to disrupt a company's operations for as long as possible. This can lead to website downtime, loss of customers and profits, and reputational damage.
- ❖ **Public safety:** Cyber criminals may target critical infrastructure such as power grids or manufacturing plants. This can disrupt essential services and even create risks to public safety.

### CYBER CRIME PREVENTION

As the overall cost and risks associated with cybercrimes continue to increase, so does the need to continuously implement, monitor, and upgrade prevention systems and technologies. Between foreign adversaries, terrorists, and everyday scammers, cyber-attacks are becoming smarter and more sophisticated.

Individuals, businesses, and governmental entities must take proactive measures to prevent cybercrime from penetrating security systems and infiltrating sensitive

data. While some cyber-crime prevention strategies remain steadfast in warding off attackers, there's also been a new wave of modern technologies to help support these initiatives.



## **1. Advanced Cybersecurity Systems**

One of the key strategies in preventing cybercrime is utilizing advanced cybersecurity protection. This includes fundamental technologies like firewalls, antivirus software, and intrusion detection systems, but more advanced cybersecurity systems are evolving with artificial intelligence (AI) and machine learning (ML). Implementing the right cybersecurity tools should be a top priority for any organization or individual aiming to protect itself from cyber-attacks and digital threats.

## **2. Multifactor Authentication**

Multifactor authentication (MFA), commonly used as two-factor authentication, is a common security protocol that prevents data breaches, hacks, and other direct cyber-

attacks. In simple terms, this process requires users to provide two or more forms of identification to authenticate access to their accounts, such as needing a password and an access code sent to a device. Now a best practice protocol for organizations, MFA adds extra layers of cybersecurity to online accounts, making it much more challenging for attackers to access your data.

### **3. Virtual Private Networks**

A Virtual Private Network (VPN) is a service that enables users to browse the Internet with reinforced security and anonymity. VPNs are engineered to encrypt online activity, making it far more difficult for cyber-attackers to intercept and steal your data. VPNs act as intermediaries between your device and the targeted server, adding their own encryption layer and routing communication via their own servers. VPNs are especially effective in helping protect against email frauds like phishing scams by masking your IP address and location.

### **4. Email Security Solutions**

Email accounts are one of the most frequently exploited channels for cyber-attackers to breach access to sensitive data and private information. Specialized email security technologies can be leveraged to prevent this activity, which includes solutions like email encryption, spam filters, and antivirus software. Encryption is a powerful technology that protects email content from interception. Spam filters detect and prevent unwarranted and malicious emails from reaching your inbox, while antivirus software detects and removes malicious attachments from emails.

### **5. Password Managers**

Cyber criminals frequently attack password credentials. In addition to creating secure, difficult-to-hack passwords, password managers are software applications that securely store multiple login credentials in an encrypted database, all of which are locked behind a master password. Password managers are commonly used by

organizations, remote teams, and individuals to provide extra security protection when surfing the web while safely maintaining passwords in a safe space. The most common password managers include 1Password, KeePass, LastPass, and Apple's iCloud Keychain. However, some password managers come with risks.

## **6. Security Awareness Training**

Many cyber-attacks result from human error, such as clicking on malicious links or downloading virus-containing files. Security awareness training is intended to help educate users on how to better identify, avoid, and mitigate the threat of cyber-attacks. The most common forms of training are computer-based awareness training and phishing simulated exercises where employees receive fake phishing emails to test how they react. Security awareness training helps organizations establish a security-conscious culture, creating a more resilient network to protect against cyber-attackers.

## **7. Data Backup and Recovery**

Many forms of cyber-attacks can result in critical data loss, which can have severe financial and operational repercussions for both individuals and organizations. Data backup and recovery solutions can help mitigate the damages from data loss by creating backup copies of data and ensuring a faster recovery in the event of a ransomware attack, data breach, or another form of cyber-attack. Regularly archiving data is an essential security protocol to ensure that you can recover your data in the event of an attack.

## **8. AI and ML Cyber Crime Protection**

More advanced cyber-crime prevention technologies now utilize machine learning and artificial intelligence to gather and analyze data, track and trace threats, pinpoint vulnerabilities, and respond to breaches. For example, ML algorithms can detect and prevent fraud in financial transactions by identifying patterns that

indicate fraudulent activity and flagging them for review. Similarly, AI technologies can detect and prevent cyber-attacks on networks and systems by analyzing network traffic, identifying abnormal patterns, and responding to threats in real-time.

## **CYBER LAW**

- ❖ Cyber law, also known as internet law or digital law, signifies the legal regulations and frameworks governing digital activities. It covers a large range of issues, including online communication, e-commerce, digital privacy, and the prevention and prosecution of cybercrimes.
- ❖ Cyber law deals with the legal aspects of cyberspace, the internet, and computing. In a broader view, cyber law handles the issues of intellectual property, contract, jurisdiction, data protection laws, privacy, and freedom of expression in the digital space.

## **IMPORTANCE OF CYBER LAW**

Cyber law is of paramount importance in our digital age as it safeguards digital assets, prevents cybercrimes, regulates online activities, protects e-commerce and consumer rights, fosters international cooperation, upholds intellectual property rights, ensures data privacy, and provides legal remedies. It plays a vital role in establishing legal order and security in the digital realm, protecting both individuals and organizations in an interconnected world.

### **Objectives of Cyber Law**

Lawmakers have executed cyber law legal protections with the following objectives:

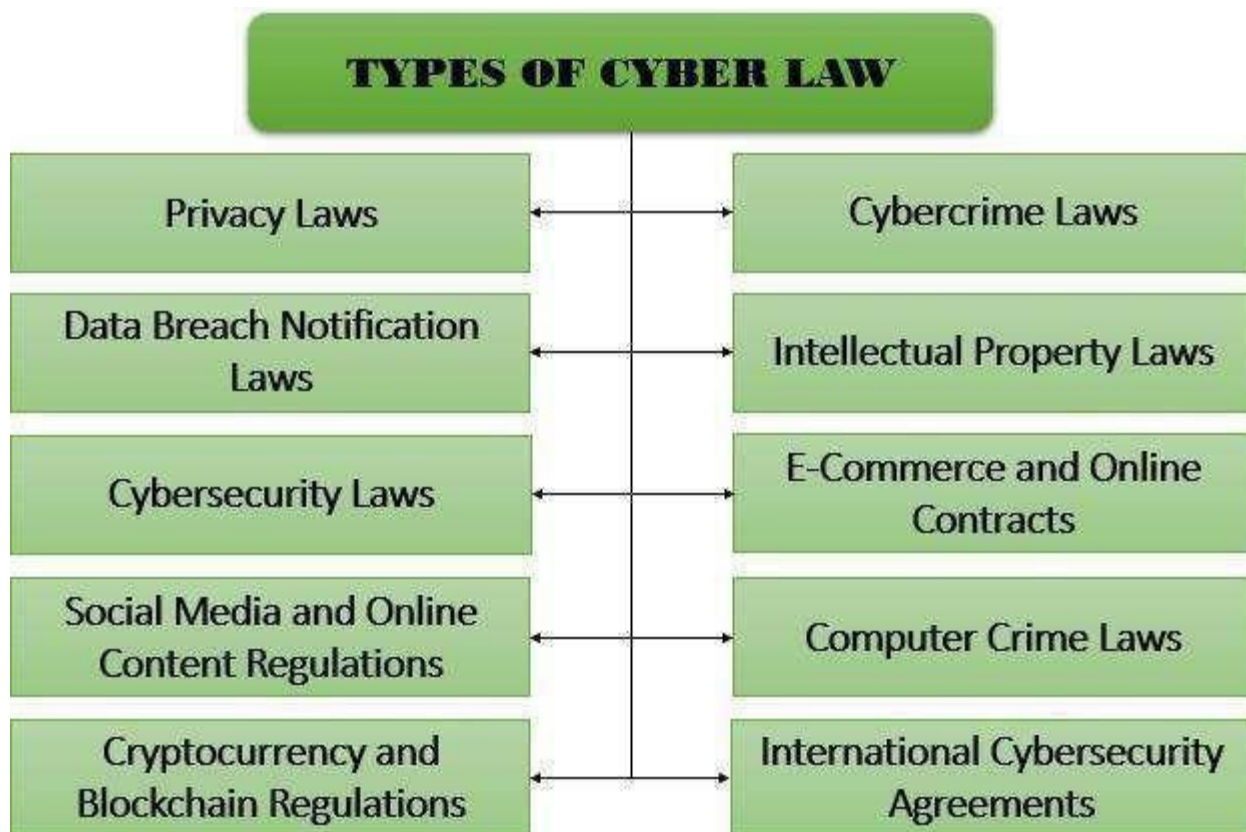
The following features of cyber law make the internet a much safer place to explore:

- To be a safety net against online data predators.
- To ensure justice for cybercrime victims

- To prevent debit card or credit card fraud. Many people have switched to digital payment methods. Cyberlaw tries to make sure that victims do not have to go through the additional agony of long procedures.
- To block transactions when there is any unusual activity such as the input of an incorrect password.
- To ensure the safety of protected data. By knowing what cyber law is, one can easily adopt preventative measures.
- To ensure national security.

## TYPES OF CYBER LAW

There are several types of cyber laws, each addressing specific aspects of digital activities and cybersecurity. Here are some common categories of cyber laws:



### 1. Privacy Laws:

- ✓ Privacy laws govern the collection, use, and protection of individuals' personal information online.

- ✓ Examples include the General Data Protection Regulation (GDPR) in Europe and the California Consumer Privacy Act (CCPA) in the United States.

## **2. Cybercrime Laws:**

- ✓ Cybercrime laws focus on criminal activities conducted online, including hacking, identity theft, online fraud, and cyberbullying.
- ✓ These laws define offenses, penalties, and procedures for investigation and prosecution.

## **3. Data Breach Notification Laws:**

- ✓ Data breach notification laws mandate that organizations inform affected individuals and authorities when a data breach occurs.
- ✓ These laws aim to ensure transparency and help individuals take necessary actions to protect themselves.

## **4. Intellectual Property Laws:**

- ✓ Intellectual property laws protect digital content, patents, trademarks, and copyrights in the digital realm.
- ✓ They address issues like copyright infringement and online piracy.

## **5. Cybersecurity Laws:**

- ✓ Cybersecurity laws require organizations to implement measures to protect their digital infrastructure and sensitive data.
- ✓ These laws often set standards and requirements for data security practices.

## **6. E-Commerce and Online Contracts:**

- ✓ Laws related to e-commerce and online contracts establish legal frameworks for online transactions, electronic signatures, and consumer rights.
- ✓ They provide a basis for resolving disputes in the digital marketplace.

## **7. Social Media and Online Content Regulations:**

- ✓ Regulations governing social media and online content address issues such as hate speech, defamation, and harmful content.
- ✓ They set guidelines for the removal or restriction of such content.

## **8. Computer Crime Laws:**

- ✓ Computer crime laws specifically target offenses involving computer systems and networks.
- ✓ They encompass unauthorized access, malware distribution, and cyberattacks on critical infrastructure.

## **9. Cryptocurrency and Blockchain Regulations:**

- ✓ As digital currencies and blockchain technology gain prominence, regulations address issues like cryptocurrency trading, initial coin offerings (ICOs), and blockchain-based contracts.

## **10. International Cybersecurity Agreements:**

- ✓ Some laws and agreements focus on international cooperation in combating cybercrimes and promoting cybersecurity best practices.
- ✓ Examples include the Budapest Convention on Cybercrime and bilateral cybersecurity agreements between nations.

## **ADVANTAGES OF CYBER LAW**

The various advantages of cyber law include the following:

- ☒ Better protection of e-commerce sites ensures better revenue for the companies; this, in turn, ensures a better economy for the country.
- ☒ Grievances for online transactions will be heard by the court as a part of the remedial measures of cyber law.
- ☒ Recognition of e-documents and grievances on the same will be heard by the court.
- ☒ Fixing security issues by the companies leads to better data protection standards.
- ☒ Ensuring proper usage of data by the companies.

## **INFORMATION TECHNOLOGY ACT, 2000**

The Information Technology Act, 2000 was notified on Oct 17, 2000. It was the law that deals with law-breaking and electronic commerce in India and during this article, we are going to verify the objectives and options of the knowledge Technologyact 2000. In 1996, the international organization Commission on International Trade Law (UNCITRAL) adopted the model law on electronic commerce (e- commerce) to bring uniformity within the law in several countries. Further, the overall Assembly of the international organization counselled that each one country should think about this model law before creating changes to its laws. India became the 12th country to alter cyber law once it passed the knowledge Technology Act, 2000. While the primary draft was created by the Ministry of Commerce, Government of India because of the E-Commerce Act, 1998, it was redrafted because of the 'Information Technology Bill, 1999', and passed in could 2000.

### **Objectives of the Act**

- ❖ Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- ❖ Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- ❖ Facilitate the electronic filing of documents with Government agencies and also departments
- ❖ Facilitate the electronic storage of data
- ❖ Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions
- ❖ Grant legal recognition to bankers under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934, for keeping the books of accounts in electronic form.

## **Features of the Information Technology Act, 2000**

- ❑ All electronic contracts made through secure electronic channels are legally valid.
- ❑ Legal recognition for digital signatures.
- ❑ Security measures for electronic records and also digital signatures are in place
- ❑ A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized
- ❑ Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act. Further, this tribunal will handle all appeals made against the order of the Controller or Adjudicating Officer.
- ❑ An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court
- ❑ Digital Signatures will use an asymmetric cryptosystem and also a hash function
- ❑ Provision for the appointment of the Controller of Certifying Authorities (CCA) to license and regulate the working of Certifying Authorities. The Controller to act as a repository of all digital signatures.
- ❑ The Act applies to offences or contraventions committed outside India
- ❑ Senior police officers and other officers can enter any public place and search and arrest without warrant
- ❑ Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government and Controller.

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**APPLICABILITY AND NON-  
APPLICABILITY OF THE ACT-  
GOVERNMENT AND CONTROLLER**

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➤ **Applicability**

According to Section 1 (2), the Act extends to the whole country that conjointly includes Jammu and the geographic region as the Act uses Article 253 of the constitution. Further, it doesn't consider citizenship and provides extra-territorial jurisdiction.

Section 1 (2) at the side of Section 75 specifies that the Act applies to any offence or dispute committed outside India yet. If the conduct of personnel constituting the offence involves a laptop or a processed system or network settled in India, then no matter his/her position, the person is punishable underneath the Act. Lack of international cooperation is the sole limitation of this provision.

