



**MEASI INSTITUTE OF MANAGEMENT
CHENNAI-14**

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Core Paper – VI

Semester - II

PMF2G- Legal Systems in Business

Course Material Prepared

By

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VISION & MISSION STATEMENTS OF THE INSTITUTE

VISION;

- To emerge as the most preferred Business School with Global recognition by producing most competent ethical managers, entrepreneurs and researchers through quality education.

MISSION;

- **Knowledge through quality teaching learning process;** To enable the students to meet the challenges of the fast challenging global business environment through quality teaching learning process.
- **Managerial Competencies with Industry institute interface;** To impart conceptual and practical skills for meeting managerial competencies required in competitive environment with the help of effective industry institute interface.
- **Continuous Improvement with the state of art infrastructure facilities;** To aid the students in achieving their full potential by enhancing their learning experience with the state of art infrastructure and facilities.
- **Values and Ethics;** To inculcate value based education through professional ethics, human values and societal responsibilities.

PROGRAMME EDUCATIONAL OBJECTIVES (PEOs)

PEO 1; Placement; To equip the students with requisite knowledge skills and right attitude necessary to get placed as efficient managers in corporate companies.

PEO 2; Entrepreneur; To create effective entrepreneurs by enhancing their critical thinking, problem solving and decision-making skill.

PEO 3; Research and Development; To make sustained efforts for holistic development of the students by encouraging them towards research and development.

PEO4; Contribution to Society; To produce proficient professionals with strong integrity to contribute to society.



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Program Outcome;

PO1; Problem Solving Skill; Apply knowledge of management theories and practices to solve business problems.

PO2; Decision Making Skill; Foster analytical and critical thinking abilities for data-based decision making.

PO3; Ethical Value; Ability to develop value based leadership ability.

PO4; Communication Skill; Ability to understand, analyze and communicate global, economic, legal and ethical aspects of business.

PO5; Individual and Leadership Skill; Ability to lead themselves and others in the achievement of organizational goals, contributing effectively to a team environment.

PO6; Employability Skill; Foster and enhance employability skills through subject knowledge.

PO7; Entrepreneurial Skill; Equipped with skills and competencies to become an entrepreneur.

PO8; Contribution to community; Succeed in career endeavors and contribute significantly to the community.



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Subject Code	Subject Name	L	T	P	S	C
PMF2G	LEGAL SYSTEMS IN BUSINESS	4	0	0	1	4
Course Objectives						
C1	To create knowledge and understanding on law of contracts					
C2	To describe about sale of goods and Negotiable instrument act					
C3	To have an overall understanding about partnership act and company law.					
C4	To familiarize various labor laws for effective administration of Human Resource of an organization.					
C5	To provide insights and awareness about consumer protection act, Cyber-crimes, Intellectual property Rights.					
SYLLABUS						
Unit. No.	Details					Hours
Unit I	The Law of Contracts: Definition of Contract Offer and Acceptance – Essential Elements of a Valid Contract; Free Consent – Competency of Parties – Lawful Consideration – Legality of Object. Void, Voidable, Unenforceable and Illegal Contracts – Performance of Contracts – Privity of Contracts – Assignments of Contracts – By Whom Contract must be Performed – Time and Place of Performance – Performance of Reciprocal Promises – Contracts which need not be performed, Discharge of Contracts; By Performance, By Agreement, By Impossibility, By Lapse of Time, By Operation of Law and By Breach of Contracts – Remedies for Breach of Contracts.					12
Unit II	Sale of Goods Act: Definition of a Sale and a Contract of Sale – Difference between (1) Sale and an Agreement to Sell (2) Sale and a Contract Form (3) Sale and Bailment (4) Sale and Mortgage of Goods (5) Sale and Time Purchase Conditions and Warranties – Passing of Property of Goods – Rights of an Unpaid Seller. Negotiable Instruments Act: Negotiable Instruments in General; Cheques, Bills of Exchange and Promissory Notes – Definition and Characteristics					13
Unit III	Partnership Act: Evolution – Definition of Partnership – Difference between Partnership and Joint Family Business – Kinds of Partnerships – Registration – Rights and Liabilities of Partners – Dissolution. Company Law: Evolution of Company Form of Organization – Companies Separate Legal Entity – Comparison of Company with Partnership and Joint Hindu Family Business – Kinds of Companies – Comparison of Private and Public Companies – Formation of Companies – General Idea About Memorandum and Articles of Association, Prospectus, Statement in lieu of Prospectus – Management of Companies – General Idea of Management of Companies – Officers, Meetings – Resolutions – Account and Audit – Winding up of Companies – General Idea of the Different Modes of Winding Up.					13



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Unit IV	Labor Law: Factories Act, Minimum Wages Act, Industrial Disputes Act, Workmen’s Compensation Act, Payment of Bonus Act. Payment of Gratuity Act 1972.ESI Act, CPF ACT 1952, Employees Family Pension Scheme, 1971. Maternity Benefits Act, Contract Labor Act.	12	
Unit V	Consumer Protection Act, Competition Act 2002, Cyber Crimes, ITS Act 2002. Intellectual Property Rights; Types of Intellectual Property – Trademarks Act 1999 – The Copyright Act 1957 – International Copyright Order, 1999 – Design Act, 2000.	10	
Total Hours		60	
Reference Books			
1.	Intellectual Property Laws, Universal Law Publishing, 2012.		
2.	Majumdar, A. K. and Kapoor, G.K., Company Law, 15 th Edition, Taxmann Publications Pvt. Ltd., 2012.		
3.	Majumdar, A. K. and Kapoor,G.K., Company Law and Practice, 17 th Edition, Taxmann Publications Pvt. Ltd., 2012.		
4.	Mishra, S., Banking Law and Practice, S.Chand Publishers, 2012.		
5.	Rao, P.M., Mercantile Law, PHI Learning, 2011.		
6.	Wadehra, Laws Relating to Intellectual Property, 5 th Edition, Universal Law Publishing, 2012.		
E-Sources			
1.	http://www.legalserviceindia.com/article/		
2.	http://search.ebscohost.com		
3.	http://www.freebookcentre.net/Law/Law-Books.html 2		
4.	http://197.14.51.10;81/pmb/DROIT/1405899646.pdf		
5.	https://www.mooc-list.com/course/business-law-wma		
Assessment Tools Used			
1.	Assignments	6.	Group Discussion
2.	Internal Assessment Tests	7.	Quiz
3.	Model Exam	8.	Simulations
4.	Seminars	9.	Videos
5.	Case studies	10.	Management games



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Content Beyond Syllabus		
Company Act, 2013 and other updated amendments of the act, Discussions about the recent case studies relating to consumer protection, cybercrimes etc.		
Shop Establishment Act, Contract of Guarantee, FEMA		
Law of Insurance, Right To Information Act, 2005		
Additional Reference Books		
N.D.Kapoor, Elements of Mercantile Law, S.Chand & Sons, 2013		
P. P. S. Gogna, Mercantile Law, S. Chand & Co. Ltd., India, Fourth Edition, 2008.		
Richard Stim, Intellectual Property- Copy Rights, Trade Marks, and Patents, Cengage Learning, 2008.		
Balachandran V., Legal Aspects of Business, Tata McGraw Hill, 2012		
Daniel Albuquerque, Legal Aspect of Business, Oxford, 2012		
Course Outcomes		
CO No.	Have knowledge on understandings on law of continuation.	Program Outcomes (PO)
C201.1	Know the sale of Goods & Negotiable instrument act.	PO4, PO6, PO7
C201.2	Apply basic legal knowledge to business transactions.	PO6
C201.3	Have understandings on partnership and company law.	PO6, PO7
C201.4	Have familiarize with various labour laws.	PO5, PO6, PO7
C201.5	Possess insights & awareness about consumer protection Act Cyber-Crimes, Intellectual Property Rights.	PO8



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UNIT – I - THE LAW OF CONTRACTS

The Law of Contracts: Definition of Contract Offer and Acceptance – Essential Elements of a Valid Contract: Free Consent – Competency of Parties – Lawful Consideration – Legality of Object. Void, Voidable, Unenforceable and Illegal Contracts – Performance of Contracts – Privity of Contracts – Assignment of Contracts – By Whom Contract must be Performed – Time and Place of Performance – Performance of Reciprocal Promises – Contracts which need not be performed, Discharge of Contracts : By Performance, By Agreement, By Impossibility, By Lapse of Time, By Operation of Law and By Breach of Contracts – Remedies for Breach of Contracts.

1. THE INDIAN CONTRACT ACT, 1872:

1.1. INTRODUCTION

The law relating to contracts is contained in the **Indian contract Act, 1872**. This Act is based mainly on English common law. It extends to the whole of India except the state of Jammu and Kashmir and came into force on the first day of September 1872 (sec.1 Indian contract act 1872). The Act deals with:-

- (1) The general principles of the law of contract (**sec.1 – 75**) and
- (2) Some special contracts (**sec.124 – 238**).

1.1.1. General principles: The General principles of law of contract include Formation of a contract, essential elements, performance or breach and remedies for breach of contracts.

1.1.2. Special contracts: - The special contracts deals with Indemnity and guarantee, Bailment and pledge, Law of agency.

1.2. DEFINITION OF CONTRACT:-

- (1) A contract is an agreement made between two or more parties which the law will enforce.
- (2) According to **Sec.2 (h)** of the Indian Contract Act “an agreement enforceable by law is a contract”
- (3) **Pollack’s** defines “every agreement and promise enforceable at law is a contract”.

If we analyze the definitions of contract, we find that a contract essentially consist of two important words.

- (1) Agreement
- (2) Enforceable by law



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1.2.1. Agreement:-

Agreement is defined as “every promise and every set of promises, forming consideration for each other”

[Sec.2 (e)], A promise is defined thus, “when the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

Therefore to form an agreement, there must be a proposal or offer by one party and its acceptance by the other.

To sum up, Agreement = Offer + Acceptance

On analyzing the above definition of agreement the following characteristics are evident.

a) **There must be two persons:** There must be two or more persons, one person cannot enter into an agreement with himself.

b) **Consensus ad idem:**

This means that the parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time. Unless, there is consensus ad idem, there can be no contract.

Example:- A, who owns two horses named ‘Rajhans’ & ‘Hansraj’, is selling Raghans to B. B thinks he is purchasing horse Hansraj. There is no consensus ad idem and consequently no contract.

1.2.2. Obligations (Enforceable by law):

An agreement to become a contract must give rise to a legal obligation or duty. An agreement which gives rise to a social obligation is not a contract.

Example: A, invites B to a dinner and B accepts the invitation, it is a social agreement it does not give rise to contractual obligations is not enforceable in a court of law.

1.2.3. Conclusion:

From the above we conclude that two or more persons enter into an agreement that agreement is enforceable by law it becomes a contract.

Contract = Agreement + Enforceable at law.

Thus all contracts are agreements, but all agreements are not contracts.



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1.3. ESSENTIAL ELEMENTS OF A VALID CONTRACT:-

According to **Sec.10** to become a contract, an agreement must have the following essential elements.

1. Offer & Acceptance
2. Intention to create legal relationship
3. Lawful consideration
4. Capacity of parties – competency
5. Free & Genuine consent
6. Lawful object
7. Agreement not declared void
8. Certainty & possibility of performance
9. Legal formalities

1.3.1. Offer & Acceptance:-

- There must be two parties to an agreement.
- One party making the offer and other party accepting it.
- The terms of the offer must be definite.
- The acceptance of the offer must be absolute and unconditional.
- The acceptance must also be according to the mode prescribed and must be communicated to the offeror.

1.3.2. Intention to create legal relationship:-

- Two parties enter into an agreement; their intention must be to create legal relationship between them.
- If there is no such intention on the part of the parties, there is no contract between them.
- Agreements of a social or domestic nature do not contemplate legal relationship as such they are not contracts.

1.3.3. Lawful consideration:-

- An agreement to be enforceable by law must be suffered by consideration.
- Consideration means an advantage or benefit moving from one party to the other.
- In simple words, it means ‘something in return’
- The agreement is legally enforceable only when both the parties give something and get something in return.
- It need not necessarily be in cash or kind.
- It may be past, present or future.
- But it must be real and lawful.



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1.3.4. Capacity of parties – competency:-

- The parties to the agreement must be capable of entering into a valid contract.
- Every person is competent to contract.

If he (a) Is of the age of majority,

- (b) Is of sound mind, &
- (c) Is not disqualified from any law.

1.3.5. Free & Genuine consent:-

- There must be free & genuine consent of the parties.
- The consent of the parties is said to be free when they are of the same mind on all the material terms of the contract.
- There is absence of free consent, if the agreement is induced by coercion, undue influence, fraud, misrepresentation.

1.3.6. Lawful object:-

- The object of the agreement must be lawful
- It means that the object must not be (a) illegal (b)immoral (c) opposed to public policy
- If an agreement suffers from any legal flaw it would not be enforceable by law

1.3.7. Agreement not declared void:-

- An agreement not enforceable by law is said to be void

1.3.8. Certainly & possibility of performance :-

- The agreement must be certain & not vague or indefinite

1.3.9. Legal formalities :-

- There are some other formalities also which have to be complied with in order to make an agreement legally enforceable
- In some cases , the document in which the contract is incorporated is to be stamped
- In some other cases a contract , besides being a written one , has to be registered

1.4. CLASSIFICATION OF CONTRACT:

Contracts may be classified

- (1) According to validity;
- (2) According to formation; &
- (3) According to performance.



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1.4.1. Classification according to validity :-

According to validity contracts can further be classified into

- A. Valid contract;
- B. Voidable contract;
- C. Void contract;
- D. Illegal contract; &
- E. Unenforceable contract.

A. Valid contract:

A contract is based on an agreement. An agreement becomes a contract, when all the essential elements are present. In such a case, the contract is a valid contract.

B. Voidable contract:

An agreement which is enforceable by law at the option of one or more of the parties there to, but not at the option of the other or others, is a voidable contract [sec.2 (i)].

This happens when the essential element of free consent in a contract is missing.

Example: A promises to sell his car to B for Rs.2000. His consent is obtained by use of force. The contract is voidable at the option of A.

C. Void contract:

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable [sec.2 (i)]. A contract, when originally entered into, may be valid & binding on the parties.

Example: A contract to import goods from a foreign country. It may break out between the importing country & the exporting country.

D. Illegal contract:

An illegal agreement is one which breaks some rule of basic public policy or which is criminal in nature or which is immoral.

Example: B borrows Rs.5000 from A & enters into a contract, with an alien to import prohibited goods. A knows of the purpose of the loan. The transaction between B & A is collateral to the main agreement is illegal.

E. Unenforceable contract:

An Unenforceable contract is one which cannot be enforced in a court of law because of some technical defect such as absence of writing or by lapse of time.



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1.4.2. Classification according to formation:-

According to formation contracts can further be classified into

- A. Express contract
- B. Implied contract
- C. Quasi contract

A. Express contract:

If the terms of a contract are expressly agreed upon (whether by words spoken or written) at the time of formation of the contract, the contract is said to be an express contract.

B. Implied contract:

An implied contract is one which is inferred from the acts or conduct of the parties or course of dealings between them.

C. Quasi contract:

Strictly speaking, a quasi contract is not a contract at all. A contract is intentionally entered into by the parties. It rests on the ground of equity that "a person shall not be allowed to enrich himself unjustly at the expense of another"

Example: T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.

1.4.3. Classification according to performance:-

According to performance contracts can further be classified into

- A. Executed contract;
- B. Executory contract;
- C. Unilateral or one – sided contract;&
- D. Bilateral contract.

A. Executed contract:

'Executed' means that which is done. An executed contract is one in which both the parties have performed their respective obligations.

Example: A agrees to paint a picture for B for Rs.100. When A paints the picture & B pays the price, (i.e.) when both the parties perform their obligations, the contract is said to be executed.



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B. Executory contract:

'Executory' means that which remains to be carried into effect. An Executory contract is one in which both the parties have yet to perform their obligation. Thus in the above example The contract is Executory if **A** has not yet painted the picture & **B** has not paid the price.

C. Unilateral or one – sided contract:

A Unilateral or one – sided contract is one in which only party has to fulfill his obligation at the time of the formation of the contract , the other party having fulfilled his obligation at the time of the contract or before the contract comes into existence .

D. Bilateral contract:

A Bilateral contract is one in which the obligation on the part of both the parties to the contract are outstanding at the time of the formation of the contract.

1.5. OFFER & ACCEPTANCE:-

1.5.1. OFFER:

A person is said to have made a proposal when he “signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence” [sec.2 (a)].

For example: **A** says to **B**,”will you purchase my car for **Rs.5000**?” **A** in this case ,is making an offer to **B** as he signifies to **B** his willingness to sell his car to **B** for **Rs.5000** with a view to obtaining **B** 's agent to purchase the car .

The person making the offer is known as the **offeror, proposer or promisor** & the person to whom it is made is called the **offeree or proposee**. When the offeree accepts the offer, he is called the **acceptor or promise** [sec. 2(c)].

HOW AN OFFER IS MADE:-

An offer is made by any one of the following types

- An offer may be made by express words, spoken or written. This is known as an “**express offer**”.
- An offer may also be implied from the conduct of the parties or the circumstances of the case. This is known as an “**implied offer**”.
- When an offer is made to a definite person, it is called a “**specific offer**”.
- When an offer is made to the world at large, it is called a “**general offer**”.



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LEGAL RULES AS TO OFFER:-

1. Offer must be such as in law is capable of being accepted & giving rise to legal relationship.
2. Terms of offer must be definite unambiguous and certain and not loose and vague.
3. Offer must be communicated.
4. Offer must be made with a view to obtaining the assent.
5. Offer should not contain a term the noncompliance of which may be assumed to amount to acceptance.
6. A statement of price is not an offer.

1.5.2. ACCEPTANCE:

This means when the offeree signifies his assent to the offeror the offer is said to be accepted. An offer when accepted becomes a promise [sec.2 (b)]

TYPES OF ACCEPTANCE:-

Acceptance may be given by the following types

1. **Express acceptance:** When it is communicated by words, spoken or written or by doing some required act.
2. **Implied acceptance:** When it is to be gathered from the surrounding circumstances or the conduct of the parties
3. **Acceptance of particular offer:** When an offer is made to a particular person , it can be accepted by him alone
4. **Acceptance of general offer:** When an offer is made to world at large, any person to whom the offer is made can accept it.

LEGAL RULES AS TO ACCEPTANCE:

1. It must be absolute & unqualified i.e., it must conform to the offer.
2. It must be communicated to the offeror.
3. It must be according to the mode prescribed or usual & reasonable mode.
4. It must be given within a reasonable time
5. It cannot precede an offer
7. It must be given by the party or parties to whom the offer is made.
8. It must be given before the offer lapse or before the offer is withdrawn
9. It cannot be implied from silence.



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1.6. CONSIDERATION:

Consideration is a technical term used in the sense of **quid pro quo** (i.e., something in return). When a party to an agreement to do something, he must to get “**something**” in return. This “something” is defined as consideration.

In the word of **Pollock**, “consideration is the price for which the promise of other is brought, & the promise thus given for value is enforceable”.

Sec.2 (d) defines consideration as follows:“ when at the desire of promisor, the promise or any other person has done or abstained from doing or does or abstains from doing , or promise to do or to abstain from doing , something , such act or abstinence or promise is called a consideration for the promise”.

Legal rules as to Consideration:-

1. It must move at the desire of the promisor,
2. It may be past , present or future,
3. It need not be adequate,
4. It must be real & not illusory,
5. It must be something which the promisor is not already bound to do,
6. It must not be Illegal, immoral or opposed to public policy.

1.7. CAPACITY TO CONTRACT:

Capacity means competence of the parties to enter into a valid contract.

According to **sec. 10**, an agreement becomes a contract if it is entered into between the parties who are competent to contract.

According to **sec. 11**, every person is competent to contract who

- a) Is of the age of majority,
- b) Is of sound mind, &
- c) Is not disqualified from any law.

Thus **sec. 11** declares the following persons to be incompetent to contract.

- 1) Minors,
- 2) Persons of unsound mind,&
- 3) Persons disqualified by any law.

1. Minors:

According to **sec. 3** of the Indian majority Act 1875, a minor is a person who has not completed 18 years of age. In the following two cases, he attains majority after 21 years of age.

- (1) Where a guardian of a minor’s person or property has been appointed under the Guardians and Wards Act 1890, or
- (2) Where the superintendence of a minor’s property is assumed by a court of wards.



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2. Persons of unsound mind:

Sec. 12 lays down a test of soundness of mind. It reads as follows: A person is said to be of sound mind for the purpose of making a contract, if at the same time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest.

(1) Lunatics:

A Lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity.

(2) Idiots:

An Idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary matters. Idiot is permanent.

(3) Drunken or Intoxicated persons:

A drunker or intoxicated person suffers from temporary incapacity to contract at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment.

3. Persons disqualified by any law:

(1) Alien enemy:

An alien enemy is a person who is not a subject of the republic of India. He may be (a) An Alien friend or (b) An Alien enemy.

(2) Corporations:

A Corporation is an artificial person created by law having a legal existence apart from its members. It may come into existence by a special Act of the legislature or by registration under the Companies Act, 1956. It has to act within the powers of memorandum of association. If it acts beyond the powers of memorandum it leads to ultra vires Act. Further it cannot enter into contracts of a strictly personal nature as it is an artificial and not a natural person.

(3) Insolvents:

When a debtor is adjusted insolvent, his property vests in the official receiver or official assignee. He is incapable of entering into a contract.

(4) Convicts:

A convict when undergoing imprisonment is incapable of entering into a contract.



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1.8. FREE CONSENT:

Meaning of Consent:

“Two or more persons are said to consent when they agree upon the same thing in the same sense”
(Sec. 13).