➤ **Non-Applicability**

According to Section 1 (4) of the knowledge Technology Act, 2000, the Act doesn't apply to the subsequent documents:

- ✓ Execution of instrument underneath Negotiable Instruments Act, 1881, except cheques.
- ✓ Execution of influence of professional underneath the Powers of professional Act, 1882.
- ✓ Creation of Trust underneath the Indian Trust Act, 1882.
- ✓ Execution of a can underneath the Indian Succession Act, 1925 as well as the other legal document disposition by no matter name known as.
- ✓ Stepping into a contract for the sale or conveyance of immovable property or any interest in such property.

- ✓ Any such category of documents or transactions as is also notified by the Central Government within the Gazette.

### **Positive Aspects of IT Act 2000**

Considering the viewpoints of the e-commerce industry in India, the Information Technology Act 2000 contains many beneficial aspects, which are as follows:

- The implications for electronic businesses would be that email will be accepted by the communication system in India that can be acknowledged in a court of law. Section 4 of the IT Act 2000 confers all legal recognition of electronic records. It states that where any law requires any matter or information that should be in writing or in printed or typewritten form, then such requirement shall be deemed to be satisfied if it is in an electronic form.
- The IT Act 2000 has granted legal recognition and definition for the concept of the digitally secure process, which is mandated to have been passed through a process of security procedure as prescribed by the Government on a given date. A legal infrastructure is granted by the Information Technology Act 2000 to the e-commerce companies to run all electronic commerce with the help of this act. With the coming of the various provisions of the IT Act, 2000, digital signatures are now getting legal validity. Section 3 of the Information Technology Act 2000 contains various provisions related to the authentication of electronic records by attaching the digital signature.
- Section 35 of the IT Act 2000 allows an open door for the entrance of any kind of company in the corporate sphere in the business of being the authority to certify and issuing of legally validated signatures certificates as prescribed by the Central Government. It also heralds e-governance by issuing notifications on the e-web.
- Section 6 of the Information Technology Act 2000 lays down the foundation for e-governance or electronic governance. It provides that the filing of any form,

document, application, creation or retention or preservation of records, permit, receipt, or payment in the government offices and its agencies must be made through the means of electronic form.

### **Defects of Information Technology Act 2000**

The IT Act had its own advantages and disadvantages. While it increased security in cyberspace, it caused a conflict of jurisdiction amongst the population. The following points mentioned below analyze the defects of the IT Act 2000 briefly.

➤ While the IT Act promotes safety in cyberspace. It does not provide security in various kinds of cybercrimes such as: cyberstalking, cyber threats, cyber room abuse, and the rest of it.

➤ The Information Technology Act 2000 has been unable to cater to privacy concerns. Though privacy is a fundamental right it needs to be addressed.

➤ Cybersecurity has not been protected effectively. The breach of data and privacy violations are a threat.

➤ To track cybercrimes, there is a need for specialized officers with adequate skills to trace the cases. However, the lack of expertise is also a major defect of the IT Act.

# **LEGAL ASPECTS OF BUSINESS**

## **UNIT VI**

### **INTELLECTUAL PROPERTY RIGHTS IN BUSINESS**

## UNIT V

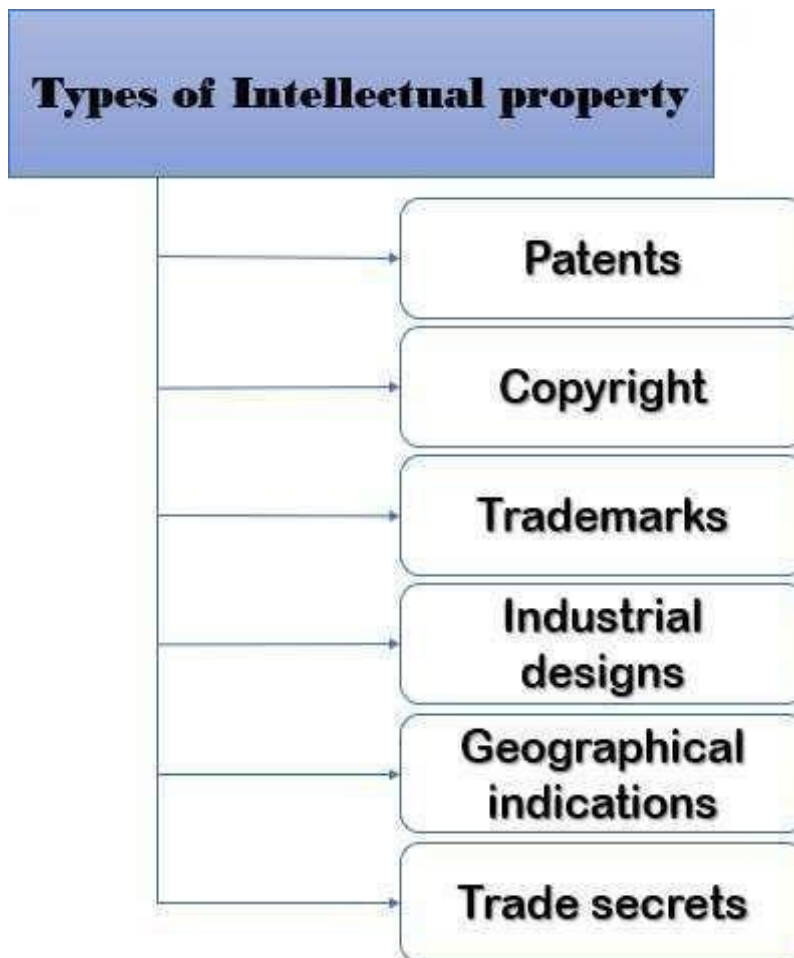
### **INTELLECTUAL PROPERTY RIGHTS (IPR)**

Intellectual property rights (IPR) refer to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.

### **INTELLECTUAL PROPERTY (IP) LAW**

Intellectual Property (IP) law relates to the establishment and protection of intellectual creations such as inventions, designs, brands, artwork and music

## Types of Intellectual property



- **Patents**

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.

- **Copyright**

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

- **Trademarks**

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.

- **Industrial designs**

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

- **Geographical indications**

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

- **Trade secrets**

Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.

### **Why is Intellectual Property Important?**

Intellectual Property Rights are important to stimulate and promote research and development. If the inventions and ideas of individuals and organizations are not protected then the concerned people or organizations will not reap the benefits of their hard work and naturally, it will lead to discontent and reduce the efforts in the field of research and development, which is extremely important for the growth and development of humanity.

## **Significance of IPR**

- ❖ Intellectual property rights (IPR) grant exclusive rights to inventors for their important creations or developments.
- ❖ It protects intangible assets that can be easily replicated and accessed by the public.
- ❖ IPR plays a crucial role in global trade and livelihood activities in today's globalized world.
- ❖ Intellectual property is the basis for a nation's progress. It showcases the creativity of its youth.
- ❖ IPR has the potential to positively impact lives. It provides a livelihood for billions of people.
- ❖ It recognizes and rewards creators and inventors. This, thus, fosters an environment of innovation.

## **INTELLECTUAL PROPERTY INFRINGEMENT**

Attached to intellectual property are certain rights, known as intellectual property rights. These are rights that cannot be infringed upon by those without authorization to use them. IPRs give owners the ability to bar others from recreating, mimicking, and exploiting their work.

- Patent infringement occurs when a legally protected patent is used by another person or company without permission. Patents filed before June 8, 1995, were valid for 17 years, whereas patents filed after this date are valid for 20 years. After the expiration date, the details of the patent are made public.
- Copyright violations occur when an unauthorized party recreates all or a portion of an original work, such as a work of art, music, or a novel. The duplicated content need not be an exact replica of the original to qualify as an infringement.

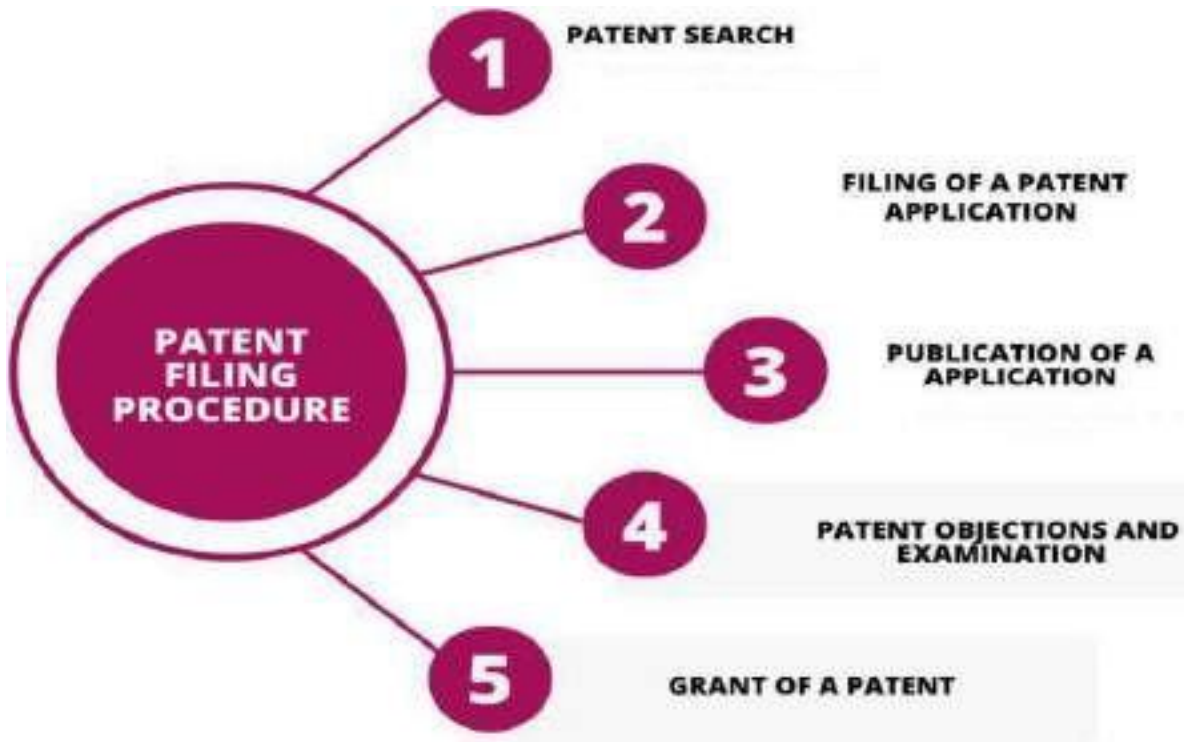
- Trademark infringement occurs when an unauthorized party uses a licensed trademark or a mark resembling the licensed trademark. For example, a competitor might use a mark similar to its rivals to disrupt business and attract their customer base. Also, businesses in unrelated industries may use identical or similar marks in an effort to capitalize on other companies' strong brand images.
- Trade secrets are often protected by NDAs. When a party to the agreement discloses all or parts of a trade secret to uninterested parties, they have violated the agreement and infringed upon the trade secret. It is possible to be guilty of trade secret infringement when an NDA is not present.

## **PATENTS**

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.



## Steps for filing patent in India



### ❖ **Step 1 – Conceiving the idea or invention**

The first step for an inventor/person who wants to go ahead with his or her invention is to compile or collect as much related information as possible. Some of the pertinent questions that the inventor/person must think are: the field of the invention, advantages, how will it help in improving already existing solutions/products/processes (and the like)?

### ❖ **Step 2 – Check if the idea or invention is new**

Before an inventor/person begins the patent registration process, it is advisable to check if the invention is patentable. This means that it must be checked if another individual or organization has filed a patent for a similar technology for which an inventor/person is filing. Performing an in-depth patentability search helps you understand whether or not the inventor/person have a chance of getting a patent. While this step is optional, it can save time and help the inventor/person to understand whether or not patent should be filed.

## **Interesting facts**

Before filing a patent application, one must check the patentability of their invention. Slight variations in the patentability eligibility criteria can be seen based on the jurisdiction. Main criteria for patentability are as follows:

- ✓ **Novelty:** The invention should be new with no public disclosures in any part of the globe or through any other platform.
- ✓ **Non-obvious:** No skilled person in the relevant area of technology should be able to decode the invention easily. The invention must be having distinctive value-adding feature compared to existing inventions in the same field
- ✓ **Business or industrial application:** The newly invented product or process should have a wide range of industrial utilities with positive economic implication

### **❖ Step 3 – Drafting Patent Application**

The next step which follows requires effective drafting of the patent application. The application consists of various parts such as claims, background, description, drawing (if any), claims, abstract, and summary. The aforementioned portions of specification/patent application must be carefully drafted to provide effective disclosure of the invention. While drafting the patent application utmost care and precision must be taken.

In case the invention is still in idea stage an inventor/person can draft and file a provisional patent application to protect idea and to get priority over other competitors. In case of provisional patent application claims will not be there in patent application.

Also, an inventor, can either draft patent application by himself or can seek professional drafters help.

## **Step 4 – Filing the Patent Application before Indian patent Office (IPO)**

After drafting the patent application, it is filed in the government patent offices as per the application form in Form 1/jurisdiction. A receipt is generated with the patent application number. A person/inventor can also file a provisional patent application, if the invention is at an early stage (idea stage without any form of prototype or definitive process).

The advantage of filing a provisional application is that the person/inventor can secure a prior date of filing which is crucial in the patent world. Also, the person/inventor gets 12 months' time to file the complete specification (patent application).

### **❖ Step 5 – Patent Application Publication**

After filing the complete specification, the application is published after 18 months from the date of filing. There is no need for any special requirement from the applicant for publication. However, if the applicant does not want to wait till the expiry of 18 months, an early publication request can be filed along with prescribed fees by filing Form 9. The patent application is published within one month from the request of early publication.

### **❖ Step 6 – Request for examination (RFE)**

The examination is not an automatic process like publication and the applicant is required to request the patent office to examine the patent application. A normal request for examination (RFE) must be filed by 48 months from the date of filing of the patent application, under Form 18. After the RFE is filed, the controller provides the application to a patent examiner.

The patent examiner examines it with different patentability criteria i.e. novelty, non-obviousness or inventive step, and capable of industrial applicability. After

examining the patent application, the examiner provides the applicant with a First Examination Report (FER). The application can also file a request for expedited examination of the application under Form 18A.

#### ❖ **Step 7 – Responding to objections/examination report**

The applicant is required to submit a written response to the raised objections in the examination report. The applicant can argue regarding the patentability of the invention and try negating the objections being raised by the examiner. Physical hearing or video conferencing can also be requested, as per requirement and norms.

#### ❖ **Step 8 – Patent Grant**

After addressing all objections, the patent application would be placed for a grant once it is found to be meeting all patentability requirements, and finally, the patent will be granted to the applicant. The grant of a patent is notified in the patent journal which is published from time to time.