Meaning of Free Consent:

Consent is said to be free when it is not caused by (Sec. 14)

- a) Co-ercion (Sec. 15),
- b) Undue influence (Sec. 16),
- c) Fraud (Sec. 17),
- d) Misrepresentation (Sec. 18),&
- e) Mistake (Sec. 20, 21 & 22).

(A) Co-ercion:

When a person is compelled to enter into a contract by the use of force by the other party or under a threat, “co-ercion” is said to be employed.

Co-ercion is the committing, or threatening to commit, any Act forbidden by the Indian Penal Code, 1860 or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement (Sec. 15).

(B) Undue influence:

Sec. 16(1) defines undue influence as follows: “A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain on unfair advantage over the other”.

(C) Misrepresentation and Fraud:

A statement of fact which one party makes in the course of negotiations with a view to inducing the other party to enter into a contract is known as a misrepresentation

A representation when wrongly made either innocently a misrepresentation may be

1. An innocent or unintentional misrepresentation.
2. An intentional deliberate or wilful misrepresentation with an intent to deceive or defraud the other party

The former is called “**Misrepresentation**” and the latter “**Fraud**”.



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(D) Mistake:

Mistake may be defined as an erroneous belief about something. It may be a mistake of law or a mistake of fact.

Mistake of law:

- Mistake of law of the country
- Mistake of law of a foreign country

(1) Mistake of law of the country:

Ignorantia juris non excusat, (i.e.) ignorance of law is no excuse, A party cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law.

(2) Mistake of law of a foreign country:

Such a mistake is treated as mistake of fact.

Mistake of fact:

Mistake of fact may be

(1) **Bilateral mistake** where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement there is a bilateral mistake.

(2) **Unilateral mistake** when in a contract only one of the parties is mistaken regarding the subject matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is a unilateral mistake.

1.9. VOID AGREEMENT:

A void agreement is one which is not enforceable by law [Sec. 2 (g)]. Such an agreement does not give rise to any legal consequences and is void ab initio.

The following agreements have been expressly declared to be void by the contract Act:-

1. Agreement by incompetent parties (Sec. 11),
2. Agreement made under a mutual mistake of fact (Sec. 20),
3. Agreement the consideration or object of which is unlawful (Sec. 23),
4. Agreement the consideration or object of which is unlawful in part (Sec. 24),
5. Agreement made without consideration (Sec. 25),
6. Agreements in restraint of marriage (Sec. 26),
7. Agreements in restraint of trade (Sec. 27),
8. Agreement in restraint of legal proceedings (Sec. 28),
9. Agreement the meaning of which is uncertain (Sec. 29),
10. Agreement by way of wager (Sec. 30),
11. Agreements contingent on impossible events (Sec. 36), &
12. Agreements to do impossible Act (Sec. 56).



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1.10. PERFORMANCE OF CONTRACT:

Performance of a contract takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the matter prescribed.

Sec. 37(Para 1) lays down that the parties to a contract must either perform or offer to perform, their respective promises.

Offer to perform (Sec. 38):

Sometimes it so happens that the promisor offer to perform his obligation under the contract at the proper time and place but the promisee does not accept the performance. This is known as 'attempted performance' or "tender".

By whom must contracts be performed?

- 1 Promisor himself,
- 2 Agent,
- 3 Legal representatives,
- 4 Third parties, &
- 5 Joint promisors.

Who can Demand performance?

It is only the promisee who can demand performance of the promise under a contract.

Death of a promisee:

In case of death of the promisee, his legal representatives can demand performance.

Reciprocal promises:

Promises which form the consideration or part of the consideration for each other are called "Reciprocal promises" [Sec. 2 (f)].

These promises have been classified by:

1) **Mutual and independent:**

where each party must perform his promise independently and irrespective of the fact whether the other party has performed, or is willing to perform, his promise or not, the promises are mutual and independent.

Example: In a contract of sale, **B** agrees to pay the price of goods on **10th** instant. **S** promises to supply the goods on **20th** instant. The promises are mutual and independent.



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2) **Conditional and dependent:**

Where the performance of the promise by one party depends on the prior performance of the promise by the other party, the promises are conditional and dependent.

Example: A promises to remove certain debris lying in front of B's house provided B supplies him with the cart. The promises in this case, are conditional and dependent. A need not perform his promise if B fails to provide him with the cart.

3) **Mutual and concurrent:**

Where the promises of both the parties are to be performed simultaneously, they are said to be mutual and concurrent.

1.11. DISCHARGE OF CONTRACT:

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate (i.e.,) when the rights and obligations created by it comes to an end.

A contract may be discharged,

1. By Performance,
2. By Agreement or consent,
3. By Impossibility,
4. By Lapse of time,
5. By Operation law, &
6. By Breach of contract.

1. **Discharge by Performance:**

Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end.

It may be by

- a) Actual performance
- b) Attempted performance or tender.

2. **Discharge by Agreement or consent:**

The various cases of discharge of a contract by mutual agreement are

- a) Novation
- b) Rescission
- c) Alteration
- d) Remission
- e) Merger



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A. Novation (Sec. 62):

Novation takes place when a new contract is substituted for an existing one between the same parties

B. Rescission:

Rescission of a contract takes place when or some of the terms of the contract are cancelled.

C. Alteration:

Alteration of a contract may take place when one or more of the terms of the contract is altered by the mutual consent of the parties to the contract. In such a case, the old contract is discharged

D. Remission:

Remission means acceptance of a lesser fulfillment of the promise made

E. Merger:

Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract

Example: P holds a property under lease. He later buys the property. His rights as a lease merge into his rights as an owner.

3. Discharge by impossibility of performance:

According to **sec.56** impossibility of performance may fall into either of the following categories

(1) Impossibility existing at the time of agreement: An agreement to do an act impossible in itself is void. This is known as pre-contractual or initial impossibility.

The fact of impossibility may be –

- a) Known to the parties
- b) Unknown to the parties

(2) Impossibility arising subsequent to the formation of contract (or) supervening impossibility

4. Discharge by lapse of time:

The limitation act, 1963 lays down that a contract should be performed Within a specified period called period of limitation. If it is not performed, the contract is terminated.



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5. Discharge by operation of law:

A contract may be discharged independently of the wishes of the parties. (i.e.,) by operation of law. This includes:

- a) By death
- b) By merger
- c) By insolvency
- d) By unauthorized alteration of the terms of a written agreement.

6. Discharge by breach of contract:

It occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action damages on the injured party.

Breach of contract may be-

- (1) Actual breach of contract
 - a) At the time when the performance is due.
 - b) During the performance of the contract.
- (2) Anticipatory breach of contract.

1.12. REMEDIES FOR BREACH OF CONTRACT:

When a contract is broken, the injured party (i.e., the party who is not in breach) has one or more of the following remedies.

- a) Rescission of the contract
- b) Suit for damages
- c) Suit upon quantum meruit
- d) Suit for specific performance of the contract
- e) Suit for injunction

1. Rescission:

When a contract is broken by one party, the other party may be sue to treat the contract as rescinded & refuse farther performance. In such a case, he is absolved of all his obligation under the contract.

Example: A promises B to supply 10 bags of cement on a certain day. B agrees to pay the price after the receipt of the goods. A does not supply the goods. B is discharged from liability to pay the price.

2. Damages:

Damages are monetary compensation allowed to the injured party by the court for the loss or injury suffered by him by the breach of a contract.



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3. Quantum meruit:

“Quantum meruit” literally means “as much as earned” or “as much as is merited”. When a person has done some work under a contract, & the other party repudiates the contract, or some event happens which makes the farther performance of the contract impossible, then the party who has performed the work can claim remuneration for the work he has already done.

4. Specific performance:

In certain cases of breach of a contract, its damages are not an adequate remedy. The court may, in such cases, direct the party in breach to carry out his promise according to the terms of the contract.

5. Injunction:

Where a party is in breach of a negative term of a contract (i.e., where he is doing something which he promised not to do), the court may, by issuing an order, restrain him from doing what he promised not to do. Such an order of the court is known as an ‘injunction’

Questions:

1. Define contract
2. Explain the essential features of a valid contract?
3. What is/define offer
4. What is /define acceptance
5. Explain the different classification of contracts?
6. What is free consent?
7. Who are all the parties incompetent to enter into contract?
8. What is void agreement? Explain the different types of void agreement?
9. What is performance of contract? By whom contracts must be performed?
10. What is meant by discharge of contract? What are the different methods of discharge?
11. What are all the remedies for breach of contract?



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UNIT –II - SALE OF GOODS ACT AND NEGOTIABLE INSTRUMENTS ACT

Sale of Goods Act: *Definition of a Sale and a Contract of Sale – Difference between (1) Sale and an Agreement to Sell (2) Sale and a Contract Form (3) Sale and Bailment (4) Sale and Mortgage of Goods (5) Sale and Time Purchase Conditions and Warranties – Passing of Property of Goods – Rights of an Unpaid Seller.*

Negotiable Instruments Act: *Negotiable Instruments in General: Cheques, Bills of Exchange and Promissory Notes – Definition and Characteristics*

2.1. SALE OF GOODS ACT, 1930:

2.1.1. INTRODUCTION:

The sale of goods is the most common of all commercial contracts. A knowledge of its main principles is of the utmost importance to all classes of the community. The law relating to it is contained in the sale of goods act, 1930. Prior to this act, the law of sale of goods was contained in chapter vii of the Indian contract act, 1872.

2.1.2. FORMATION OF CONTRACT OF SALE:

Contract of sale of goods:

A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. The term 'contract of sale' is a generic term & includes both a sale & an agreement to sell

Sale & agreement to sell:

Where under a contract of sale, the property in the goods is transferred from the seller to the buyer, the contract is called a 'sale' but where the transfer of the property in the goods is to take place at a future time or subject to some conditions therefore to be fulfilled, the contract is called an 'agreement to sell'.

2.1.3. ESSENTIALS OF A CONTRACT OF SALE:

The following essential elements are necessary for a contract of sale

1. **Two parties:** There should be two parties namely the buyer and seller to enter into a valid contract of sale.
2. **Goods:** There must be some goods to enter to a contract of sale. It is the subject matter of the contract of sale.
3. **Price:** The consideration for a contract of sale must be money consideration called the 'price'.



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4. **Transfer of general property:** 'Property' here means 'ownership'. Transfer of property in the goods is another essential of the contract of sales of goods.
5. **Essential elements of a valid contract:** Apart from the above contract of sale must consist of other essential elements of a valid contract like agreement, free consent, capacity to contract, consideration etc.

2.1.4. DISTINCTION BETWEEN SALE & AGREEMENT TO SELL:

1. **Transfer of property:**

In a sale, the property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of the goods sold. In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled.

2. **Type of goods:**

A sale can only be in case of existing & specific goods only. An agreement to sell is mostly in case of future & contingent goods.

3. **Risk of loss:**

In a sale, if the goods are destroyed, the loss falls on the buyer. In an agreement to sell, if the goods are destroyed the loss falls on the seller.

4. **Consequences of breach:**

In a sale, if the buyer fails to pay the price of the goods or if there is a breach of contract by the buyer, the seller can sue for the price. In an agreement to sell if there is a breach of contract by the buyer, the seller can only sue for damages & not for the price.