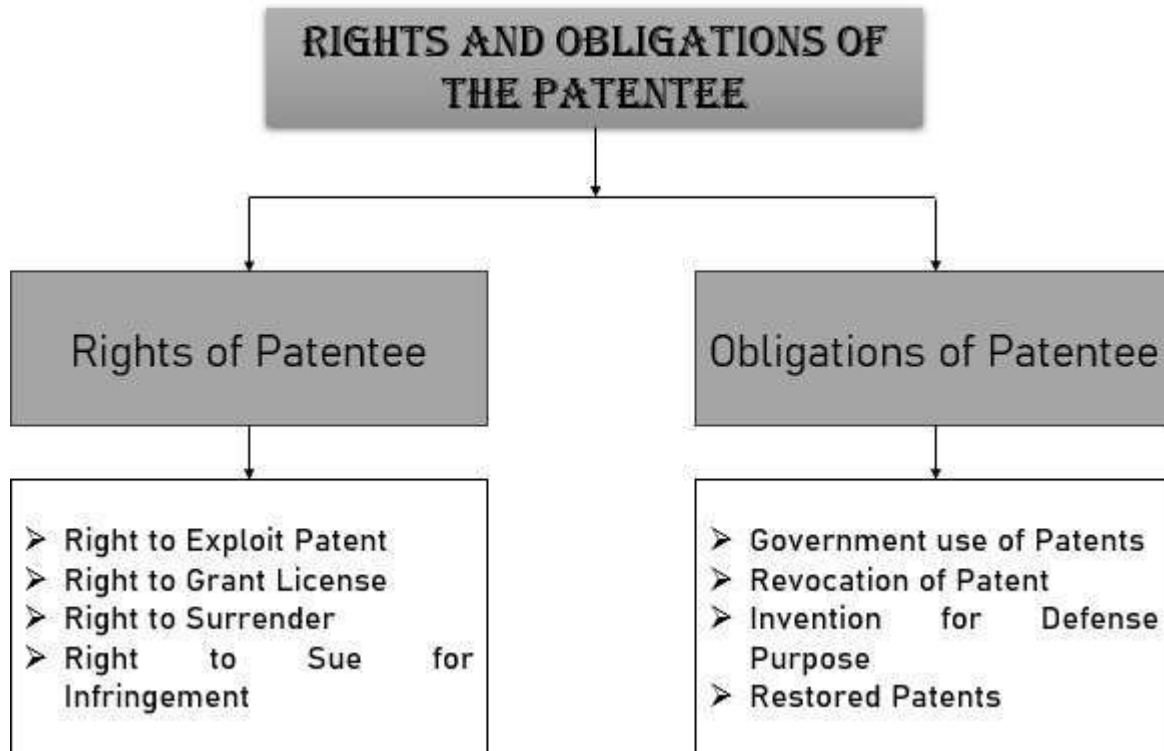
Any interested person or organization can file a post-grant opposition within 12 months from the date of publication of the granted patent (by submitting a notice of opposition to the controller).

#### ❖ **Step 9 – Patent life term and renewal of patent**

Usually, a patent holds a validity for 20 years. After 20 years, the patent owner is required to renew the patent by paying corresponding fee.

## RIGHTS AND OBLIGATIONS OF THE PATENTEE

A grant of Patent in India gives the Patentee an exclusive right to utilize or make the patented invention. Certain rights and obligations of a Patentee are enshrined under The Patent Act, 1970.



### Rights of Patentee

- ❑ **Right to Exploit Patent:** In India, the patentee is granted the right to use, market and distribute the protected goods or exercise the method if the patent is for a person. The right given can be provided either by the patentee himself or by his agent or licensees. Patentee can only exercise the rights during the term of the patent.
- ❑ **Right to Grant License:** Patentee has a discretion to grant license to third parties for the purpose of distributing and producing the protected goods. For a license to be legitimate and valid, it must be in written form and lodged with the Patent authority.

- ❑ **Right to Surrender:** Patentee has the power to abandon the patent after appropriately asking for authorization from the controllers. The controller transfers ownership only after evaluating the claims of the parties. The application for surrender is also mentioned in the Official Gazette to enable interested persons to oppose.
- ❑ **Right to Sue for Infringement:** Patent Infringement refers to any breach of a patent holder's rights. Hence, patentee has a right to institute proceedings for infringement of the patent and if the defendant is found guilty of infringement, the court may order compensation or a long-term order.

### **Obligations of Patentee**

- ❑ **Government use of Patents:** A patented invention may be used by the government for its use only and the patent holder is prohibited from using the innovation for personal gain or claiming a monopoly over commercial activities under this barrier. In case of a patent in respect of medicines or drugs, it may be imported by the government for its own use or for distribution in any hospital, dispensaries or medical institutions run by or on behalf of the government.
- ❑ **Revocation of Patent:** In cases of unsatisfactory result to the demand of public in respect of the patented invention, a patent may be revoked in such cases.
- ❑ **Invention for Defense Purpose:** In certain cases, publications of inventions are restricted by directions of controller, hence are subjected to certain secrecy provisions. In continuation of such prohibition of patented invention, the application is debarred for using it and it might be used on payment for royalties by the Central Government.
- ❑ **Restored Patents:** A patent can be restored once lapsed, provided that few limitations are imposed on the right of the patentee.

## **PATENT INFRINGEMENT**

Patent infringement occurs when another party makes unauthorized use, production, sale or offer of sale of a subject matter without the patent holder's permission. The idea behind patent infringement is that unauthorized parties are not permitted to use patent without the patent holder's permission. In the patent infringement cases, the court usually compares the subject matter covered under the patent with the subject matter that is used by the infringer. Infringement may occur directly or indirectly.

### **Remedies for Patent Infringement**

The legal proceedings in Patent Infringement cases can result in significantly higher losses than other kind of lawsuits. The act here allows plaintiff to recover damages. In the cases of infringement, patent holders are entitled to several remedies.

- ❑ **Injunction:** Injunction is a stay order that stops the infringing party to stop making use of infringing product. It aims at preserving the patent's value and preventing further harm to the patent holder. In order to obtain an injunction, the patent holder has an obligation to prove that their patent is valid and has been infringed by the defendant.
- ❑ **Damages:** The patent owner may obtain damages in respect of loss caused due to infringement.
- ❑ **Seizure of Forfeiture of Infringing Goods:** Court may order that the items determined to be infringing must be taken into custody, disposed of, or forfeited as deemed.

## **What cannot be patented?**

- **Frivolous Inventions:** Those inventions which are contrary to public order, morality, public health, environment, etc.
- Mere discovery of scientific principles or any new form of substance that already exists in nature.
- Any method related to agriculture or horticulture.
- Aesthetic creations such as literary, dramatic, musical or artistic work.
- Traditional knowledge and presentation of information.

## **COPYRIGHT**

Copyright is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression.



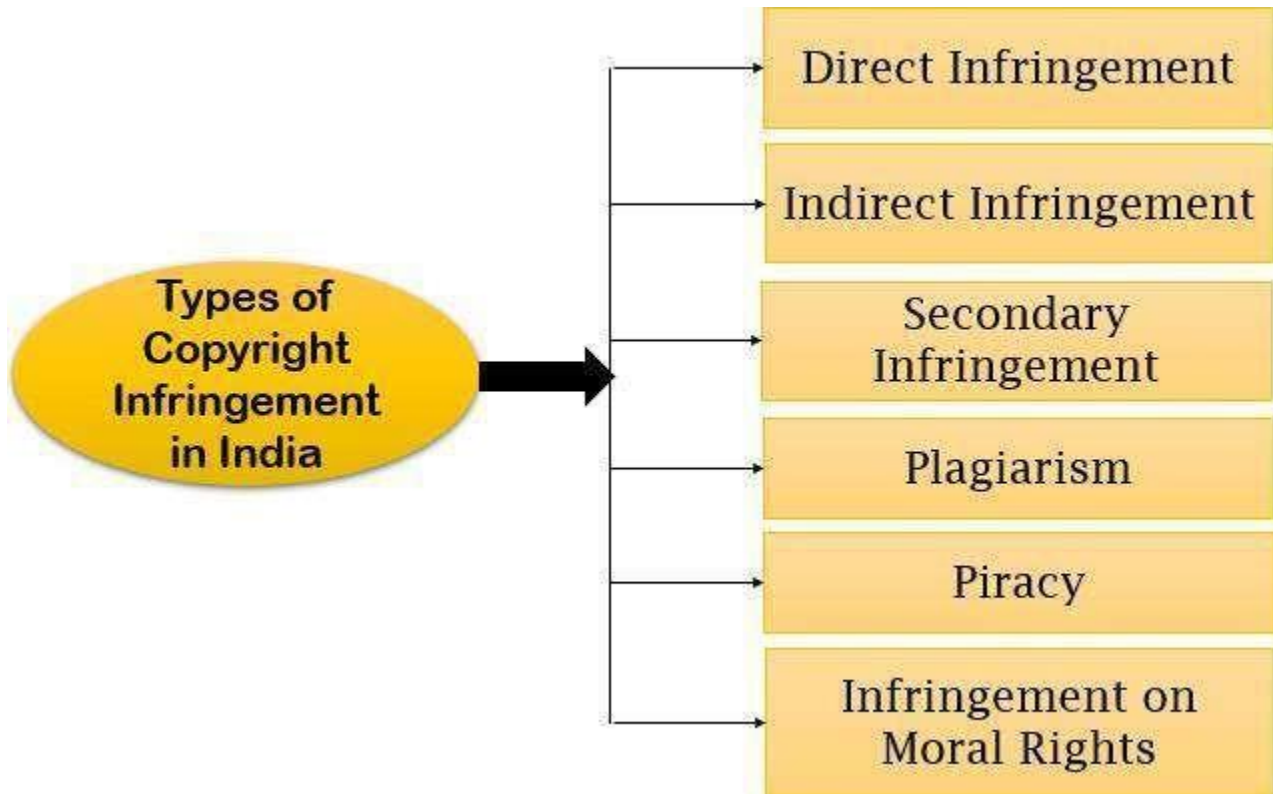
## **Copyright Infringement**

Copyright infringement means using, copying, sharing, or displaying someone's creative work without permission. This includes using a part of their work in your own creation, copying their work or sharing it with others without permission. Copyright laws protect different types of creative work, such as books, music, movies, paintings, photos and software. To avoid breaking these laws, you should always ask for permission before using someone else's work. If you're caught breaking these laws, you could face serious penalties such as fines or lawsuits. It's

important to know what's considered copyright infringement and take steps to avoid it.

## Types of Copyright Infringement in India

Here are some of the types of copyright infringement in India:



- **Direct infringement:** This occurs when someone copies or reproduces a copyrighted work without permission from the owner.
- **Indirect infringement:** This occurs when someone contributes to or facilitates copyright infringement, such as providing equipment or services that enable the copying or distribution of copyrighted material.
- **Secondary infringement:** This refers to the unauthorized sale or distribution of copyrighted works by someone other than the copyright owner.
- **Plagiarism:** This occurs when someone presents someone else's work as their own without giving proper credit or permission.
- **Piracy:** This involves the unauthorized reproduction or distribution of copyrighted material, such as music, movies, or software.

- **Infringement on moral rights:** This refers to the violation of the non-economic rights of the copyright owner, such as the right to be recognized as the author of a work or the right to prevent any distortion or mutilation of a work.

### **Copyright Infringement in India**

As per the Copyright Act, 1957, the use of a copyrighted work without the permission of the owner results in copyright infringement. Infringement occurs when a third person unintentionally or intentionally uses/copies the work of another without giving credit. It is usually classified into two categories, i.e. primary and secondary infringement.

Primary infringement occurs when there is an actual act of copying, while secondary infringement occurs when unauthorized dealings take place, such as selling or importing pirated books, etc. In the case of secondary infringement, the infringer will know about infringement, while in the case of primary infringement, the infringer may or may not know about infringement.

The following elements should be present for copyright infringement:

- The copyrighted work is the original creation of the author
- The copyright infringement work is actually copied from the work of the author

### **Rights of a Copyright Owner**

The copyright owner has the exclusive right to do the following with their work:

- **Reproduce the work.** This means making copies of the work in any form, such as printing, photocopying, or scanning.
- **Prepare derivative works.** This means creating a new work based on the original work, such as a translation, adaptation, or sequel.
- **Distribute copies of the work to the public.** This means selling, renting, or lending copies of the work to others.

- **Perform the work publicly.** This means performing the work in front of an audience, such as a play or a song.
- **Display the work publicly.** This means displaying the work in a public place, such as a painting or a sculpture.
- **Digitally transmit the work.** This means making the work available online, such as streaming a movie or a song.

### **Civil Remedies for Copyright Infringement in India**

Copyright infringement can have serious consequences for the maker of the content, which is why the Copyright Act of 1957 provides for civil remedies to protect their rights.

#### ➤ **Interlocutory Injunctions**

An interlocutory injunction is a powerful tool that provides immediate interlocutory relief to the creator of the content who is suffering ongoing harm as a result of the breach.

It allows them to halt the infringing activity while the case is ongoing, giving them time to pursue other remedies against copyright infringement, such as seeking monetary damages

#### ➤ **Anton Piller Order**

The Anton Piller order, named after a notable case, allows a plaintiff in a copyright violation case to obtain a court order authorizing entry into the defendant's property for the purpose of inspecting and searching for evidence to support their claim.

However, in order to be granted this order, the plaintiff must demonstrate that they have a valid cause of action and have suffered damages.

The plaintiff is also required to present specific evidence to the court as part of their case against the defendant.

It is important to note that an Anton Piller order is not a search warrant and does not grant the plaintiff unlimited access to the defendant's property. Rather, it allows for a limited inspection and preservation of evidence.

Failure to obtain court approval and the defendant's consent could result in trespassing. This type of order is commonly used in conjunction with injunctions, which seek to prevent the defendant from moving assets outside the jurisdiction of the court.

#### ➤ **Mareva Injunction**

The Mareva injunction is a legal tool used by courts when they suspect that a defendant is attempting to stall or interfere with the implementation of a court order.

In such cases, the court can order the defendant to put their assets or a portion of them under the court's control to ensure that the court's order is satisfied.

#### ➤ **Pecuniary Damages**

Under the Copyright Act of 1957, copyright owners have three options to seek compensation if someone has used their work without consent.

- i. The first option is called an account of profits, which means the owner can ask for the same amount of money that the person who used their work earned from it.
- ii. The second option is compensatory damages, which means the owner can ask for money to make up for the damage caused by the violation.
- iii. The third option is conversion damages, which means the proprietor can ask for the value of the work that was used without authorization.

#### ➤ **Norwich Pharmacal Order**

A Norwich Pharmacal Order is a legal tool that allows a person or organisation to get information from someone who has it, even if that person doesn't want to share it.

This is typically used when the person with the information has done something wrong, like committing copyright infringement, and the person seeking the information needs it to prove their case.