SALE AND BAILMENT:

Sale and Bailment are two different types of contracts. A contract of sale is a straight forward contract where a person may buy goods, services or property from a seller in exchange for remuneration, usually in the form of money. This amount is decided between the buyer and seller as appropriate for the value of goods, services or property.

Bailment, on the other hand is slightly different than sale. The definition of 'Bailment' states that it is "the contractual transfer of possession of assets or property for a specific objective. In bailment, the deliverer of the asset is the bailor, and the receiver is the bailee. In a bailment transaction, ownership is never transferred, and the bailor is generally not entitled to use the property while it's in possession of the bailee. In these ways, bailment differs from gifting and leasing."



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DISTINCTION BETWEEN SALE AND BAILMENT:

	Sale	Bailment
Possession	Possession of goods is transferred to the buyer.	Possession of goods is transferred to the bailee
Ownership	Ownership is transferred to the buyer.	Ownership resides with the bailor.
Usage	The buyer may use the goods in any way he likes.	A bailee can use the goods only according to the directions of the bailor.
Return	There is no return of goods from the buyer to the seller, unless there is breach.	The goods are returned after the specified time or accomplishment of the purpose.
Consideration	The consideration is the price in terms of money.	The consideration is an undertaking to return the goods after the accomplishment of the purpose.
Charges	The question of any charges to be paid by the seller to buyer or vice versa does not arise.	The bailor has to repay the charges which the bailee has incurred in keeping the goods safe
Duration	Final. Once the sale is transacted, the seller keeps the goods until he decides to sell them to another.	Temporary. The bailee has to return the goods to the bailor once the specified time is passed.

MORTGAGE:

A legal agreement that conveys the conditional right of ownership on an asset or property by its owner (the mortgagor) to a lender (the mortgagee) as security for a loan. The lender's security interest is recorded in the register of title documents to make it public information, and is voided when the loan is repaid in full.

Virtually any legally owned property can be mortgaged, although real property (land and buildings) are the most common. When personal property (appliances, cars, jewellery, etc.) is mortgaged, it is called a chattel mortgage.

2.1.5. MEANING OF GOODS:

[Sec.2 (7)] defines 'goods' as every kind of movable property other than actionable claims & money. Actionable claim means a debt, a person may have against another & which he may recover by suit & money means legal tender money. Except these two, all other types of movable property are 'goods' under the act. Movable articles like furniture, clothing etc., & share & debentures are goods.



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CLASSIFICATION OR TYPES OF GOODS:

1. Existing goods:

Existing goods are goods which are already in existence & which are physically present in some
Existing goods may either: -

(a) Specific & ascertained goods

Specific goods are goods which can be clearly identified & recognized as separate things.

(b) Generic & unascertained goods

These are the goods which are not identified

2. Future goods:

According to **sec.2 (6)** future goods are goods which will be manufactured or produced or acquired by the seller after the making of the contract of sale.

3. Contingent goods:

According to **sec.6 (2)** contingent goods are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen. Contingent goods come within the class of future goods.

2.1.6. CONDITION & WARRANTIES:

Whether any statement or representation made by the seller with reference to the goods is a stipulation forming part of the contract. A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty [**sec.12 (1)**]

Condition [**sec.12 (2)**]:

A condition is a stipulation which is essential to the main purpose of the contract.

Warranty [**sec.12 (3)**]:

A warranty is a stipulation which is collateral to the main purpose of the contract



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DISTINCTION BETWEEN A CONDITION & WARRANTY:

Condition	Warranty
1. A condition is a stipulation essential to the purpose of the contract	1. A warranty is a stipulation collateral main purpose of the contract.
2. In the case of breach of conditions, the aggrieved party may repudiate the contract, refuse to perform own obligations, bring an action for breach of c and can reject the goods which do not correspond stipulated conditions.	2. In the case of breach of a warranty aggrieved party can claim only damages. But has no right to repudiate the contract.
3. In some cases, a breach of a condition m treated as a breach of warranty	3. A breach of a warranty may not be t as a breach of condition.

IMPLIED CONDITION & WARRANTIES IN SALES CONTRACT:

Sec.14-17 of the sales of the goods act contains a list of condition & warranties which are implied in a contract for the sales of goods.

IMPLIED CONDITION:

1. Condition as to title:

There is an implied condition on the part of the seller that.

- (a) In the case of a sale, he has a right to sell the goods, &
- (b) In the case of an agreement to sell, he will have the right to sell the goods at the time when the property is to pass.

2. Sale by description:

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description

3. Condition as to quality or fitness:

Normally, in a contract of sale there is no implied condition as to quality or fitness of the goods for a particular purpose. the buyer must examine the goods thoroughly before he buys them in order to satisfy himself that the goods will be suitable for the purpose for which he is buying them.

4. Condition as to merchantability:

Where goods are brought by description from a seller who deals in goods of that description there is an implied condition that the goods shall be of merchantable quality



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5. Condition implied by usage of trade:

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade

6. Sale by sample:

If any goods sold based on sample, there is an implied condition that the goods shall correspond with the sample.

7. Conditions to wholesomeness:

In the case of eatables & provision in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome

IMPLIED WARRANTIES:

1. Warranty of quiet possession:

There is an implied warranty that the buyer shall have & enjoy quiet possession of the goods. If the buyer is in any way disturbed in the enjoyment of the goods in consequence of the seller's defective title to sell, he can claim damages from the seller.

2. Warranty of freedom from encumbrances:

In addition to the previous warranty, the buyer is entitled to a further warranty that the goods are not subject to any change or right in favour of a third party. If his possession is in any way disturbed by reason of the existence of any change or encumbrance, he shall have a right to claim damages for breach of warranty

3. Warranty as to quality or fitness by usage of trade:

An implied warranty as to quality or fitness for a particular purpose may be annexed by the usage of trade

4. Warranty to disclose dangerous nature of goods:

Where a person sells goods, knowing that the goods are inherently dangerous or they are likely to be dangerous to the buyer is ignorant of the danger, he must warn the buyer of the potential danger otherwise he will be liable in damages.

2.1.7. CAVEAT EMPTOR:

This means "let the buyer beware" i.e., in a contract of sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his own skill or judgment & makes a bad selection, he cannot blame anybody excepting himself.



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Exceptions:

The doctrine of caveat emptor has certain important exceptions

- 1. Fitness for buyer's purpose:** In certain circumstances, the buyer makes his purpose clear to seller and buys the goods relying upon his skill and judgment, then there is an implied condition that the goods shall be fit for the buyer's specific purpose. In such cases the doctrine of caveat emptor does not apply.
- 2. Sale under a patent or trade name:** In case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition that the goods shall be reasonably fit for any particular purpose.
- 3. Merchantable quality:** Sometimes, the goods are sold by description. In such cases, there is an implied condition that the goods shall be of merchantable quality.
- 4. Usage of trade:** The implied conditions as to fitness and merchantability are applicable only if certain requirements are fulfilled. However the implied condition as quality or fitness for a particular purpose may be attached by the custom or usage of trade.
- 5. Consent by fraud:** where the consent of the buyer in a contract of sale, is obtained by the seller by fraud, the doctrine of caveat emptor does not apply.

2.1.8. TRANSFER OF PROPERTY:

(1) Specific goods:

The rules relating to transfer of property in specific goods are as follows.

- A. Passing of property at the time of contract
- B. Passing of property delayed beyond the date of the contract
 1. Goods not in a deliverable state
 2. When the price of goods is to be ascertained by weighing etc.

(2) Unascertained goods:

Where is a contract for the sale of unascertained goods, the property in the goods does not pass to the buyer until the goods are ascertained. Until the goods are ascertained there is merely an agreement to sell

(3) Goods sent on approval or on sale or return:

When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property there in passes to the buyer

1. When he signifies his approval or acceptance to the seller
2. When to the does any other act adopting the transaction



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2.1.9. PERFORMANCE OF CONTRACT:

Performance of contract of sale means as regards the seller, delivery of the goods to the buyer, & as regards the buyer, acceptance of the delivery of the goods & payment for them, in accordance with the terms of the contract of sale (Sec.31).

2.1.10. DELIVERY OF GOODS:

Delivery means voluntary transfer of possession of goods from one person to another [Sec.2 (2)]. Delivery of goods may be actual, symbolic, or constructive.

1. Actual delivery:

Where the goods are handed over by the seller to the buyer or his duly authorized agent, the Delivery is said to be actual.

2. Symbolic delivery:

where goods are bulky and incapable of actual delivery, the delivery may be symbolic. Handling over of the key of a warehouse to the buyer is symbolic delivery of the goods.

3. Constructive delivery (or) delivery by attornment:

Where the third person who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that he holds the goods on his behalf, there takes place a delivery by attornment or constructive.

Example: A sells to B, 10bags 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 transfers the goods in his books to B. This is a delivery by attornment.

RULES AS TO DELIVERY OF GOODS:-

1. Mode of delivery: delivery of goods may be

- (1) Actual,
- (2) Symbolic &
- (3) Constructive.

2. **Delivery and payment – concurrent conditions:** delivery of the goods and payment of the price must be according to the terms of the contract.

3. **Effect of part delivery:** a delivery of part of the goods in progress of the delivery of the whole has the same effects for the purpose of passing the property in such goods as a delivery of the whole.



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4. **Buyer to apply for delivery:** a part from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery
5. **Place of delivery:** where the place at which delivery of the goods is to take place is specified in the contract, the goods must be delivered at the place during business hours on a working day.
6. **Time of delivery:** where under the contract of sale of seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
7. **Goods in possession of a third party:** when at the time of the sale, the goods are with a third party, there is no delivery by the seller to the buyer until such third party acknowledges to the buyer that he holds them on his behalf.
8. **Delivery of wrong quantity (sec.37):** the delivery of the quantity of goods contracted for should be strictly according to the terms of the contract.
A defective delivery entitles the buyer to reject the goods.
 - a) Delivery of goods less than contracted for.
 - b) Delivery of goods in excess of the quantity contracted for.
 - c) Delivery of goods contracted for mixed with the other goods.
9. **Cost of delivery:** unless otherwise agreed, all expenses of and incidental to making of delivery are borne by the seller, but all expenses of and incidental to obtaining of delivery are borne by the buyer.
10. **Installment deliveries (sec.38):** unless otherwise agreed, the seller is not entitles to deliver the goods by installments and if he does so, the buyer is not bound to accept the goods.



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2.1.11. RIGHTS AND DUTIES OF THE BUYER:

RIGHTS OF THE BUYER:

1. The first right of the buyer is to have delivery of the goods as per the terms of the contract. (sec.37).
2. The buyer of the goods is not bound to accept delivery of the goods in instalments and can repudiate the contract, unless otherwise agreed. (sec.38 (1)).
3. Right to notice of insurance (sec.39).
4. Right to examine the goods delivered (sec.41).
5. Right to sue for breach of contract.
 - Suit for damages (sec.57).
 - Suit for price
 - Suit for specific performance (sec.58).
 - Suit for breach of warranty (sec.59)
 - Repudiation of contract before due date (sec.60).
 - Suit for interest (sec. 61(2) (b)).