### **Criminal Remedies for Infringement of Copyright in India**

The Copyright Act of 1957 offers several solutions for infringement known as criminal remedies. These criminal remedies for infringement of copyright in India include:

- i. Imprisonment for a minimum of 6 months up to a maximum of 3 years
- ii. A fine of no less than 50,000 but up to 2,00,000.
- iii. Additionally, infringing goods can be searched and seized
- iv. And the copyright owner can demand the delivery of these goods.

The court can provide remedies to the owner of a copyrighted work if they prove that their work has been copied or used without their permission. These remedies may include injunctions to stop the infringing activity, compensation for damages suffered, and the delivery or destruction of infringing copies of the work.

### **Administrative Remedies for Infringement of Copyright in India**

Administrative remedies for copyright owners are available in cases of infringement through importation. In such cases, content owners can approach the Registrar of Copyrights and file a petition to impose a restriction on the import of infringing copies into India. This means that any goods infringing upon the copyright will not be allowed to enter the country for sale.

Furthermore, if infringing copies have already been imported, the copyright owner can request the confiscated copies to be delivered to them. This provides an effective

way for them to prevent infringing copies from being sold within India and protect their rights.

## **TRADEMARK**

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights.



### **Meaning of Trademark**

A trademark is defined under Section 2(m) of the Act as a mark that includes a brand, device, heading, ticket, label, name, word, signature, letter, the shape of goods, numeral, packaging or combination of colors or any such combination.

Trademark is a visual symbol or logo used to indicate the source of the products or goods. The symbol or logo can be a word, signature, number, geometrical figure, monogram, a combination of words and numerical, a combination of colors with a logo, or it can even be a sound mark.

### **Examples of a Registered Trademark**

A few examples of registered trademarks are:

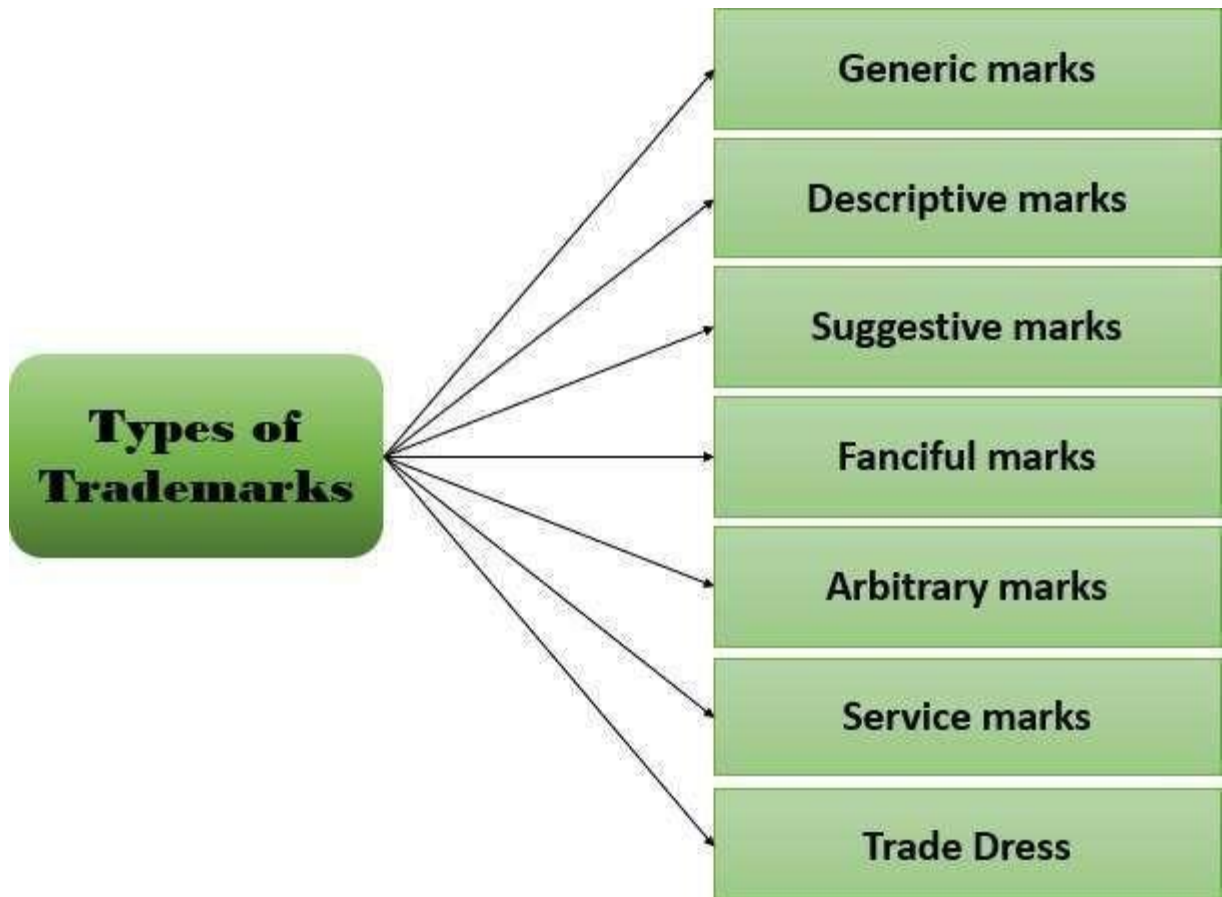
- Apple (Half eaten apple symbol with the leaf)
- Coca Cola (Coca-Cola bottle symbol)
- Nestle (Nestle word written in red color)

- Amazon (Amazon word in black color with a yellow arrow below)
- McDonald's (Yellow 'M' symbol)
- Nike (Swoosh symbol)
- Maggie (Maggie word written in yellow color inside the red color bubble)
- Adidas (Adidas word written with three parallel lines/stripes above the word)

### **Who Can Apply for Trademark Registration?**

The owner (proprietor) of the trademark can apply for trademark registration in India. An individual is the owner of a trademark that he/she creates and uses for his/her services or products. A company or entity will be the owner of the trademark when the trademark is used to represent the goods or services of that company. Thus, an individual or a company can apply for trademark registration.

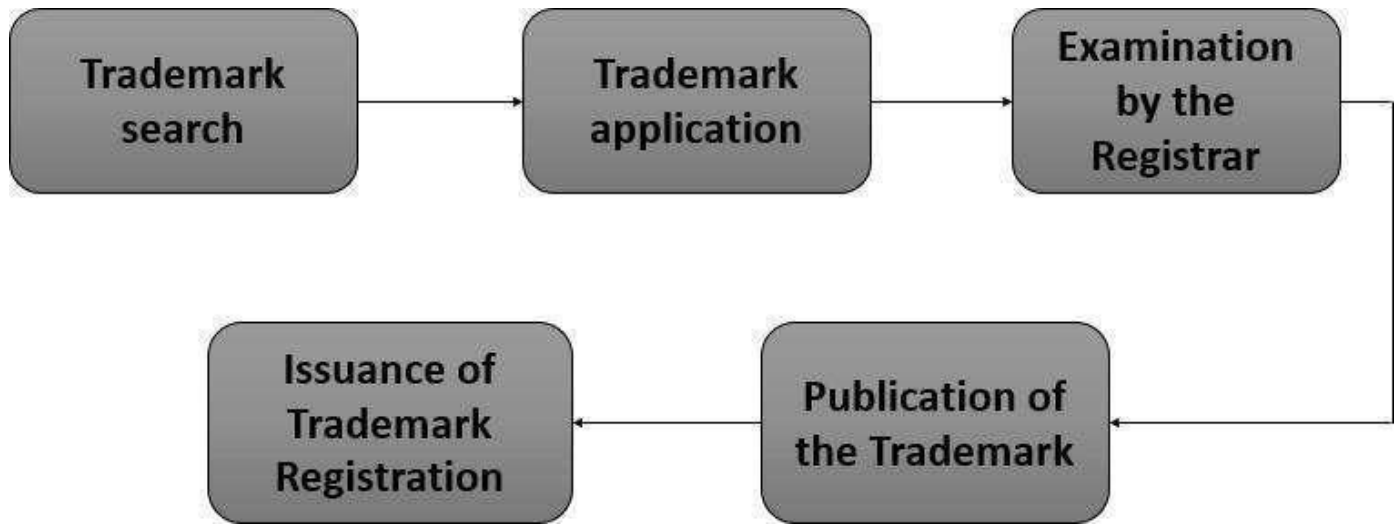
### **Types of Trademarks**



- ❓ **Generic marks:** Generic marks are the marks that cannot be qualified as a trademark. Generic marks cannot be considered as trademarks until they have more specific characterization and description of the mark. E.g. 'The Ice Cream shop' is a generic mark as it can stop the other ice cream shops to sell the ice creams.
- ❓ **Descriptive marks:** The descriptive marks are the marks that describe one or more characteristics and has a primary and secondary unique element. The primary element talks about the mark being unique and the secondary element talks about the length, volume, size and other characterizations of the mark. The descriptive mark evolves from what the brand represents to who the brand represents.
- ❓ **Suggestive marks:** Suggestive marks are the marks which suggest something about the product. These marks do not have a secondary meaning and they are just the creation of a person's imagination. E.g. Jaguar, Ninja and Trip Advisor. These names suggest something about their company.
- ❓ **Fanciful marks:** Fanciful marks are the marks which are different and unique and they don't compete with any other marks. They don't affect any other company or mark or infringe the trademark of anyone and they don't have a specific meaning. E.g. Kodak, Nokia, Adidas.
- ❓ **Arbitrary marks:** These are the marks that do not resemble their name and product. E.g. Apple, Blackberry, Orange company, Alphabet and Co.
- ❓ **Service marks:** It is the same as a Trademark, but different because it provides services rather than the product. E.g. McDonald's, Domino's, etc.
- ❓ **Trade Dress:** Trade dress is an identifying element that helps to identify the product. E.g. Bottle cap of Listerine

## Procedure for Trademark Registration

The trademark registration involves the following procedure:



### ➤ **Trademark search**

Before filing the trademark registration application with the Registrar of Trademarks ('Registrar'), the owner (applicant) must first conduct a trademark search on the online website of the Controller General of Patents, Designs and Trademarks. The trademark search is an essential step before applying for registration as the Registrar will reject the application if the proposed trademark is similar or resembles another registered trademark.

Thus, the applicant must first conduct a trademark search to find out if there are any similar or resembling trademarks. If there are no similar registered trademarks, the applicant can proceed to fill out the trademark registration application. If a similar registered trademark exists, the applicant must change his/her trademark and then apply for trademark registration.

### ➤ **Trademark application**

The trademark registration application is Form TM-A. The applicant must fill out Form TM-A and submit it either online or offline. It can be filed online by signing up

on the ipindia website. It can be filed offline by submitting the form to the Registrar Office of Trade Marks located in Delhi, Kolkata, Mumbai, Chennai and Ahmedabad.

➤ **Examination by the Registrar**

Once the Registrar receives the application, either online or office, he/she will examine the form to find out if the trademark abides by the terms and complies with the Act and Rules. When the Registrar finds any objection to the application, he/she will inform the applicant. The applicant needs to file the rectified or amended application with the Registrar.

➤ **Publication of the Trademark**

When the Registrar is satisfied that the application abides by the Trademark Act and Rules, he/she will publish the trademark in the trademarks journal. Any third party can oppose the trademark registration after it is published in the trademark journal by filing a statement of opposition with the Registrar.

The Registrar will inform the applicant of the opposition, and the applicant needs to file the counter-statement to the opposition. The applicant and the opposing party should also file evidence supporting their case. The Registrar will hear both parties and pass an order of acceptance of registration or rejection of registration.

➤ **Issuance of Trademark Registration**

When the Registrar passes an order of acceptance of registration in case of any opposition proceedings, he/she will proceed and grant the trademark registration certificate. When there is no opposition to the trademark within three months of its publication in the trademarks journal, the Registrar will give the trademark registration certificate to the applicant.

**Documents Required for Trademark Registration**

The following documents are required to be given along with the trademark registration application:

- Soft copy of the trademark
- Business registration proof (in case the applicant is a company or entity)
- Class III digital signature certificate (in case of online filing of trademark registration)
- Date of first use of the trademark in India (in case of any prior usage of trademark or prior use claim)
- Power of attorney signed by the applicant

### **Rectification of a Trademark**

Rectification of trademark is the procedure to rectify or correct an error or defect of the trademark details entered in the Register of Trademarks ('register') after its registration. Any person aggrieved by the wrong entry of the trademark can apply for its rectification to the Registrar or the Appellate Board.

Upon application for rectification of trademark by the person aggrieved, the Registrar or Appellate Board will make such an order for cancelling or varying the registration of a trademark. The grounds on which the rectification application can be made are as follows:

- Error in the name, contact details or address of the registered proprietor
- Error in the trademark details such as description, class and design
- Omission or absence of any entry in the register
- Change in details of the proprietor such as name, address and contact details
- Removal of the trademark that is not in use for five years
- Strikeout any goods, classes of services or goods in respect of which a trademark is registered
- Any other grounds accepted and prescribed by the Registrar

## **Infringement of Trademark**

The term infringement means the violation of someone's rights. Therefore, infringement of trademark means the violation of trademark rights. A trademark is said to be infringed when there is unauthorized use of a trademark or a substantially similar mark on goods or services of a similar nature. In such a case, the court will look at whether such use of the trademark will cause any confusion to the consumer as to the actual brand they are purchasing.

Therefore, according to the Act, a trademark is infringed if: -

- ☒ If the trademark is a copy of a registered trademark with a few additions or alterations.
- ☒ If the infringed mark is printed or used in advertisements.
- ☒ If the infringed mark is used in the course of trade
- ☒ If the mark used is so similar to a registered mark that it is likely to confuse or deceive a consumer when selecting a category of product.

In case of infringement of a registered trademark, the person may file a suit for damages. For filing such a suit, the following conditions must be met:

- ☒ The person filing the suit (plaintiff) must be the registered owner of the trademark.
- ☒ The person who is infringing (defendant) must be using a mark that is similar to that of the plaintiff such that it can easily be confused as one another.
- ☒ Such use by the defendant is not accidental in nature.
- ☒ The use of the mark by the defendant must be in the course or similar goods or services to that which the trademark is registered to.

## **Cancellation of a Trademark**

Cancellation of a trademark is taking it off or removing its entry from the register. Any person aggrieved by the trademark registration, a person interested in the

trademark or the Registrar can apply for cancellation of a trademark. A registered proprietor of the trademark can also file for the cancellation of its entry from the register.

The cancellation application is to be filed to the Registrar or the Appellate Board. After the application is filed, the Registrar or Appellate Board will hear the matter and pass an order. When the Registrar makes an order of cancellation, he/she will execute it by removing the trademark from the register.