DUTIES OF THE BUYER:

1. Duty to accept the goods and pay for them in exchange for possession (sec.31).
2. Duty to apply for delivery (sec.35).
3. Duty to demand delivery at a reasonable hour sec. (36(4)).
4. Duty to accept installment delivery and pay for it (sec. 38 (2)).
5. Duty to intimate the seller where he rejects the goods (sec.43).
6. Duty to take delivery.
7. Duty to pay price.
8. Duty to pay damages for non – acceptance (sec.56).



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2.1.12. WHO IS AN UNPAID SELLER?

A seller of goods is deemed to be an unpaid seller when –

- (1) The whole of the price has not been paid or tendered.
- (2) A bill of exchange or other negotiable instrument has been received as a conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

RIGHTS OF UNPAID SELLER:

An unpaid seller has two fold rights

1. Rights of unpaid seller against the goods
2. Rights of unpaid seller against the buyer personally.

1. Rights of unpaid seller against the goods:

An unpaid seller has the following rights against the goods

1. Right of lien
2. Right of stoppage of goods in transit
3. Right of resale

1. Right of Lien:

The term Lien means the right to retain possession of goods and refuse to deliver them to the buyer until the price due in respect of them is paid or tendered.

2. Right of stoppage of Goods in transit:

The right of stoppage in transit means the right of stopping the goods while they are in transit, to regain possession and to retain them till the full price is paid.

3. Right to Resale:

- a. Where the goods are of a perishable nature
- b. Where such a right is expressly stated in the contract.
- c. Where the seller has given a notice to the buyer of his intention to resell, if the buyer does not pay the price within a reasonable time.



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2. **Rights of Unpaid seller against the Buyer Personally:**

The rights of unpaid seller against the buyer personally are

1. Suit for price
2. Suit for damages.

1. **Suit for price:**

The buyer wrongfully neglects or refuses to pay the price according to the terms of the contract; the seller is entitled to sue the buyer for price.

2. **Suit for damages:**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages.

2.2. **NEGOTIABLE INSTRUMENTS ACT, 1881:**

2.2.1. **INTRODUCTION:**

The term “negotiable instrument” literally means “a document transferable by delivery”. In India, the law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881 which came into force 1st march 1882. A negotiable instrument is a method of transferring a debt from one person to another. The term ‘negotiable instrument’ as such is not defined in the Negotiable instruments Act. Sec.13 however says that “a Negotiable instrument means a promissory note, bill of Exchange or cheque payable either to order or bearer”.

CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS:

The characteristics of a negotiable instrument are as follows

1. **Freely transferable:** They can be transferred from one person to another like cash, i.e., the property (ownership) in the instrument can be transferred by mere delivery.
2. **Title of holder free from all defects:** A bonafide transferee for value (known in law as a holder in due course) of a negotiable instrument gets a complete, independent and indefeasible title to the instrument even though there was some defect in the title of the transferor.



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3. Recovery: The holder in due course can sue upon a negotiable instrument in his own name for the recovery of the amount.

4. Presumptions: Certain presumptions apply to all negotiable instruments, unless contrary is proved. These presumptions are dealt with in secs. 118 and 119 and are as follows.

(a). Considerations: Every negotiable instrument is presumed to have been made, drawn, accepted, indorsed, negotiated or transferred, for consideration.

(b). Date: Every negotiable instrument bearing a date is presumed to have been made or drawn on such date.

(c). Time of acceptance: When a bill of exchange has been accepted, it is presumed that it was accepted within a reasonable time of its date and before its maturity.

(d). Time of transfer: every transfer of a negotiable instrument is presumed to have been made before its maturity.

(e). Order of indorsements: The indorsements appearing upon a negotiable instrument are presumed to have been made in the order in which they appear thereon

(g). Holder presumed to be a holder in due course: Every holder of a negotiable instrument is presumed to be a holder in due course (sec.118).

(h). Proof of protest: In a suit upon an instrument which has been dishonoured, the court, on proof of the protest, presumes the fact of dishonour, until such fact is disproved (sec.119).

The above presumptions are rebuttable by evidence, If anyone challenges any of these presumptions, he has to prove his allegation. Again, these presumptions would not arise where an instrument has been obtained by any offence, fraud or unlawful consideration.



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TYPES OF NEGOTIABLE INSTRUMENTS:

Negotiable instruments may be

1. Negotiable by Statute, or
2. Negotiable by Custom or usage

1. **Instruments negotiable by statute:** The Negotiable Instruments Act mentions only three kinds of negotiable instruments (sec.13). These are: promissory notes, bill of exchange and cheques. These instruments are negotiable by statute.

2. **Instruments negotiable by custom or usage:** There are certain other instruments which have acquired the character of negotiability by the usage or custom of trade.

2.2.2. PROMISSORY NOTE

A promissory note is an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument (Sec.4).

The person who makes the promissory note is called the **Maker**; the person to whom the payment is to be made is called the **payee**.

Specimen of a Promissory Note

Rs.7000	Chennai, August 03, 2018		
Seven Months after date I promise to pay Madan Mohan or order the sum of seven thousand rupees, for value received.			
To, Modan Mohan 707, Perumal koil street Chennai – 600 007	<table border="1"><tr><td>Stamp</td></tr><tr><td>signature</td></tr></table>	Stamp	signature
Stamp			
signature			



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ESSENTIALS FEATURES OF PROMISSORY NOTE:

1. It must be in writing.
2. It must contain an express undertaking or promise to pay.
3. The promise to pay should be unconditional.
4. It must be signed by the maker.
5. The parties, i.e., the maker and the payee, must be certain.
6. The sum payable must be certain.
7. It must contain a promise to pay money.

2.2.3. BILL OF EXCHANGE

A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument (sec.5)

Parties to a Bill:

There are three parties to a bill of exchange viz, the drawer, the drawee and the payee.

The person who makes the bill is called the **drawer**.

The person who is directed to pay is called the **drawee**.

The person to whom the payment is to be made is called the **payee**.

Specimen of a Bill of Exchange

Ramu of Chennai buys goods on credit from somu of Bangalore for Rs.7000 to be paid 3 months after date. Somu buys goods from Gopu of Chennai for Rs.700 on similar terms. Now somu may order Ramu to pay the sum of Rs.7000 to Gopu. This order will be a bill of exchange.

Rs.7000
Bangalore, March, 17, 2018
Three months after date pay to Gopu or order the sum of seven thousand rupees, for value received.

To,
Ramu
234, Peters Road,
Chennai – 14.

Sd/-

In case of need with
IOB, Chennai

Accepted
Ramu

Stamp
somu



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ESSENTIALS FEATURES OF BILL OF EXCHANGE:

1. The bill of exchange must be in *writing*
2. There must be an *order to pay*
3. The order must be *unconditional*.
4. The drawee must *sign the instrument*.
5. There must be *three distinct persons*
6. The sum must be *certain*
7. The medium of payment must be *money and money only*.

2.2.4. CHEQUE

A cheque is a bill of exchange drawn on a specified banker and payable on demand (Sec.6)

A cheque is a species of a bill of exchange; but it has the following two additional qualifications viz.,

- (1). It is always drawn on a specified banker, and
- (2). It is always payable on demand.

The Usual form of Bank cheque is as follows:

No.....	INDIAN OVERSEAS BANK	Date.....201...
	Parys corner, Chennai – 600 002	
Pay	or bearer the sum of	
Rs.....		
Rs.....		Sd/-

ESSENTIAL FEATURES OF CHEQUE

1. A cheque can be payable either to order or bearer
2. A cheque is an instrument in writing
3. A cheque is payable on demand
4. A cheque can be drawn only on the branch where the customer is having an account.
5. Notice of dishonor is not necessary in the case of dishonour of cheque
6. Cheques are not necessary to present for acceptance
7. Cheques are not required to be stamped in India.



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Questions

1. Define contract of sale
2. What is agreement to sell?
3. Distinguish between sale and agreement to sell.
4. What are the essentials of a sales contract?
5. What is Bailment?
6. What is Mortgage?
7. Distinguish between sale and bailment.
8. Define the term conditions and warranties
9. Distinguish between conditions and warranties.
10. What are the implied conditions and warranties in a sales contract?
11. Explain the rules for transfer of property?
12. Who is an unpaid seller? What are the rights of an unpaid seller?
13. Define the following term: 1. Negotiable Instruments 2. Cheque 3. Promissory Notes 4. Bill of exchange.
14. Explain the characteristics of following 1. Negotiable instruments 2. Cheque, 3. Promissory Note, .Bill of Exchange.



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UNIT –III - PARTNERSHIP ACT AND COMPANY LAW

Partnership Act: Evolution – Definition of Partnership – Difference between Partnership and Joint Family Business – Kinds of Partnerships – Registration – Rights and Liabilities of Partners – Dissolution.

Company Law: Evolution of Company Form of Organisation – Companies Separate Legal Entity – Comparison of Company with Partnership and Joint Hindu Family Business – Kinds of Companies – Comparison of Private and Public Companies – Formation of Companies – General Idea About Memorandum and Articles of Association, Prospectus, Statement in lieu of Prospectus – Management of Companies – General Idea of Management of Companies – Officers, Meetings – Resolutions – Account and Audit – Winding up of Companies – General Idea of the Different Modes of Winding Up.

PATNERSHIP ACT:

INTRODUCTION:

The Indian Partnership Act was passed in 1932 to define and amend the law relating to Partnership.

DEFINITION OF PARTNERSHIP:

Section 4 of the partnership Act of defines partnership as “Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all”

DIFFERENCE BETWEEN PARTNERSHIP AND JOINT FAMILY BUSINESS:

1. Regulating law:

A partnership is governed by the provisions of the Indian Partnership Act, 1932. A joint Hindu family business is governed by the principles of Hindu law.

2. Mode of creation:

A partnership arises out of a contract, whereas a joint Hindu family business arises by the operation of law and is not the result of a contract.

3. Admission of new members:

In a partnership no new partner is admitted without the consent of all the partners, while in the case of a joint Hindu family firm a new member is admitted just by birth.



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4. The position of females:

In a partnership women can be full-fledged partners, while in a joint Hindu family business membership is restricted to male members only. After the passage of the Hindu Succession Act, 1956, females get only co-sharer's interest at the death of a coparcener and they do not become coparceners themselves.

5. Number of members:

In partnership the maximum limit of partners is 10 for banking business and 20 for any other business. But there is no such maximum limit of members in the case of joint Hindu family business.

6. Authority of members:

In partnership each partner has an implied authority to bind his co-partners by act done in the ordinary course of the business, there being mutual agency between various partners. In a joint family business all the powers are vested in the 'Karta' and he is the only representative of the family who can contract debts or bind his coparceners by acts done in the ordinary course of business, there being no mutual agency between various coparceners. But a coparcener other than the 'Karta' of the family may be authorised expressly or by implication to contract debts on behalf of the firm (Lai Chand vs. Ghanayalal).