When the Appellate Board passes an order for cancellation, an intimation is sent to the Registrar to cancel the trademark from the register. The grounds on which a cancellation application can be filed are as follows:

- The trademark is registered without any genuine or bonafide intention to use it for the goods and services for which it is registered
- The registered trademark was not in bonafide use for five years from its registration, and such five years have elapsed
- The registered trademark is used in a manner that causes confusion or deception to the public
- The trademark proprietor has misrepresented or has not disclosed any material fact regarding the trademark in its registration application, and such fact, if disclosed, would not justify such registration
- Any change in the circumstances after trademark registration such that its registration will be invalidated
- When a condition is mentioned in the register, and there is a failure or violation to observe such a condition.

## **PATENTS ACT, 1970**

Indian Patent Law is defined by various provisions of the Patents Act, 1970. Under this law, patent rights are granted for inventions covering a new and inventive process, product or an article of manufacture that are able to satisfy the patent eligibility requirements of having novelty, inventive steps, and are capable of industrial application.

### **Salient Features of Indian Patents Act 1970**

- ❖ Indian patents are issued in accordance with the Indian Patent Act of 1970 if the innovation satisfies the following requirements:
- ❖ The invention should be novel.
- ❖ Invention needs to be non-obvious or involve novel processes.
- ❖ The invention should be appropriate for use in industries.
- ❖ Inventions in which only techniques or processes of manufacturing are patentable.
- ❖ It shouldn't be subject to sections 3 and 4 of the Patents Act of 1970's provisions.
- ❖ Atomic energy inventions are not patentable: Atomic energy-related inventions that fall within subsection (1) of section 20 of the Energy Act of 1962 are not eligible for patent protection.
- ❖ An application under sub-section (1) may be made by any of the people mentioned therein, either alone or jointly with another person.
- ❖ Every patent application must be for a single invention and must be submitted in the required form and lodged with the patent office.

### **Patent Law Amendment Act 2005**

- ❖ The Patents (Amendment) Bill 2005 was passed by the Indian Parliament, replacing the Patents (Amendment) Ordinance 2004 issued by the Government of India in December 2004.

- ❖ The Patents (Amendment) Act of 2005 establishes a product patent framework for food, chemicals, and medicines.
- ❖ In compliance with the WTO's TRIPS Agreement, India was obligated to implement product patent protection in these areas beginning on January 1, 2005.

### **Features in the Patents (Amendment) Bill, 2005 related to Product Patents**

- ❖ Product patent protection is being extended to all disciplines of technology (i.e., drugs, foods, and chemicals).
- ❖ The term for product patent protection must be 20 years.
- ❖ Introduction of a clause allowing for the granting of obligatory licenses for the export of pharmaceuticals to countries with limited or no manufacturing capability in order to fulfill emerging public health needs (in accordance with the Doha Declaration on TRIPS and Public Health).
- ❖ Strengthening national security rules to prevent patenting of dual-use technology abroad.
- ❖ Rationalization of timeline provisions in order to introduce flexibility and reduce processing time for patent applications, as well as to simplify and rationalize procedures.
- ❖ Addition of a new provision in relation to mailbox applications, stating that patent rights in respect of the mailbox should be accessible only from the date of award of the patent, not from the date of publication.

### **COPYRIGHT ACT, 1957**

The Copyright Act, 1957, governs the law pertaining to copyright in India. The major goals of this copyright law are twofold: first, to guarantee authors, musicians, painters, designers, and other creative individuals the right to their creative interpretation; and second, to enable others to openly develop upon the concepts and knowledge made available by a work. India's history with copyright laws dates back

to the British Empire's colonial rule. A law called the Indian Copyright Act, 1957, was passed; it went into effect in January 1958 and has since undergone five revisions, in 1983, 1984, 1992, 1994, and 1999. The Copyright Act of 1957 was India's first copyright law following independence, and six amendments have been made since then. The Copyright (Amendment) Act 2012, which was passed in 2012, was the most recent amendment. The concept of copyright in India is governed by the Indian Copyright Act, 1957, as modified from time to time, and the Indian Copyright Rules, 1958 (Rules).

### **Objectives of copyright law**

Copyright is primarily intended to advance science and useful art and to compensate authors for their labour. In order to do this, copyright guarantees authors the right to their creative expression while allowing others to openly expand upon the concepts and knowledge presented in a work. The primary goals of copyright law are twofold. First and foremost, copyright laws were created by nations to guarantee the original expression of writers, songwriters, designers, artists, and other creatives, as well as film and sound recording producers, who risked their money to present their works to the public.

Second, a work's knowledge and suggestions can be freely expanded upon by others, thanks to copyright legislation. Additionally, it permits some unrestricted uses of copyrighted content. The Copyright Act of 1957 outlines the range of these permissible uses. To establish harmony between the rights of the copyright owner and the welfare of people to the greatest possible degree in the interest of society, measures relating to free use are included in the Act.

## **Salient features of the Copyright Act, 1957**

The salient features of the Copyright Act, 1957 are herein mentioned below:

### **➤ Scope of rights conferred to the author**

Literary works, musical works, theatrical works, creative works, sound recordings, and cinematographic films are all protected by copyright under Section 13 of the Copyright Act of 1957. Literary works, for instance, books, manuscripts, poetry, and these are safeguarded by the Act. Original literary, dramatic, musical, and artistic works as well as cinematographic and sound recordings are shielded from illegal access under the Copyright Act of 1957. In contrast to patents, copyright safeguards expressions rather than ideas.

### **➤ Provisions to assert the ownership**

The original owner of the copyright is the creator of the work itself, as stated in Section 17 of the Copyrights Act of 1957. The one exception to this rule is when an employee creates work while performing duties as part of their employment, in which case the employer assumes ownership of the copyright.

### **➤ Civil and criminal remedies**

Section 55 of the Copyright Act of 1957 addresses civil remedies for copyright infringement. These civil remedies encompass restitution, injunctions, account interpretation, deletion and surrender of copies made infringing, as well as conversion damages. Section 63 of the Copyright Act of 1957 specifies criminal penalties for copyright infringement. These criminal penalties can take the form of jail time, fines, searches, the seizure of contraband, etc. The maximum sentence for imprisonment is 3 years, but it cannot be less than 6, and the maximum fine is between 50,000 and 2,00,000 rupees.

## ➤ **Establishment of copyright boards and offices**

The Copyright Act of 1957 also makes provisions for the establishment of a copyright board to assist in resolving copyright-related issues and a copyright office, which comes under the jurisdiction of the Registrar of the Copyright, for the registration of books and other “works” of art. The establishment of an office to be known as the Copyright Office for Act purposes is provided for under Section 9 of the Copyright Act, 1957. The Copyright Board was established under Section 11 of the Copyright Act of 1957.

## **TRADE MARKS ACT, 1999**

1. This Act may be called the Trade Marks Act, 1999.
2. It extends to the whole of India.
3. It shall come into force on such date 1 as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

### **Salient features of the Trade Marks Act, 1999**

- (a) Providing for registration of trade mark for services, in addition to goods.
- (b) Amplification of definition of trade mark to include registration of shape of goods, packaging and combination of colors.
- (c) All 42 international classification of goods and services (as earlier used) now applicable to India as well.
- (d) Recognition of the concept of “well-known trademarks”.
- (e) Increasing the period of registration and renewal of trade marks from 7 to 10 years, to bring it in conformity with the accepted international practice.

(f) Widening the scope of infringement of trade marks. For instance, use of a registered trade mark as trade name or as a part of a trade name or use of a mark which is identical or deceptively similar to a registered trade mark.

(g) Creation of an “Intellectual property Appellate Board” for hearing appeals against orders and decisions of the Registrar of Trade Marks for speedy disposal of cases and rectification applications which hitherto lie before High Courts.

(h) Criminal remedies in case of falsification of trade marks.

(i) Recognition of use of trade mark by even an unregistered licensee.

(j) Expedious examination of a trade mark application on payment of five times the application fee.

### **Objective of the Act:**

The object of trade mark law has been explained by the Supreme Court in *Dau Dayal v. State of Uttar Pradesh* AIR 1959 SC 433, in the following words: “The object of trade mark law is to protect the rights of persons who manufacture and sell goods with distinct trade marks against invasion by other persons passing off their goods fraudulently and with counterfeit trademarks as those of the manufacturers. Normally, the remedy for such infringement will be by action in Civil Courts.

### **RIGHT TO INFORMATION ACT, 2005**

Every citizen of India has a right to free speech and expression under Article 19(1)(a) of the Constitution of India. This right does not only cover the communication of information but also the receipt of information since without adequate information, a person cannot form an informed opinion. Thus, the right to know and seek information is an integral part of the fundamental right enshrined under Article 19(1)(a). The Hon’ble Supreme Court has also held that the right of the citizens to know, and to receive information regarding matters of public concern is a fundamental right flowing from Article 19(1)(a).

The first central legislation dealing with the right to information in India, namely, the Freedom of Information Act, 2002 was passed on December 4, 2002, but was not notified. In 2004, the UPA (United Progressive Alliance) government appointed a National Advisory Council (NAC) which had recommended some changes in the Freedom of Information Act, 2002.

The amended act known as “The Right to Information Act, 2005” was passed on 11th May 2005 and 12th May 2005 by the Lok Sabha and Rajya Sabha respectively. The President of India gave his assent to the Act on 15th June 2005 and it came into force on 12th October 2005.

### **Objectives of the RTI Act**

- ☒ Empower citizens to question the government.
- ☒ The act promotes transparency and accountability in the working of the government.
- ☒ The act also helps in containing corruption in the government and work for the people in a better way.
- ☒ The act envisages building better-informed citizens who would keep necessary vigil about the functioning of the government machinery.

### **Important provisions under the Right to Information Act, 2005**

- **Section 2(h):** Public authorities mean all authorities and bodies under the union government, state government or local bodies. The civil societies that are substantially funded, directly or indirectly, by the public funds also fall within the ambit of RTI.
- **Section 4 1(b):** Government has to maintain and proactively disclose information.
- **Section 6:** Prescribes a simple procedure for securing information.
- **Section 7:** Prescribes a time frame for providing information(s) by PIOs.
- **Section 8:** Only minimum information exempted from disclosure.

- **Section 8 (1)** mentions exemptions against furnishing information under the RTI Act.
- **Section 8 (2)** provides for disclosure of information exempted under the Official Secrets Act, 1923 if the larger public interest is served.
- **Section 19:** Two-tier mechanism for appeal.
- **Section 20:** Provides penalties in case of failure to provide information on time, incorrect, incomplete or misleading or distorted information.
- **Section 23:** Lower courts are barred from entertaining suits or applications. However, the writ jurisdiction of the Supreme Court of India and high courts under Articles 32 and 226 of the Constitution remains unaffected.

### **Significance of the RTI Act**

- ❑ The RTI Act, 2005 empowers the citizen to question the secrecy and abuse of power practiced in governance.
- ❑ It is through the information commissions at the central and state levels that access to such information is provided.
- ❑ RTI information can be regarded as a public good, for it is relevant to the interests of citizens and is a crucial pillar for the functioning of a transparent and vibrant democracy.
- ❑ The information obtained not only helps in making government accountable but also useful for other purposes which would serve the overall interests of the society.
- ❑ Every year, around six million applications are filed under the RTI Act, making it the most extensively used sunshine legislation globally.
- ❑ These applications seek information on a range of issues, from holding the government accountable for the delivery of basic rights and entitlements to questioning the highest offices of the country.

- Using the RTI Act, people have sought information that governments would not like to reveal as it may expose corruption, human rights violations, and wrongdoings by the state.
- The access to information about policies, decisions and actions of the government that affect the lives of citizens is an instrument to ensure accountability.
- The Supreme Court has, in several judgments, held that the RTI is a fundamental right flowing from Articles 19 and 21 of the Constitution, which guarantee to citizens the freedom of speech and expression and the right to life, respectively.

### **Recent Amendments of the RTI Act**

- i. The RTI amendment Bill 2013 removes political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act.
- ii. The draft provision 2017 which provides for closure of case in case of death of applicant can lead to more attacks on the lives of whistleblowers.
- iii. The proposed RTI Amendment Act 2018 is aimed at giving the Centre the power to fix the tenures and salaries of state and central information commissioners, which are statutorily protected under the RTI Act. The move will dilute the autonomy and independence of CIC.
- iv. The Act proposes to replace the fixed 5-year tenure with as much prescribed by the government.

### **Criticism of RTI Act**

- One of the major set-back to the act is that poor record-keeping within the bureaucracy results in missing files.
- There is a lack of staffing to run the information commissions.
- The supplementary laws like the Whistle Blower's Act are diluted, this reduces the effect of RTI law.

- Since the government does not proactively publish information in the public domain as envisaged in the act and this leads to an increase in the number of RTI applications.
- There have been reports of frivolous RTI applications and also the information obtained have been used to blackmail the government authorities.

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**DEPARTMENT OF MASTER OF BUSINESS ADMINISTRATION**  
**YEAR 2025-2027 SEM : FIRST**  
**COURSE CODE: LEGAL ASPECTS OF BUSINESS**

**PREVIOUS YEAR QUESTION PAPERS**

Reg. No. :

**Question Paper Code : 80189**

M.B.A. DEGREE EXAMINATION, APRIL/MAY 2025

First Semester

BA 4105 – LEGAL ASPECTS OF BUSINESS

(Common to: Master of Business Administration (Apparel Management)/ Master of Business Administration (Artificial Intelligence and Data Science)/ Master of Business Administration (Business Analytics)/ Master of Business Administration (Retail Management)/ Master of Business Administration (Textile Management))

(Regulations 2021)

Time : Three hours

Maximum : 100 marks

Answer ALL questions.

PART A — (10 × 2 = 20 marks)

1. Distinguish between guarantees and warranties.
2. List the rights of holder in due course.
3. What is a prospectus?
4. Define corporate governance.
5. Mention the key objectives of the payment of wages act.
6. Identify three common causes of disputes in an industry.
7. What is corporate tax planning?
8. Write a note on electronic way bill.
9. State the objectives of Right to information Act, 2005.
10. What is infringement of copyright?

PART B — (5 × 13 = 65 marks)

11. (a) Define contract and discuss the types of contract based on its formation and performance in detail.

Or

- (b) What are negotiable instruments? Discuss the different modes of negotiable instrument.

12. (a) Describe the powers, duties and liabilities of directors under Companies Act 1956 & 2013.

Or

- (b) Explain the salient features of Competition Act 2002 and highlight the provisions related to combination.

13. (a) Explain the health, safety and welfare provisions of Factories Act.

Or

- (b) Define Bonus and discuss the important provisions of payment of Bonus Act.

14. (a) Outline the latest developments in indirect tax laws relating to GST.

Or

- (b) Describe the basic concepts of time and value of supply, Input tax credit in GST.

15. (a) Describe any four cybercrimes as per IT Act 2000 and explain the penalty provisions in detail.

Or

- (b) Discuss the procedure for filing patents and highlight the rights from patents as per Patent Act in detail.

PART C — (1 × 15 = 15 marks)

16. (a) Critically analyze the process of creating agency and explain the rights and duties of principal and agent. Also, discuss the modes of termination of agency.

Or

- (b) What are consumer rights? Discuss the procedure for consumer grievance redressal through State and National consumer redressal forum in detail.

Reg. No. :

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**Question Paper Code : 20195**

M.B.A. DEGREE EXAMINATIONS, NOVEMBER/DECEMBER 2024

First Semester

BA 4105 – LEGAL ASPECTS OF BUSINESS

(Common to : Master of Business Administration (Apparel Management)/Master of Business Administration (Business Analytics)/Master of Business Administration (Retail Management)/Master of Business Administration (Textile Management)/Master of Business Administration (Artificial Intelligence and Data Science))

(Regulations 2021)

Time : Three hours

Maximum : 100 marks

Answer ALL questions.

PART A — (10 × 2 = 20 marks)

1. What are the essential elements of a contract according to the Indian Contract Act of 1872?
2. What is a quasi contract?
3. Why is a company referred to as an 'Artificial Person'?
4. What is meant by chartered Company?
5. What is the main objective of the Factories Act?
6. What does the Payment of Bonus Act regulate?
7. What is the purpose of the Input Tax Credit in GST?
8. What is the reverse charge mechanism under GST?
9. What are the main rights provided to consumers under the Consumer Protection Act?
10. What is the purpose of the IT Act, 2000 and 2008, in addressing cyber-crimes?

PART B — (5 × 13 = 65 marks)

11. (a) Explain the essential elements of a valid contract under the Indian Contract Act, 1872, with suitable examples.

Or

- (b) Analyze the nature and key elements of a sales contract under the Sale of Goods Act, 1930, with emphasis on the concepts of risk of loss, guarantees, warranties, and the rights of an unpaid seller.

12. (a) Explain the importance of the Memorandum and Articles of Association.

Or

- (b) Evaluate the objectives and impact of the Competition Act, 2002, focusing on the concepts of "dominant position" and "combinations."

13. (a) Explain the key provisions of the Industrial Disputes Act and discuss its role in addressing disputes between employers and employees.

Or

- (b) Evaluate the objectives and significance of the Payment of Wages Act in ensuring fair labour compensation.

14. (a) Discuss the importance of corporate tax planning in today's business environment, focusing on its impact on financial performance and compliance with tax regulations.

Or

- (b) Evaluate the key provisions of the GST framework, including the levy and collection of CGST and IGST.

15. (a) Explain the procedures for consumer grievance redressal under the Consumer Protection Act, including the types of redressal forums and their functions.

Or

- (b) Analyze the scope and importance of Intellectual Property Rights (IPR) laws.

PART C — (1 × 15 = 15 marks)

16. (a) Case Study: Breach of Contract and Consumer Rights

Swift Electronics, a prominent electronics manufacturer, signed a contract with ElectroMart, a large retail chain, to supply 500 units of a new mobile phone model by the end of the month. This model was in high demand, and ElectroMart launched a promotional campaign, allowing customers to pre-order the phones. However, due to unforeseen supply chain disruptions, Swift Electronics could only deliver 300 units on time. ElectroMart faced significant backlash from disappointed consumers, many of whom had prepaid for their orders. ElectroMart suffered financial losses, with their reputation also at risk and filed a claim against Swift Electronics for breach of contract.

As a result of unfulfilled orders, frustrated consumers began filing complaints with the Consumer Protection Forum, citing ElectroMart's failure to deliver their preorders on time. ElectroMart sought redressal from Swift Electronics, while at the same time needing to address consumer grievances. ElectroMart also handled complaints from customers who had placed their orders through its online platform, raising potential concerns under Cyber Laws about data security and grievance redressal for online transactions.

Questions:

- (i) How can ElectroMart seek redressal for breach of contract from Swift Electronics under the Indian Contract Act, and what remedies are available? (8)
- (ii) What rights do consumers have under the Consumer Protection Act in this case, and how can they file grievances for unfulfilled orders? (7)

Or

(b) Case Study: Intellectual Property Infringement and GST Compliance

CreativePrint, a small printing business specializing in sustainable packaging, developed an innovative eco-friendly packaging design, which was granted a patent. This unique design gained popularity, enhancing CreativePrint's brand reputation and market value. However, a year after obtaining the patent, CreativePrint discovered that a competitor, EcoPack Solutions, was producing packaging with a remarkably similar design. CreativePrint suspected patent infringement and filed a case against EcoPack Solutions. EcoPack, however, denied any infringement and claimed that their design was independently developed.

Simultaneously, CreativePrint underwent a tax audit, revealing discrepancies in their GST filings, specifically related to input tax credit claims. CreativePrint was notified by tax authorities to address these discrepancies and comply with the required documentation and filing standards. The company now faced the dual challenge of protecting its intellectual property while ensuring compliance with GST regulations to avoid penalties and maintain its financial standing.

Questions:

- (i) What legal actions can CreativePrint pursue under Intellectual Property Rights (IPR) laws to protect their patented design, and what are their rights in case of infringement? (8)
- (ii) In light of GST compliance requirements, what steps should CreativePrint take to resolve discrepancies in their GST filings, particularly concerning input tax credit claims? (7)

Reg. No. :

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**Question Paper Code : 70190**

M.B.A. DEGREE EXAMINATIONS, APRIL/MAY 2024

First Semester

BA 4105 – LEGAL ASPECTS OF BUSINESS

(Common to: Master of Business Administration (Apparel Management)/Master of Business Administration (Retail Management)/Master of Business Administration (Textile Management)

(Regulations 2021)

Time : Three hours

Maximum : 100 marks

Answer ALL questions.

PART A — (10 × 2 = 20 marks)

1. Differentiate jus in rem with jus in personam.
2. Write a short note on agency by estoppel.
3. Write the difference between ordinary resolution and special resolution.
4. List down the factors that cause adverse effect on competition.
5. What is meant by shift and rely?
6. Give a brief note on the penalty for obstructing inspector under the payment of wages Act.
7. List down the types of taxes under GST.
8. Write a short note on E-way Bill.
9. What is meant by Asymmetric crypto system?
10. Bring out the difference between restrictive trade practice and restrictive trade practice.

PART B — (5 × 13 = 65 marks)

11. (a) Explain the essential elements of a valid contract.

Or

- (b) Discuss the conditions in which condition is treated as warranty and explain the exceptions to caveat emptor.

12. (a) What is meant by corporate veil? Detail the exceptions under which the corporate veil is lifted.

Or

- (b) Examine with reference to the relevant provisions of the Competition Act 2002, the following:

Whether a person purchasing goods not for personal use but for resale can be considered as a consumer.

Whether a Government department supplying water for irrigation to the agriculturists after levying charges for water supplied (and not a water tax) can be considered as an enterprise.

13. (a) Discuss the rules regarding approval, licensing and registration of factories with reference to notice by occupier as required by the Factories Act 1948 before starting a factory and occupying the same.

Or

- (b) Explain the procedure for the settlement of industrial disputes and authorities under the Industrial Disputes Act 1947.

14. (a) State the objectives of corporate tax planning? Detail the different tax planning methods that can be availed by corporates.

Or

- (b) Detail the different types of returns under GST.

15. (a) Explain the various consumer dispute redressal agencies in India and its procedure.

Or

- (b) Detail the general procedure for obtaining a Patent.

PART C — (1 × 15 = 15 marks)

16. (a) In the current context everyone would agree that cybercrime is on the rise. Therefore, you are asked to devise strategies to topple cybercrime based on your understanding.

Or

- (b) "The new Companies Act paves way for individuals to start companies of their own named as 'One Person Company' which remains a boon to the educated youth". In view of this statement discuss its process and advantages.

# **QUESTION BANK**

**UNIT 1**  
**COMMERCIAL LAW**

**PART A (TWO MARK QUESTION WITH ANSWER)**

**1. What is a Contract?**

- A contract is an agreement between two parties that creates an obligation to perform or not perform a particular duty.

**2. Define Contract:**

- *Salmond* – “A contract is an agreement creating and defining obligations between two parties”
- *Section 2(h) of Indian Contract Act 1872* – “An agreement enforceable by law is a contract”.

**3. What is Agreement?**

- Agreement is the manifestation of mutual assent by two or more persons to one another.

**4. Define Agreement**

- *Section 2(e) of Indian Contract Act 1872* – “Every promise and every set of promises forming the consideration for each other is an agreement”

**5. Define Offer:**

- *Section 2(a) of Indian Contract Act 1872,*” When a person expresses his willingness to another person to do or to abstain from doing something and also obtain the consent of such expression it is called Offer”.

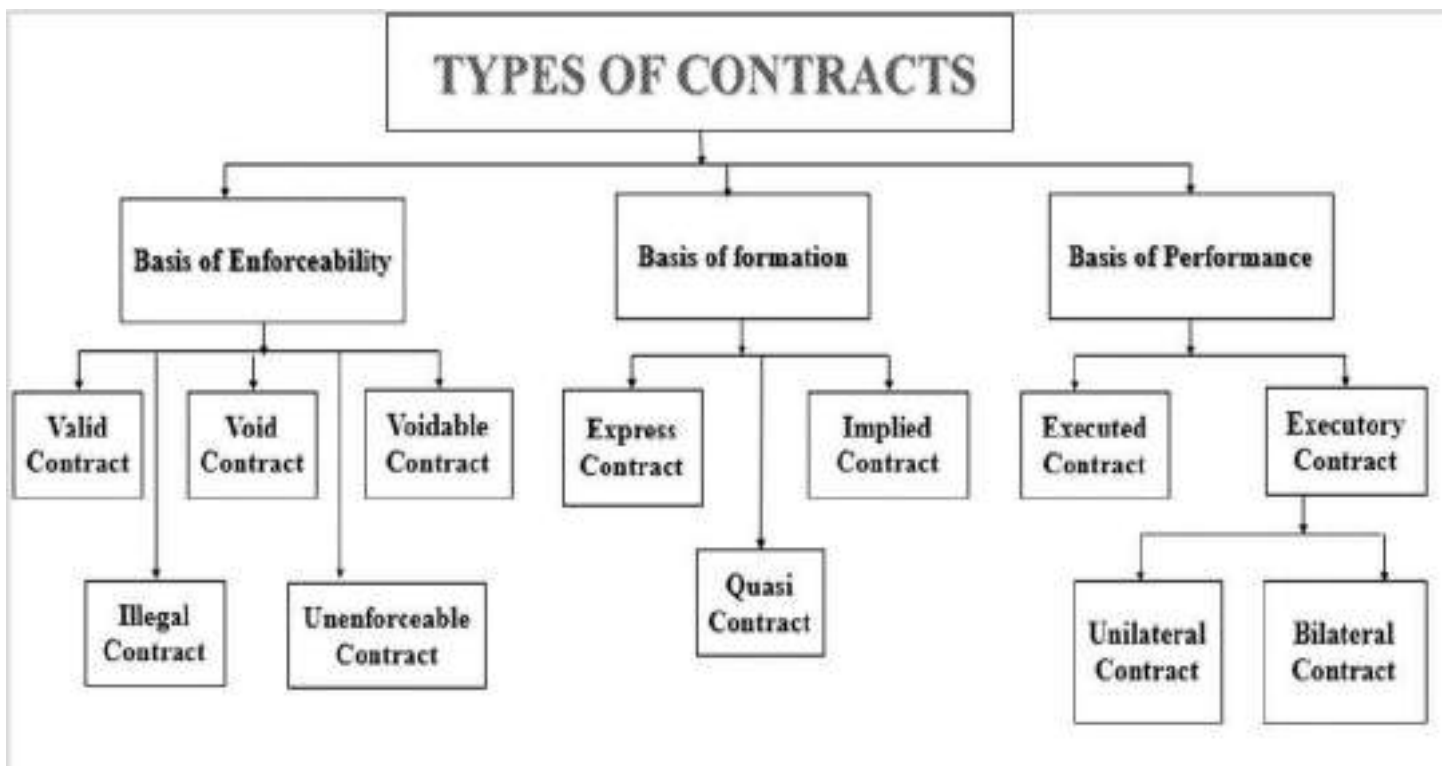
**6. Define Acceptance:**

- *Section 2(b) of Indian Contract Act 1872,*” When the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted”.

## 7. List the essential elements of a Contract:

- Agreement
- Free Consent
- Competency
- Consideration
- Lawful object
- Not expressly declared as void

## 8. List the types of Contracts:



## 9. Define Void Contract

- *Section 2(j) of Indian Contract Act 1872,* "Void contract is a contract which ceases to be enforceable by law".

## 10. Define Voidable Contract

- *Section 2(i) of Indian Contract Act 1872,* " An agreement which is enforceable by law at the option of one or more parties thereto and it is not enforceable by law at the option of the other or others".

## 11. What is Performance of Contract?

- The term 'Performance of Contract' means that both the promisor and the promisee have fulfilled their respective obligations, which the contract placed upon them.

## 12. Define Performance of Contract

- *Section 27 of Indian contract Act 1872,*" The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law".

## 13. What is Tender?

- Tender is a formal invitation to trade under the terms of offer and the documents associated with that offer.

## 14. Define Tender:

- *Section 38 of Indian Contract Act,1872,* "Where a promisor has made an offer of performance to the promisee and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract".

## 15. Who can Demand Performance?

- **Promisee** – Only a promisee can demand performance and not a stranger demand performance of the contract.
- **Legal Representatives** – Legal representative can demand exception performance. The contrary intention appears from the contract. The contract is of a personal nature.

- **Third Party** – Exception to “Stranger to a contract”.

### 16. What is Breach of Contract?

- A breach of contract occurs when one party in a binding agreement fails to deliver according to the terms of the agreement.

### 17. Define Quasi Contract:

- *Legal Scholar John Salmond* – “Certain obligations which are not in truth contractual in the sense of resting on agreement, but which law treats as if they were”.

### 18. Difference Between Contract and Quasi-Contract:

CONTRACT	QUASI-CONTRACT
➤ Two or more parties will come together for common intention and generate an agreement.	➤ Not a real contract.
➤ It is always an agreement between the parties.	➤ No agreement between parties.
➤ Parties will give their consent.	➤ Parties’ consent is not required.
➤ Legal contract exists	➤ No legal contract exists

### 19. Difference Between Void Contract and Voidable Contract:

VOID CONTRACT	VOIDABLE CONTRACT
➤ Agreement which is no longer enforceable by law.	➤ Agreement where parties have a right to cancel it on discovering legal fault.
➤ Section 2(j) of Indian Contract Act, 1872.	➤ Section 2(i) of Indian Contract Act, 1872.
➤ Party cannot sue for loss	➤ Party can sue for loss.