7. Liability of members:

In partnership, the liability of the partners is joint and several as well as unlimited. In other words, each partner is personally and jointly liable to an unlimited extent and if partnership liabilities cannot be fully discharged out of the partnership property each partner's separate personal property is liable for the debts of the firm. In a joint Hindu family business only the 'Karta' is personally liable to an unlimited extent, i.e., his self-acquired or other separate property besides his share in the joint family property is liable, for debts contracted on behalf of the family business. Other coparceners' liability is limited to the extent of their interest in the joint family property and they do not incur any personal liability. But an adult coparcener can be made personally liable if he is also, expressly or impliedly, a party to the contract or if he has subsequently ratified and accepted the transaction out of which the obligation of the creditor arose (Lai Chand vs. Ghanayalal).



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8. Right of members to share in profits:

In a partnership each partner is entitled to claim his separate share of profits but a member of a joint Hindu family business has no such right. His only remedy lies in a suit for partition.

9. Effect of death of a member:

A partnership, subject to contract between the partners, is dissolved on the death of a partner, but a joint Hindu family firm is not dissolved on the death of a coparcener (Bajj Nath vs. Ram Gopal).

KINDS OF PARTNERSHIP:

There are three kinds of partnership

- 1. Partnership at will:** In partnership at will, there is no fixed partnership period of duration for partnership. In the partnership agreement no specific provision on determination of there is the partnership.
- 2. Partnership for a fixed period:** In this case a fixed period is mentioned. A partnership is created for a fixed period on expiry of which partnership comes to an end.
- 3. Particular Partnership:** This partnership is constituted to carry on a particular business.

REGISTRATION OF A PARTNERSHIP FIRM:

1. An application in the prescribed form along with the prescribed fee.
2. The application is to be submitted to the registrar of firms of the state in which any place of business of the firm is situated or proposed to be situated.
3. The application contains the name of the firm, its place or principal place of business, other places of business, date of joining by each partner, full name and permanent address of each partner, duration of the firm and the fact that a minor, if any, is admitted to the benefits of partnership.
4. The application is to be signed by all the partners or by their authorized agents, and duly witnessed.
5. When the Registrar is satisfied that requirements as to registration been duly complied with,



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RIGHTS OF A PARTNER:

1. The rights of a partner are given below
2. Right to take part in the business.
3. Right to have access to books and accounts.
4. Right to profits.
5. Right to remuneration.
6. Right to receive interest on capital.
7. Right to indemnity.

DUTIES AND LIABILITIES OF PARTNERS:

1. The duties and liabilities of partners are given below
2. Duty to act in good faith and common advantage
3. To render proper accounts.
4. To give full information.
5. To identify for fraud.
6. To act with due diligence.
7. To indemnify for wilful neglect
8. To contribute for losses.
9. Not to compete
10. Joint and several liabilities for the acts of the firm
11. Proper use of property.

DISSOLUTION OF PARTNERSHIP:

Closing down of a partnership is called dissolution of partnership. The dissolution of a partnership takes place by agreement between the parties.

DISSOLUTION OF FIRM:

It is the complete severance of the relationship of partnership between all the partners. Dissolution of firm implies dissolution of partnership as well as discontinuance of partnership business.



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MODES OF DISSOLUTION OF FIRMS:

Compulsory Dissolution:

A firm is compulsorily dissolved by the adjudication of all partners or all the partners but one as insolvent.

Dissolution on the happening of certain event;

- By the death of the partner
- If it is constituted for a fixed term.
- If a partner becomes insolvent.
- The completion of the particular adventure or adventures.

Dissolution by court:

The court may dissolve a firm on the following grounds:

- Insanity
- Permanent incapacity
- Misconduct.
- Persistent breach of agreement
- Transfer of interest
- Business working at a loss
- Any other ground which is just and equitable.

COMPANY LAW:-

The law relating to companies in India is contained in the companies Act, 1956 as amended up-to-date.

Due to all round economic development, both at the national and international level, the Companies Act, 1957 had outlived its utility. In addition, certain major frauds, for instance sathyam exposed the mismanagement and gross neglect of legal and compliance requirements by certain companies. These could have been avoided if proper compliance procedures had been followed and due diligence was exercised by experts and professionals associated with such companies.

The Companies Bill,2012, passed by Lok sabha on 18th December 2012 and by Rajya Sabha on 8th August 2013, was assented by the president of India on 29th August 2013 and notified on 30th August,2013. The companies Act,2013 contains 470 sections and seven schedules.



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DEFINITION OF COMPANY:-

Lindley. L.J. defines a company as “an association of many persons who contribute money or money’s worth to a common stock, and employ it in some common trade or business, and who share the profit or loss arising there from. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his share. Shares are always transferrable although the right to transfer them is often more or less restricted”.

CHARACTERISTICS OF A COMPANY:-

1. **Separate legal entity:** A company is in law regarded as an entity separate from its members. In other words, it has an independent corporate existence.
2. **Limited liability:** A company may be a company limited by shares or a company limited by guarantee.
3. **Perpetual succession:** A company is a juristic person with a perpetual succession. Perpetual succession, therefore, means that a company’s existence persists irrespective of the change in the composition of its membership.
4. **Common seal:** Since a company has no physical existence, it must act through its agents and all such contracts entered into by its agents must be under the seal of the company. The common seal acts as the official signature of the company.
5. **Transferability of shares:** The capital of a company is divided into parts, called shares. These shares are, subject to certain conditions, freely transferrable, so that no shareholder is permanently or necessarily wedded to company.
6. **Separate property:** As a company is a legal person distinct from its members, it is capable of owning, enjoying and disposing of property in its own name. Although its capital and assets are contributed by its shareholders, they are not the private and joint owners of the property. The company is the real person in which all its property is vested and by which it is controlled, managed and disposed of.
7. **Capacity to sue:** A company can sue and be sued in its corporate name. It may also inflict or suffer wrongs.

LIFTING OR PIERCING THE CORPORATE VEIL:

A company is a legal person distinct from its members. This principle may be referred to as “The veil of incorporation”. There is a veil between a company and its members keeping them both separate from each other. However sometimes it becomes necessary to lift this veil and find out the realities of the company. The court may investigate the real affairs, ownership, etc, of the company. This is called Lifting or piercing the corporate veil.



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Exceptions:

1. The various cases in which corporate veil have been lifted are as follows.
2. Protection of revenue.
3. Prevention of fraud or improper conduct.
4. Determination of character of a company whether it is enemy.
5. Company avoiding legal obligations.
6. Company acting as agent or trustee of the shareholders.
7. Protecting public policy.

KINDS OF COMPANIES:

Companies may be classified into various kinds on the following basis.

1. Classification on the basis of incorporation:

- (a) **Statutory companies:** these are the companies which are created by a special acts of the legislature. (e.g.) RBI, SBI, LIC, Industrial Finance Corporations, UTI, etc.
- (b) **Registered companies:** these are the companies which are formed and registered under the companies act, 1956 or were registered under any of the earlier companies acts.

2. Classification on the basis of liability:

(a) Companies with limited liability

- i. **Companies limited by shares:** Where the liability of the members of a company is limited to the amount unpaid on the shares, such a company is known as a company limited by shares.
- ii. **Companies limited by guarantee:** Where the liability of the members of a company is limited to a fixed amount

(b) Companies with unlimited liability

3. Classification on the basis of number of members:

- a. Private company.
- b. Public company.



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4. Classification on the basis of control:

- a. Holding company.
- b. Subsidiary company.

5. Classification on the basis of ownership:

- a. **Government Company:** 51% of paid-up share capital is held by –
 - a. The central government, or
 - b. Any state government or government, or
 - c. (iii). Partly by the central government and partly by one or more state governments.
- b. **Non-Government Company:** 50% of paid-up share capital is held by citizen of India.
- c. **Foreign Company:** It means any company incorporated outside India which has an established place of business in India [Sec.591(1)]

DISTINCTION BETWEEN A PUBLIC COMPANY AND A PRIVATE COMPANY:

Private company	Public company
Minimum paid-up capital is Rs.1,00,000	Minimum paid-up capital is Rs.5,00,000
Minimum number of persons required to form a private company is 1.	Minimum number of persons required to form a public company is 7.
Maximum number of members cannot exceed 200.	There is no restriction on maximum number of members
A private company must have at least 2 directors.	A public company must have at least 3 directors.
Prohibits any invitation to general public to subscribe for shares or debentures.	A public company invites the general public to subscribe for shares or debentures.
The right to transfer shares and debentures is restricted by articles.	The shares and debentures are freely transferrable.
A private company enjoys some special privileges	There are no such privileges.
No restriction applied for total managerial remuneration.	Total managerial remuneration cannot exceed 11% of net profit.



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SPECIAL PRIVILEGES OF A PRIVATE COMPANY:

The companies Act, 2013 gives a large number of privileges to private companies.

1. A private company need not file a prospectus or a statement in lieu of prospectus in the matter of allotment of shares.
2. A private company can commence business immediately on incorporation.
3. A private company need not hold the statutory meeting or file the statutory report.
4. A private company may have only minimum of 2 and a maximum of 50 members.
5. A private company need not have more than 2 directors.
6. The overall maximum managerial remuneration of 11% does not apply to a pvt. co.
7. The rules regarding appointment of directors of a pvt. company are less stringent.
8. The directors of a private company need not retire by rotation.

WHEN DOES A PRIVATE COMPANY BECOME A PUBLIC COMPANY?

1. **Conversion by default:** Where a default is made by a private company in complying with the essential requirements of a private company (viz., restriction on transfer of shares, limitation of the number of members to 200 and prohibition of invitation to the public to buy shares or debentures), the company ceases to enjoy the privileges and exemptions conferred on a private company.
2. **Conversion by choice or violation:** If a private company so alters its articles that they do not contain the provisions which make it a private company, it shall cease to be a private company as on the date of alteration.



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FORMATION OF A COMPANY:-

Promoter – They do all the necessary preliminary work incidental to the formation of a co.

Documents to be filed with the registrar: The following documents duly stamped together with the necessary fees are to be filed with the registrar.

1. The Memorandum of Association duly signed by the subscribers.
2. The Articles of Association if any signed by the subscribers to the memorandum of association.
3. The agreement if any which the company proposes to enter into with any individual for appointment as its managing or whole time director or manager.
4. A list of the directors who have agreed become the first directors of the company.
5. A declaration stating that all the requirements of the companies act and other formalities relating to registration have been complied with. Such declaration shall be signed by any of the following persons.
 - a. An advocate of the Supreme Court or high court.
 - b. A secretary or a chartered accountant or
 - c. A person named in Articles of Association as a director, manager or secretary.

CERTIFICATE OF INCORPORATION:

When the requisite documents are filed with the registrar, the registrar is satisfied as to the compliance of statutory requirements. We register in his books and issue a Certificate of Incorporation.

- A private company can commence business immediately after its incorporation.
- A public company has to obtain certificate to commence business before it can commence business.



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MEMORANDUM OF ASSOCIATION:

It contains the fundamental conditions upon which alone the company is allowed to be incorporated. It lays down the area of operation of the company. It also regulates the external affairs of the company in relation to outsiders.