## 20. Difference Between Valid Contract and Void Contract

VALID CONTRACT	VOID CONTRACT
➤ Enforceable by law	➤ Not enforceable by law
➤ Section 2(A) of Indian Contract Act,1872	➤ Section 2(j) of Indian Contract Act,1872
➤ Has legal effect	➤ Has no legal effect

## 21. Define Agent:

- *Section 182 of Indian Contract Act 1872, " Any agent is a person employed to do any act for another or to represent another in dealing with third party".*

## 22. Define Principal:

- *Section 182 of Indian Contract Act 1872, " The person for whom such act is done, or who is so represented is called the principal".*

## 23. Who can appoint an Agent?

- *Section 183 of Indian Contract Act 1872, " Any person who has attained the age of majority and has a sound mind can appoint an agent".*

## 24. Who may be an Agent?

- *Section 184 of Indian Contract Act 1872, " The person who has attained the age of majority and has a sound mind can become an agent".*

## 25. List the types of Agent:

- Special Agent
- Mercantile Agent
  - ✓ Broker
  - ✓ Factor
  - ✓ Banker
  - ✓ Auctioneer
- General Agent

## **26. Define Mercantile Agent**

- ✓ *Section 2(9) – Sale of Goods Act,1930* “A mercantile agent having in the customary course of business as such agent authority either to sell goods or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods”.

## **27. What is Termination of Agency?**

- When the relationship between principal and agent comes to an end, it's known as termination of agency.

## **28. Define Contract of Sale of Goods:**

- *Section 4(1) of Sale of Goods Act,1930* – “A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price”.

## **29. Define Buyer:**

- *Section 2(1) of Sale of Goods Act,1930* – “Buyer means a person who buys or agrees to buy goods”.

## **30. Define Seller:**

- *Section 2(13) of Sale of Goods Act,1930* – “Seller means a person who sells or agrees to sell goods”.

## **31. Define Goods:**

- *Section 2(7) of Sale of Goods Act,1930 – Goods* – “All 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 served before sale or under the contract of sale”.

### **32. Define Price:**

- *Section 2(10) of Sale of Goods Act, 1930 – Price – “The money consideration for a sale of goods”.*

### **33. Define sale:**

- *Section 4(3) – Indian Contract Act, 1872 – “Where under a contract of sale, the property(ownership) in the goods is transferred from the seller to the buyer; the contract is called a sale”.*

### **34. Define Agreement to Sale / Conditional Sale:**

- *Section 4(3) – Indian Contract Act, 1872 – “Where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement to sell”.*

### **35. Define Document of title to Goods:**

- *Section 2(4) – Sale of Goods Act 1930 – Document of title to Goods – “A document used in the ordinary course of business as a proof of possession or control of goods authorizing or purporting to authorize either by endorsement or delivery, the possessor of the document to transfer or to receive the goods thereby represented”.*

### **36. What is Delivery order?**

- Delivery order is an order issued by the owner of the goods to the warehouse keeper to deliver the goods to a particular person.

### **37. Define Delivery order:**

- *According to the Uniform Commercial Code, "A delivery order refers to an order given by an owner of a goods to a person in possession of the warehouse keeper directing that person to deliver the goods to a person named in the order."*

### 38. What is guarantee?

- A written promise by a company that it will repair or replace a product if it breaks in a certain period of time.

### 39. Define Guarantee:

- *Black Law Dictionary* defines the term guarantee as the assurance that a legal contract will be duly enforced.

### 40. Define Warranty:

- *Section 12(3) – Sale of Goods Act, 1930*, “A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated”.

### 41. Difference Between Guarantee and Warranty:

GUARANTEE	WARRANTY
➤ Guarantee serves as a promise made by the manufacturer to the buyer.	➤ Warranty is a written assurance that the facts specified in the product is true and genuine but if they are not, it will be repaired or replaced.
➤ Applicable to Product, Service and Person	➤ Applicable to Product only
➤ It can either be oral or written	➤ It is generally written and so it is easy to prove.
➤ E.g.: Snap fitness “If you don’t experience a positive difference within 30 days of joining our gym, you’ll receive full refund”.	➤ E.g.: Mobile Phone.

### 42. What is Performance of Sales Contract:

- Performance of contract of sale means delivery of goods by seller and acceptance of delivery of goods and payment for the same by buyer.

#### **43. Define Performance of Sales Contract**

- *Section 31 – Sale of Goods Act,1930 - Performance of contract of sale – “It is the duty of the seller to deliver the goods and the buyer to accept and pay for them, in accordance with the terms of the contract of sale”.*

#### **44. Define Delivery:**

- *Section 2(2) - Sale of Goods Act,1930 – Delivery – “Voluntary transfer of possession of goods from one person to another”.*

#### **45. Define Unpaid seller:**

- *Section 45(1) of the Sale of Goods Act,1930 a seller of goods is called an “Unpaid Seller” when;*
  - 1) *The price has not been paid or tendered.*
  - 2) *A bill of exchange or other negotiable instruments (like a Cheque) that was received as conditional payment has been dishonored.*

#### **45. What is Negotiable Instrument?**

- A Negotiable Instrument is a piece of paper that guarantees the payment of a certain sum of money, either immediately upon demand or at any predetermined period, and whose payer is typically identified

#### **46. Define Negotiable Instrument**

- *Section 13(1) of Negotiable Instruments Act,1881 – “A Negotiable Instrument means a promissory note, bill of exchanges, or cheque payable either to order or to bearer”.*

#### **47. What is Cheque?**

- A written instruction to a bank or financial institution to pay a given amount from the cheque holder’s account to the bearer is known as Cheque.

- IFSC (Indian Financial System Code), MICR (Magnetic Ink Character Recognition) and Cheque number make each cheque unique.

#### **48. Define Cheque:**

- *Section 6 – Negotiable Instruments Act, 1881 – Cheque – “A bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand”.*

#### **49. Mention the parties of cheque:**

- Drawer
- Drawee
- Payee
- Endorser
- Endorsee

#### **50. What is Demand Draft?**

- A negotiable instrument similar to bill of exchange.
- A bank issues a demand draft to a client (Drawer), directing another bank (drawee) or one of its own branches to pay a certain sum to the specified party (Payee).
- Also known as Sight Drafts.

#### **51. Define Demand Draft:**

- *Section 85(A) – Negotiable Instruments Act 1881 – Demand Draft – “A demand draft is an order to pay money drawn at one office of a bank upon another office of the same bank for a sum of money payable to order on demand”.*

#### **52. List the Special Rules for Demand Draft:**

- Issued by a bank on another bank or one of its branches.
- Cannot be issued by individual.
- Cannot be made payable to bearer.

### 53. Difference Between Cheque and Demand Draft:

CHEQUE	DEMAND DRAFT
❖ Payment made after the cheque is issued.	❖ First payment is made then DD is issued.
❖ Issued by the account holder	❖ Issued by the bank on behalf of the account holder.
❖ Signature of Account Holder required	❖ Signature not required
❖ Parties involved are – Drawer, Drawee, Payee, Endorser, Endorsee	❖ Parties involved are - Drawer, Payee

### 54. Who is called a Holder?

- A person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable.

### 55. Define Holder of a negotiable instrument:

- *Section 8 – Negotiable Instruments Act, 1881 – “The holder of a negotiable instrument means any person, entitled in his own name to the possession thereof and to receive or recover, the amount due thereon from the party liable thereto”.*

### 56. Who is called Holder in Due Course?

- A person who acquires the negotiable instrument in good faith for consideration before it becomes due for payment and without any idea of a defective title of the party who transfers the instruments to him.

### 57. Define Holder in Due Course:

- *Section 9 – Negotiable Instruments Act, 1881 – “Holder in due course means any person who for consideration, becomes the possessor of a negotiable instrument if payable to bearer or payee or indorsee thereof if payable to order before the amount mentioned in it became payable and without sufficient cause to believe that any defect existed in the title*

## PART B & C

1. Explain the essential elements of Contract in detail.
2. Explain the types of Contracts.
3. Briefly discuss the steps in formation of a contract.
4. Discuss the essential elements of a valid tender:
5. Briefly explain breach of contract:
6. How is agency created:
7. Explain the Authority and Liability of Agent and Principal
8. How can an agency be terminated?
9. Define Goods. How are goods classified.
10. Discuss the Document of Title of Goods in detail.
11. Discuss the rights of an unpaid seller.
12. Explain the Types of Negotiable Instruments
13. Discuss the Types of Cheque also write the Special Rules for Cheque
14. Explain the Liability of Parties to Negotiable Instrument
15. Explain the Modes of Discharge of Liability in Negotiable Instrument

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## UNIT II

### COMPANY LAW AND COMPETITION ACT

#### PART A (TWO MARK QUESTIONS WITH ANSWER)

#### 1. What is a Company?

- A company means a group of persons associated to achieve some common objective.

#### 2. Define Company?

- *Indian Companies Act,1956 – Section2(20) – Company - “A company is a company formed and registered under this act or an existing company”.*
- *Prof.Haney – Company – “A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal”.*

#### 3. List the characteristics of a Company:

- Incorporated association
- Artificial Legal Person
- Separate Legal Entity
- Perpetual Existence
- Common Seal
- Limited Liability

#### 4. Define Private Limited Company:

- *Section 2(68) of Companies Act,2013 – “Companies with the minimum paid-up share capital of one lakh rupees or higher as may be prescribed is said to be a Private Company”.*

## **5. Define Public Limited Company:**

- *Section 2(71) of Companies Act,2013 – Public Company is a company which*
  - a) *Is not a private company.*
  - b) *Has minimum capital of Rs.5 Lakh or such higher paid-up capital as may be prescribed.*
  - c) *Is a private company which is a subsidiary public company.*

## **6. What is a Domestic Company?**

- A company which is based in India registered under the Companies Act 2013.
- The head Office and its business operations are conducted within the country. It can either be private or public.

## **7. What is a Foreign Company?**

- A Foreign company is a company incorporated outside India which establishes its business operations within India under the Companies Act 2013

## **8. List the documents of a Company:**

- Memorandum Of Association (MoA)
- Article Of Association (AoA)
- Prospectus

## **9. What is Memorandum of Association (MoA)**

- The first step in the formation of a company is to prepare a document called the Memorandum of Association (MoA)

## **10. Define Memorandum of Association (MoA)**

- *Section 2(56) of Companies Act, 2013, - “Memorandum ‘means the memorandum of association of a company as originally framed and altered, from time to time, in pursuance of any previous company law or this act”.*

## **11. What is Article of Association (AoA)?**

- A document that specifies the regulations for a company’s operations and defines the company’s purpose.
- Also known as “Rule Book” of the company.

## **12. Define Article of Association (AoA)?**

- *Section 2(5) of Companies Act 2013 – Article of Association have been defined as “The Article of Association (AoA) of a company originally framed or altered or applied in pursuance of any previous company law or this act”.*

## **13. What is Prospectus?**

- A legal document that a company issues to the public giving details of an offer for investment.
- Provides information about the company to the public.
- Prospectus is not an advertisement; it may be a circular or even a notice.

## **14. Define Prospectus:**

- *Section 2(36) of Indian Companies Act, 1956 – “Prospectus means document described or issued as prospectus and includes any notice, circular, advertisement, or other documents inviting offers from the public for the subscription or purchase of any shares or debentures of a body corporate”.*

### **15. How is called as director?**

- A director is someone elected or appointed to manage a company's business and affairs.
- Every registered company must have at least one director.
- The role of a company director is to handle the daily operations of the organization.

### **16. Define Director:**

- *Section 2(34) of Companies Act, 2013 – “Director means a director appointed to the Board of a company”.*

### **17. What is the minimum number of directors in a company?**

As per the Companies Act, 2013, the minimum number of directors in a company is as follows,

- Private Limited Company – 2
- Public Limited Company – 3
- One Person Company – 1

### **18. List the functions of a director:**

The Board of Directors is primarily accountable for:

- the appointment of senior management;
- deciding and shaping the company's strategies & objectives;
- governing & guiding the company towards achieving its aim;
- company's accounts and finances, etc.

### **19. What is Winding Up of Company?**

- Winding – up is a process whereby the life of a company is ended and property is administered for the benefit of shareholders and creditors.
- Winding up is the process of liquidating a company

## **20. Define Winding Up of Company:**

- *Halsburry's Law of England* – “Winding up is a proceeding by means of which the dissolution of a company is brought about and in the course of which its assets are collected and realized; and applied in payment of its debts; and when these are satisfied, the remaining amount is applied for returning to its members the sums which they have contributed to the company in accordance with articles of the accompany”.

## **21. How can companies be wounded up?**

- Voluntary winding up of a company
- Compulsory winding up of a company

## **22. List The Reasons for Winding Up of a Company**

There are some following reasons for winding up a company:

- Cash flow problems
- Lack of accurate accounting
- Lack of leadership
- Disagreements among key partners
- Insolvency

## **23. What is Corporate Governance?**

- Corporate Governance is the structure of rules, practices and processes used to direct and manage a company

## **24. Define Corporate Governance:**

- *Cadbury Committee* – “Corporate Governance is defined as the system by which companies are directed and controlled”.

## **25. Define Acquisition**

- **Acquisition [Sec2(a)]:** *"Acquisition" means, directly or indirectly, acquiring or agreeing to acquire-*
- i. *shares, voting rights or assets of any enterprise; or*
  - ii. *control over management or control over assets of any enterprise;*

## **26. Define Agreement**

- **Agreement [Sec2(b)]:** *"Agreement" includes any arrangement or understanding or action in concert, -*
- i. *whether or not, such arrangement, understanding or action is formal or in writing; or*
  - ii. *whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;*

## **27. Define Cartel**

- **Cartel [Sec2(c)]:** *"Cartel" includes an association of producers, sellers, 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;*

## **28. Define Consumer**

- **Consumer [Sec2(f)]:** *"Consumer" means any person who-*
- i. *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, whether such purchase of goods is for resale or for any commercial purpose or for personal use;*

- ii. *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 whether such hiring or availing of services is for any commercial purpose or for personal use;*

### **29. Define Enterprise**

- **Enterprise [Sec2(h)]:** *"Enterprise" means a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the 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 of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defense and space.*

### **30. Define Goods**

- **Goods [Sec 2(i)]:** *"Goods" means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes--*
- a) *products manufactured, processed or mined;*
  - b) *debentures, stocks and shares after allotment;*
  - c) *in relation to goods supplied, distributed or controlled in India, goods imported into India;*

### **31. List the Objectives of Competition Act**

- ◆ To prevent practices having adverse effect on competition.
- ◆ To promote and sustain competition in market.
- ◆ To protect the interest of consumer.
- ◆ To ensure freedom of trade carried on by other participants in markets in India.