CONTENTS OF MEMORANDUM (SEC.4):-

- 1. The name clause (Sec.20):** A company may subject to the following rules, select any suitable name –
 - (a) Undesirable name to be avoided.
 - (b) Injunction if identical name adopted.
 - (c) 'Limited' or 'Private Limited' as the last word or words of the name.
 - (d) Prohibition of use of certain names.
 - The names, emblems or official seal of the United Nations Organization (UNO), World Health Organization (WHO), Indian National Flag, Emblem or official seal of the central or state government, President of India or Governor of State.
- 2. The registered office clause (Sec.12):** Every company shall have a registered office from the day on which it begins to carry on business, or as from the 30th day after the date of its incorporation, whichever is earlier.
- 3. The objects clause [Sec. 13(1)]:** The objects of a company shall be clearly set forth in the memorandum, for a company can do is within, or incidental to, the objects stated in the memorandum.
- 4. The liability clause [Sec. 13(2)]:** The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.
- 5. The capital clause [Sec. 13(4)]:** The memorandum of a company, having a share capital, shall state the amount of the share capital with which the company is to be registered and the division thereof into shares of a fixed amount. The capital with which a company is registered is called 'registered', 'authorized' or 'nominal' capital.
- 6. The association clause [Sec. 13(4)]:** The association clause states that the several persons, whose name and addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association.



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ARTICLES OF ASSOCIATION:

The Articles of Association of a company and its bye-laws are regulations which govern the management of its internal affairs and the conduct of its business. They define the duties, rights, powers and authority of the shareholders and the directors in their respective capacities and of the company and the mode and form in which the business of the company is to be carried out.

CONTENTS OF ARTICLES:

Articles usually contain provisions relating to the following matters:

1. Share capital, rights of shareholders, variation of these rights, payment of commissions share certificates.
2. Lien on shares.
3. Calls on shares.
4. Transfer of shares.
5. Transmission of shares.
6. Forfeiture of shares.
7. Conversion of shares into stock.
8. Share warrants.
9. Alteration of capital.
10. General meetings and proceedings thereat.
11. Voting rights of members, voting and poll, proxies.
12. Directors, their appointment, remuneration, qualification, powers and proceedings of Board of directors.
13. Manager.
14. Secretary.
15. Dividends and reserves.
16. Accounts, audit and borrowing powers.
17. Capitalization of profits.



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DISTINCTION BETWEEN MEMORANDUM AND ARTICLES:

Memorandum	Articles
It is the charter of the company & defines the company's relationship with outside world.	They are the regulations for the internal management of the company.
It defines the scope of the activities of the company, or the area beyond which the actions of the company cannot go.	They are the rules for carrying out the objects of the company as set out in the memorandum.
It, being the charter of the company, is the supreme document.	They are subordinate to the memorandum.
Every company must have its own memorandum.	A company limited by shares need not have articles of its own.
There are strict restrictions on its alteration.	They can be altered by a special resolution, to any extent, provided they do not conflict with the memorandum and the companies Act.

DOCTRINE OF ULTRA-VIRES:

Ultra means 'beyond' and Vires means 'powers'. The term Ultra-Vires a company means that the doing of the act is beyond the legal power and authority of the company.

DOCTRINE OF INDOOR MANAGEMENT:

The outsiders dealing with the company are entitled to assume that as far as the internal proceedings of the company are concerned, everything has been regularly done. They need not inquire into the regularity of the internal proceedings as required by the Memorandum and the Articles. They can presume that all is being done regularly. This limitation of the doctrine of constructive notice is known as the "**Doctrine of Indoor Management**" or **Turquand Rule**.

PROSPECTUS:

A prospectus has been defined in [Sec. 2(70)] of the Act as "any document described or issued as a prospectus and includes any notice, circular advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate.



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CONTENTS OF A PROSPECTUS:

Part I of Schedule II:

1. General Information.
2. Capital structure of the company.
3. Terms of the present issue.
4. Particulars of the issue.
5. Company, management and project.
6. Particulars in regard to the company and other listed Registered companies: these are the companies which are formed and registered under the companies act, 1956 or were registered under any of the earlier companies under the same management which made any capital issue during the last 3years.
7. Outstanding litigation pertaining to.
8. Management perception of risk factors.

Part II of Schedule II:

1. General Information.
2. Financial Information
 - (a) Report by the auditors.
 - (b) Report by the accountants.
3. Statutory and other Information.

STATEMENT IN LIEU OF PROSPECTUS:

Where a public company does not invite public to subscribe for its shares, but arranges to get money from private sources, it need not issue a prospectus to the public. In such case, the promoters are required to prepare a draft prospectus known as a “Statement in lieu of prospectus”.

A public company having a share capital and not issuing a prospectus must atleast 3days before the first allotment of shares or debentures, file with the registrar for registration a Statement in lieu of prospectus.



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MISSTATEMENTS IN PROSPECTUS:



POWERS OF DIRECTORS:

- 1. General powers of the Board (Sec. 179):** The Board of directors of a company is entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do.
- 2. Powers to be exercised at Board meetings (Sec. 292):** The Board of directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at the meeting of the Board.
 - a. Make calls on shareholders in respect of money unpaid on their shares.
 - b. Issue of debentures.
 - c. Borrow money otherwise than on debentures.
 - d. Invest the funds of the company.
 - e. Make loans.
- 3. Powers to be exercised with the approval of company in general meeting (Sec. 293):** The Board of directors shall exercise the following powers only with the consent of the company in general meeting.
 - a. To sell, lease or otherwise dispose the whole or substantially the whole of the undertaking of the company.



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- b. To remit or give time for repayment of any debt due to the company.
- c. To invest the amount of compensation received by the company in respect of compulsory acquisition.
- d. To borrow money where the money is to be borrowed.
- e. To contribute to charitable and other funds not directly relating to the business of the company or the welfare of its members.

DUTIES OF DIRECTORS (Sec.166):

The directors have the following duties.

1. Fiduciary Obligation: Since the company is an artificial person. It acts through the agency of natural person who are known as its directors with a view to enable the directors to carry out their duties as agents.
2. Duty to care: The directors should work very carefully. He should take every care so that the company gets more profits.
3. Duty to attend the Board meetings: Board meetings are the appropriate places for the decisions and policy making of the company. So it is the duty of the directors to attend the Board meetings regularly.
4. Duty not to delegate:
5. Duty to disclose interests:

LIABILITIES OF DIRECTORS:

The liabilities of directors are discussed by the following 4 heads.

1. Liabilities to third parties:

- (a) **Under the act:** Directors are personally liable.
 - (i) Failure to repay application money.
 - (ii) Irregular allotment of shares.
 - (iii) Failure to pay Bill of Exchange, Cheques, Promissory note.

(b) Independently of the Act:

- i. Directors are not personally liable on contracts on behalf of the company.
- ii. He is also personally liable if he acts in his own name.

2. Liability to the company:

- a. Ultra-Vires acts.
- b. Negligence.
- c. Breach of trust.
- d. Misfeasance (willful misconduct).



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3. **Liability for breach of statutory duties:** They are liable to penalties.
4. **Liability for acts of his co-directors:** A Director is not liable for the acts of his co-director.

MEETINGS:

The meetings of a company may be classified as follows:

1. General Meetings which includes

- (1). Statutory meetings
- (2). Annual General Meetings
- (3). Extraordinary meetings

These meetings are called general meetings of a company as these are meetings of all the members of the company.

2. Meetings of creditors and debenture-holders

- (a). during the lifetime of the company, and
- (b). at the time of winding up of the company.

3. Meetings of Directors

1. General Meetings of shareholders:

(1). Statutory Meeting (sec.173) :

Every company limited by shares and every company limited by guarantee and having a share capital shall, within a period of not less than one month nor more than **six** months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company. This meeting is called the **statutory meeting**. This is the first meeting of the shareholders of a public company and is held only once in the lifetime of a company.

(2). Annual General Meeting (sec.96):

Every company shall in each year hold in addition to any other meetings general meetings as its annual general meetings and shall specify the meetings as such in the notice calling it. There shall not be an interval of more than 15 months between one annual general meeting of the company and the next.



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(3). Extraordinary General Meeting (sec.100):

A statutory meeting and an annual general meeting of a company are called ordinary meetings. Any meeting other than these meetings is called an extraordinary general meetings. It is called for transacting some urgent or special business which cannot be postponed till the next annual general meeting. It may be convened

REQUISITES OF A VALID MEETING:

A meeting can validly transact any business if the following requirements are satisfied:

1. Proper authority
2. Notice of Meeting
3. Quorum for meeting(minimum no.of members who must be present in order to constitute a valid meeting and transact business thereat)
4. Chairman of the meeting
5. Minutes of Meeting (Minutes are a record of what the company and directors do in meetings)

PROXIES (SEC.105):

A proxy is an authority to represent and vote for another person at a meeting. A member entitled to attend and vote at a meeting may vote either in person or by proxy.

RESOLUTIONS (Sec.114):

The questions which generally come for consideration at the general meeting of a company are presented in the form of proposals called motions. A motion may be proposed by the chairman of the meeting or by any other member of the company. Before it is placed the meeting by the chairman for discussion, it must be seconded by someone. The motion, after the close of discussion, is formally put to vote by a show of hands. It may either be carried or rejected. If a sufficient number of members demand, the motion may be put to poll. The final result is declared after the poll is taken. If a motion is carried, it becomes a 'resolution'.

KINDS OF RESOLUTIONS:

There are three kinds of resolutions under the companies Act, 1956.

1. Ordinary Resolution (sec.114(1))

An ordinary resolution is a resolution passed at a general meeting of a company by a simple majority of votes.



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2. Special Resolution (Sec.114(2)):

A special resolution is one which satisfies the following conditions:

- a. The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting.
- b. The notice has been duly given of the general meeting.
- c. The votes cast in favour of the resolution by members entitled to vote are not less than 3 times the number of votes cast against the resolution by members so entitled and voting.
- d. An explanatory statement setting out all material facts concerning the subject-matter of the special resolution.

3. Resolutions requiring a special notice (sec.115):

A resolution requiring a special notice is not an

WINDING UP:

Winding up or liquidation of a company represents the last stage in its life. It means proceedings by which a company is dissolved. The assets of the company are disposed of; the debts are paid off out of the realized assets, and the surplus, if any, is then distributed among the members in proportion to their holdings in the company.

MODES OF WINDING UP: There are two modes of winding up of a company.

1. Winding up by the Tribunal (Sec. 270).
2. Voluntary Winding up .
 - a. Members Voluntary Winding up.
 - b. Creditors Voluntary Winding up.



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1. Winding up the Tribunal: It is also known as compulsory winding up.

Grounds for Compulsory Winding up:

- (1) Special resolution of the company.
- (2) Default in delivering the statutory report to the registrar or in holding statutory meeting.
- (3) Failure to commence or suspension of business.
- (4) Reduction in membership.
- (5) Inability to pay its debts.