### **32. Define Anti-Competitive Agreement**

- **Anti-Competitive Agreement:** *Section 3 of Competition Act, 2002 – “No enterprise or person shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which cause or is like to cause an appreciable adverse effect on competition in India”.*

### **33. Define dominant Position**

- **Dominant Position:** *Section 4 of Competition act 2002 – “Dominant Position means a position of strength, enjoyed by an enterprise or group in the relevant market which enables it to operate independently of competitive forces or affects its competitors or consumers in its favor”.*

### **34. Define Combination:**

- **Combination:** *Section 5 of Competition Act, 2002 – “The acquisition of one or more enterprise by one or more persons or merger or amalgamation of enterprise shall be treated as ‘Combination ‘of such enterprise “.*

### **35. What is Merger?**

- Business deal where two existing, independent companies combine to form a new, singular legal entity is called Merger.
- Example: Vodafone + Idea = VI

### 36. What is Acquisition?

- Business transaction that occurs when one company purchases and gains control over another company is called acquisition.
- Example: Google's acquisition of Android for 50 million Dollar in 2005.

### 37. What is Amalgamation?

- When two or more corporations unite to establish a new company, this is called Amalgamation
- Company A + Company B = New Company C
- Example: Maruti Motors in India and Suzuki Motors in Japan joined together to form a new company named as Maruti Suzuki India Limited.

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### PART B &

1. Define Company. Explain the characteristics of a Company.
2. Explain the types of Company in detail.
3. Explain the steps in formation of a Company:
4. Explain the contents of MoA
5. Explain the contents of AoA
6. Difference between MoA and AoA
7. Explain prospectus in detail.
8. Explain the classification of director:

9. Explain the power of

Directors 10.Explain the

duties of Directors

11.Explain the liabilities

of Directors

1. Explain the structure and principles of Corporate Governance:

2. Explain the Prohibition of Certain Agreements, Abuse of Dominant Position and Regulation of Combination:

3. Explain CCI in detail.

## UNIT III

### INDUSTRIAL LAW

#### PART A (QUESTION WITH ANSWER)

##### 1. What is Factory?

- ✓ A building or group of buildings where goods are made in large quantities by machine.

##### 2. Define Factory:

- ✓ *Black Law Dictionary* – “Factory is a term that includes all buildings and premises wherein, or within the cartilage of which, steam water or any mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing cotton wool hair, silk flax, hemp jute or tow”.

##### 3. Mention the Objectives of Factories Act:

- Protect health and safety of workers
- Ensure that Factories adhere to global best practices in the Factories
- Provide a fair and decent livelihood for all working-class people
- Reduce any social or industrial tensions

##### 4. What is wage?

- ✓ Payment made by an employer to an employee for work done in a specific period of time.

##### 5. Define Wage:

- ✓ *Benham – Wage* – “A wage may be defined as the sum of money paid under contract by an employer to worker for service rendered”.

## **6. Mention the Objectives of Payment of Wages Act:**

- To avoid delays in paying wages.
- To prevent unauthorized deduction from wages.
- To prevent arbitrary fines being imposed on the employed person.
- To ensure regular and timely payment of wages to the employed person.

## **7. What is Bonus:**

- A bonus is a financial compensation that is above and beyond the normal payment expectations of its recipients.
- Bonus may be awarded by a Company as an incentive or to reward good performance.

## **8. Define Bonus:**

- ✓ *New English Dictionary – Bonus – “A boon or gift over and above what is normally due as remuneration to the receiver and which is holy to the good”*

## **9. What is Quantum of Bonus:**

- The minimum bonus will be 8.33% of the salary during the year.
- The maximum bonus is 20% of the salary during the accounting year.

## **10. Who is eligible for Bonus?**

- Bonus is payable to the employee by the employer who has worked in the establishment for not less than 30 working day in that accounting year.
- Where an employee has not worked for all the working days in any accounting year, the bonus payable to him shall be proportionately reduced.

## 11. Who is disqualified from Bonus?

An employee shall be disqualified from receiving bonus, if he is dismissed from service for –

- a) Fraud
- b) Riotous or violent behavior while on the premises of the establishment
- c) Theft, misappropriation or Sabotage of any property of the establishment.

## 12. Write the formula for calculating Bonus:

- ✓ If the salary is equal to or less than Rs.7000 then the bonus is calculated on the actual amount by using the formula:

$$Bonus = Salary * \frac{8.33}{100}$$

- ✓ If the salary is more than Rs.7000 then the bonus is calculated on Rs.7000 by using the formula:

$$Bonus = 7000 * \frac{8.33}{100}$$

## 13. What is Industry?

- Industry is a group of productive enterprises or organizations that produce or supply goods, services, or sources of income.
- An industry is a group of manufacturers or businesses that produce a particular kind of goods or services.

## 14. Define industry?

- *Michael Porter (1979) - "A group of competitors producing substitutes that are close enough that the behavior of any firm affects each of the others either directly or indirectly."*

## 15. What is Industrial Dispute?

- An industrial dispute can be viewed as friction or disagreement between two or more parties involved, due to the difference in their perceptions, opinions, mindsets, attitudes and values.
- In an organization, the parties engage in such disputes can be:
  - ✓ Employer and employee;
  - ✓ employee and employee or;
  - ✓ employer and employer.

## 16. Define Industrial Dispute:

- ✓ According to the **Industrial Disputes Act, 1947, Section 2(k)**, “Industrial disputes means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or terms of employment or with the conditions of labour of any person.”

## 17. Mention the objectives of Industrial Disputes Act, 1947:

- ✓ To make provisions for the investigation and settlement of industrial dispute
- ✓ To secure amity and good relations between employer and workmen
- ✓ To investigate and settle industrial dispute
- ✓ To have a right of representation by trade union.
- ✓ To prevent illegal strikes and lockouts.
- ✓ To provide relief to workmen for lay off and retrenchment
- ✓ To promote the collective bargaining system.

## 18. What is Conciliation?

- ✓ Conciliation refers to the process by which representatives of workers and employers are brought together before a third party with a view to persuading them to arrive at an agreement by mutual discussion between them.

## **19. What is Arbitration?**

- ✓ Arbitration is a process in which the conflicting parties agree to refer their dispute to a neutral third party known as 'Arbitrator'. Arbitration differs from conciliation in the sense that in arbitration the arbitrator gives his judgment on a dispute while in conciliation, the conciliator disputing parties to reach at a decision.

## **20. What is Adjudication?**

- ✓ The ultimate legal remedy for the settlement of an unresolved dispute is its reference to adjudication by the government. The government can refer the dispute to adjudication with or without the consent of the disputing parties. When the dispute is referred to adjudication with the consent of the disputing parties, it is called 'voluntary adjudication.' When the government herself refers the dispute to adjudication without consulting the concerned parties, it is known as 'compulsory adjudication.'

## **PART B & C**

1. Explain the Provisions related to Health in Factories Act,1948
2. Explain the Provisions related to Safety in Factories Act,1948
3. Explain the Provisions related to Welfare in Factories Act,1948
4. Explain the rules for Payment of Wages:
5. Explain Deduction from Wages:
6. How is Bonus determined?
7. Explain the types and causes of Industrial Dispute:
8. Discuss the outcomes of Industrial Dispute:
9. Discuss the measures to prevent Industrial Dispute:
10. Explain the methods for settlement of Industrial Dispute:

## UNIT IV

### CORPORATE TAX & GST

#### PART A (QUESTION WITH ANSWER)

##### 1. What is Corporate Tax Planning?

- Corporate tax planning refers to the process of arranging a company's financial affairs in a way that minimizes its tax liability while staying within the bounds of tax laws and regulations.

##### 2. List the Essential Features of Corporate Tax Planning

- Corporate tax planning helps make plans for future earnings and tax savings. It is a future-oriented measure.
- Corporate tax planning lower taxes for individuals and companies. Tax saving is a necessary feature.
- Corporate tax planning induces companies to invest money in tax-free sources. It promotes investment habits for future company goals.
- Tax planning is dynamic and adaptable to the changes in tax laws.
- Corporate tax planning is a legal and ethical practice for reducing liabilities.
- Corporate tax planning helps realize goals in both the short and long term.

##### 3. List any five objectives of Corporate Tax Planning

- Increase savings
- Economic Stability
- Enhance Growth
- Minimization of litigation
- Productive investments

#### **4. Mention the scopes of Corporate Tax Planning**

- Corporate tax planning is the analysis of company statements. It analyzes the company's financial needs.
- Tax planning is futuristic. It pertains to the future needs of the firm.
- Tax planning covers company income from all relevant sources. The taxpayer must report correct figures.
- Tax planning is essential for the company's goals. It includes plans like diversification and company structure.
- Tax planning is essential for a company's budget efficiency. The budget is affected by tax liabilities.
- The country's laws bind corporate tax planning.

#### **5. List any five benefits of Corporate Tax Planning:**

- It helps save money in taxes. The business can use the extra income for growth and diversification.
- Corporate tax planning allows investment for long-term benefits for the company. These investments can be used as emergency funds.
- Corporate tax planning offers legal and white tax revenue to the government. It helps promote economic growth and stability.
- Companies don't have to face disputes with corporate tax planning. They can follow legal measures to reduce taxes.
- Businesses can estimate and plan earnings for the year. It helps in the preparation and correct financial estimations.

## **6. Mention the Limitations of Corporate Tax Planning**

- Corporate tax planning can tie up company funds. The business must invest in tax-exempt sources to reduce taxes.
- Businesses may resort to tax evasion by confusing the exemption laws.
- Tax-exempted investments often have a lower interest rate income.

## **7. What is Income Tax?**

- An income tax is a tax imposed on individuals or entities (taxpayers) in respect of the income or profits earned by them (commonly called taxable income). Income tax generally is computed as the product of a tax rate times the taxable income.

## **8. List the types of Taxes in India:**

- Direct Taxes
- Indirect Taxes

## **9. What Is Direct Tax?**

- As stated earlier, you pay these taxes directly. The government levies such taxes directly on an individual or an entity and it cannot get transferred to any other person or entity. There is only one such federation that winks at the direct taxes, i.e. the Central Board of Direct Taxes (CBDT) governed by the Department of Revenue. The CBDT has, to assist it with its sense of duties; the backup of several acts that preside over several aspects of the direct taxes.

**10. List the types of Direct Taxes in India:**

- Income Tax Act
- Wealth Tax Act
- Gift Tax Act
- Expenditure Tax Act
- Interest Tax Act

**11. What is Indirect Tax?**

- The taxes levied on goods and services are referred to as indirect taxes. They are different from direct taxes as they are not imposed on an individual who shells out them directly to the Indian government, they are, as an alternative, imposed on the products and an intermediary, the individual selling the product, collects them. The most trivial examples of indirect taxes are Sales Tax, Taxes levied on imported goods, Value Added Tax (VAT), etc. Such taxes are imposed by summing them with the price of the product or service that is likely to push the price of the product up.

**12. List the types of Direct Taxes in India:**

- Sales Tax
- Service Tax
- Value Added Tax
- Customs Duty and Octroi
- Excise Duty

### 13. Difference between Direct Tax and Indirect Tax:

<b>Direct Taxes</b>	<b>Indirect Taxes</b>
Applicable on income receipts	Applicable on expenses or sale of goods and service; i.e., adds to the outflow rather than reducing inflow unlike direct taxes
Investment in specified instruments or spending on specified activities allow you to reduce direct tax on income	No rebate for the consumer. However, it could apply to the sellers with turnover being the basis of it
Paid by the person receiving money directly to the Government	Paid by the person paying money but collected by the supplier
Three types of Direct Tax in India - Income Tax, Corporate Tax and Capital Gains Tax	Indirect Taxes in India include - GST, excise duty, customs duty and VAT

### 14. What is GST?

- GST is known as the Goods and Services Tax. It is an indirect tax which has replaced many indirect taxes in India such as the excise duty, VAT, services tax, etc. The Goods and Service Tax Act was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017.
- In other words, Goods and Service Tax (GST) is levied on the supply of goods and services. Goods and Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. GST is a single domestic indirect tax law for the entire country

### **15. List down the Types of GST:**

- Integrated Goods and Services Tax or IGST
- State Goods and Services Tax or SGST
- Central Goods and Services Tax or CGST
- Union Territory Goods and Services Tax or UTGST

### **16. What is not covered under GST?**

The following items are excluded from the purview of GST.

- **Alcohol for human consumption:** The State Government has the power to impose tax on Alcohol.
- **Petroleum Products:** The date from which GST will be imposed on five petroleum products, i.e., crude oil, diesel, petrol, natural gas and ATF, will be decided by the GST council.
- **Tobacco:** Excise duty is levied on the manufacturing of tobacco-based items like cigarettes, bidi, and other chewing tobacco products at different rates. However, additional cess is imposed on the tobacco-related products under GST.
- **Electricity:** The State Government has the power to impose tax on electricity.

### **17. List the GST Rates in India:**

- The GST Council determines the GST rate slabs. The GST Council reviews the rate slabs for goods and services on a regular basis. GST rates are typically high for luxury items and low for necessities. GST rates in India for various goods and services are divided into four slabs: 5% GST, 12% GST, 18% GST, and 28% GST.

## 18. What is VAT?

- Value-added tax (VAT) is an indirect tax that is charged at the time of consumption of goods and services and is levied when a value has been added over various stages of production/ distribution, right from the purchase of raw materials till the final products are sold to the retail consumers.

## 19. List the VAT Rates in India:

- Nil VAT Rate
- 1% VAT Rate
- 4-5% VAT Rate
- General VAT Rate

## 20. Difference between VAT and GST:

Particulars	VAT (Value-Added Tax)	GST (Goods and Services Tax)
Taxation Point	Sale of Goods	Supply of Goods and Services
Applicability	On goods only	Both Goods and Services
Registration Threshold	Compulsory if turnover exceeds Rs 10 lakhs	Compulsory if turnover exceeds Rs 40 lakhs
Interstate tax Credit	Not available (CENVAT applicable)	Can be taken
Compliances Required	Multiple compliances and registrations	Compliance procedure has been streamlined
Online Payment	Online tax payment was not mandatory	It is necessary to make online payment of GST

## PART B

1. Discuss the Types and Techniques of Tax Planning:
2. Brief about Indian Corporate Tax Rate:
3. What type of income is taxable in India?
4. Who is eligible for income tax?
5. How is income tax calculated in India?
6. Discuss the Types of Taxes in India:
7. Discuss GST in detail:
8. Discuss about VAT:
9. Discuss the methods of Computation of VAT:

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