Petitions (Sec. 272):

1. Petition by the company.
2. Petition by any creditor or creditors.
3. Petition by any contributors.
4. Petition by the registrar.
5. Petition by the central government.

2. Voluntary Winding up :

- a. Members Voluntary Winding up.
- b. Creditors Voluntary Winding up.

CORPORATE GOVERNANCE:

Corporate Governance is the system by which business corporations are directed and controlled. The Corporate Governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the Board, Managers, Shareholders and other shareholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company's objectives are set and the means of attaining those objectives and monitoring performance.



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QUESTIONS:

1. Define partnership.
 2. Differentiate between partnership and Joint Family Business
 3. What are the different kinds of partnership?
 4. Explain the procedure for registration of partnership?
 5. What are the rights and liabilities of partners?
 6. What is dissolution of partnership? What are the different modes of dissolution?
 7. Define company.
 8. Explain the characteristics of a company.
 9. What are the different kinds of classifications of a company's?
 10. What are the special privileges' enjoyed by a private company?
 11. Explain the procedure for formation of a company?
 12. What is memorandum of Association? What are its contents?
 13. What is Articles of Association? What are its contents?
 14. Distinguish between the memorandum and articles.
 15. What is prospectus? What are its contents?
 16. What is statement in lieu of prospectus? Explain the liability for misstatements in prospectus?
 17. What are the powers, duties and liabilities of directors of a company?
 18. Explain the different types of meetings of a company?
 19. What is Proxies?
 20. What are resolutions? What are its kinds?
 21. What is winding up? Explain the different modes of winding up of a company?
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UNIT –IV - LABOUR LAW

Labour Law: *Factories Act, Minimum Wages Act, Industrial Disputes Act, Workmen's Compensation Act, Payment of Bonus Act, Payment of Gratuity Act 1972, ESI Act, CPF ACT 1952, Employees Family Pension Scheme, 1971, Maternity Benefits Act, Contract Labour Act.*

THE FACTORIES ACT, 1948

The Factories Act, 1948 came into force on the 1st day of April 1949, its object is to regulate the conditions of work in manufacturing establishments which come within the definition of the term 'factory' as used in the act.

What is a Factory?

A factory is a premises where on 10 or more persons are engaged if power is used or 20 or more persons are engaged if power is not used, in a manufacturing process.

Provisions relating to Health, safety and welfare, Health (sec.11 to 20)

1. Cleanliness (sec.11)
2. Disposal of wastes and effluents (sec.12)
3. Ventilation and temperature (sec.13)
4. Dust and fume (sec.14)
5. Artificial Humidification (sec.15)
6. Overcrowding (sec.16)
7. Lighting (sec.17)
8. Drinking water (sec.18)
9. Latrines and urinals (sec.19)
10. Spittoons (sec.20)

Safety (sec.21 to 41)

1. Fencing of machinery (sec.21)
2. Work on near machinery in motion (sec.22)
3. Employment of young persons on dangerous machines (sec.23)
4. Striking gear and devices for cutting off power (sec.24)
5. Self acting machines (sec.25)
6. Casing of new machinery (sec.26)
7. Prohibition of employment of women and children near cotton openers (sec.27)
8. Hoists and lifts (sec.28)
9. Lifting machines, chains, ropes and lifting tackles (sec.29)
10. Revolving machinery (sec.30)
11. Pressure Plant (sec.31)
12. Floors, stairs and means of access (sec.32)
13. Pits, sumps, openings in floors, etc (sec.33)



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14. Excessive weights (sec.34)
15. Protection of eyes (sec.35)
16. Precautions against dangerous fumes (sec.36)
17. Precautions against explosive or inflammable dust, gas etc. (sec.37)
18. Precautions incase of fire (sec.38)
19. Safety of building and machinery (sec.40)
20. Maintenance of building (sec.40A)
21. Safety officers (sec.40.B)

Welfare (sec.42 to 50)

1. Washing facilities (sec.42)
2. Facilities for storing and drying clothing (sec.43)
3. Facilities for sitting (sec.44)
4. First aid appliances (sec.45)
5. Canteens (sec.46)
6. Shelters, rest rooms and lunch rooms (sec.47)
7. Crèches (sec.48)
8. Welfare officers (sec.49)

Working Hours of Adults

The rules as to the regulation of hours of work of adult workers in a factory and holidays are as follows.

Working hours

1. Working hours (sec.51)
Not allowed to work more than 48 hours in any week.
2. Daily hours (sec.54)
Not more than 9 hours in any day.
3. Intervals for rest (sec.55)

No worker shall work for more than 5 hours before he has an interval for rest of at least half an hour.

Spread over

Including his intervals for rest they shall not spread over more than Ten and Half hours in any day.

Rules regarding Employment of adults Night shifts

Works on a shift which extends beyond midnight his weekly and compensatory holiday means a period of holiday for 24 consecutive hours beginning when his shift ends.



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Double Employment

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory.

Notice of periods of work

There must be displayed in every factory notice showing periods of work of adults, classifications of works in groups according to nature of their work, shifts and relays etc.

Holidays

Weekly holidays

Every adult worker in a factory shall be allowed a holiday during a week. No adult worker shall be required or allowed to work in a factory on the first day of the week which is Sunday. But manager can substitute for Sunday any of the 3 days preceding or following it.

Compensatory holidays

Where a worker is deprived of any of the weekly holidays under sec.52 he shall be allowed compensatory holidays of equal number to the holidays so left.

Employment of young persons

1. Prohibition of employment of young children (sec.67)
 - not completed his 14th year
2. Non – adult workers to carry tokens (sec.68)
 - A child completed his 14 year may allowed to work in a factory if.
 - A certificate of fitness
 - Such child or adolescent carries a token giving a reference to such certificate.
3. Working hours and notice of periods of work for children.
 - No child shall be employed or permitted to work in any factory
 - a) For more than four and half hours a day
 - b) During the night shift (10.00 pm – 6.00 am)
4. Period of work of children limited to 2 shifts.
5. Child workers entitled to weekly holidays.
6. Prohibition if the child worker has already been working in another factory.
7. Female child to work only between 8.00 am to 7.00 pm
8. Display of notice of work of child workers
9. Register of child workers.



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Employment of women

1. Prohibition of work on or near machinery in motion
2. Prohibition of employment near cotton – openers
3. Crèches
4. Working hours
5. Restriction on employment of women on dangerous operations.

THE MINIMUM WAGES ACT, 1948

The philosophy behind the implementation of this act is to prevent exploitation of labour by paying less wages. This Act empowers the state and central governments to fix minimum rate of wages for different kinds of employment listed in the schedule of the Act. This act also provides for a review of the rates of minimum wages at intervals not exceeding 5 years.

Objectives of the Act:

1. The main objectives of the act is to secure the welfare of the workers in a competitive labour market by fixing of minimum rates of wages in certain employment.
2. This act is intended to prevent the exploitation of unorganized workers by the capitalist class.
3. This act gives statutory recognition to the well accepted principles that an employee must get at least a bare minimum wages for his work.
4. The act gives safeguard in the matter of minimum wages to those class of workers whose bargaining power is very poor.

Minimum Wages:

The term minimum wages means the minimum payment that an employer has to pay to an employee for a particular work. The appropriate government is vested with the power of fixing the rate of minimum wages and the employer is bound to give such rates irrespective of the extent of his profit or financial condition or the availability of workmen at lower wages.

Fixation and Revision of Wages (Sec.3 to 5)

Fixing of minimum rates of wages (sec.3): The responsibility for fixing the minimum rates of wages is that of the appropriate government. Sec.3

- a) Shall fix the minimum rates of wages payable to employees employed in an employment specified in part I or part II of the schedule

Minimum rate of wages (sec.4): Any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employment under sec.3 may consists of –

A basic rate of wages and cost of living allowance. The rate of cost of living allowance shall be adjusted at such intervals and in such manner as the appropriate government may direct.



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Procedure for fixing and revising minimum wages (sec.5): Sec.5 provides 2 separate modes of procedure for fixing and revising minimum wages.

The provisions of sec.5 are as follows:

- a) Appointment of committees.
- b) Publication of proposals in the official Gazette.
- c) Consultation with advisory board.

THE INDUSTRIAL DISPUTES ACT, 1947

What is an Industrial Dispute?

'Industrial dispute' means any dispute or difference between

- 1) Employers and employees
- 2) Employers and workmen or
- 3) Workmen and workmen.

Which is connected with

- a) The employment or non employment
- b) The terms of employment
- c) The conditions of labour of any person.

Definitions

1) Lay – off (sec.2 (kkk))

Lay off means the failure, refusal or inability of an employer to give employment to a workman due to

- Shortage of coal, power or raw material
- Accumulation of stocks
- The breakdown of machinery
- Natural calamity or for any other connected reasons.

2) Lock – out (sec.2(1))

It 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 persons employed by him.

3) Retrenchment (sec.2(oo))

It means 'to end' conclude, or cease. The term as used in the industries dispute act means the termination by the employer of the service of a workman for any reason whatsoever, otherwisethan as punishment inflicted by way of disciplinary action.

4) Strike (sec.2(q))

It means

- 1) A cessation of work by a body of persons employed in any industry acting in combination.
- 2) A concerted refusal of any member of persons who are have been so employed to continue to work or to accept employment.



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3) Refusal under a common understanding of any number of such person to continue to work or to accept employment.

5) Unfair Labour Practice (sec.2(ra))

It means any of the practices specified in the fifth schedule which declares certain labour practices as unfair on the part of employment and their trade unions and on the part of workmen and their trade unions.

Procedure for settlement of Industrial disputes and Authorities under the Act.

Conciliation Machinery

The authorities that make use of conciliation as a method of settlement of industrial disputes are.

1. Works committees
2. Conciliation officers
3. Boards of conciliation
4. Courts of Inquiry

Adjudication Machinery

The foresaid authorities endeavour to compose any industrial difference of opinion or settle the industrial dispute before it may be adjudicated upon by

1. Labour courts
2. Industrial Tribunals
3. National Tribunals.

THE PAYMENT OF BONUS ACT, 1965

Bonus defines as something given in addition to what is ordinarily received by or strictly due to a recipient.

Calculation of amount payable as Bonus

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees.

1. Computation of Gross profits (sec.4)
 - Calculated as per second schedule (for Non banking company)
2. Deductions from Gross profits (sec.6)
 - Amount by way of depreciation
 - Any amount by way of development rebate, investment allowance, development allowance.
 - Direct Tax which an employer is liable to pay for the accounting year.
 - Sums specified in respect of the employer in the third schedule.
3. Computation of available surplus



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4. Allocable surplus

Out of available surplus 67% in case of company and 60% in case of Banking company shall be Allocable surplus.

The amount available to payment of bonus to employees.

Minimum Bonus

8.33% of salary or wage earned by the employee during the accounting year

Maximum Bonus

Allocable surplus exceeds the amount of Minimum Bonus Maximum bonus to be paid that is 20% of salary or wage of the accounting year.

Set on and set off of Allocable surplus

1. Any accounting year the allocable surplus exceeds the amount of maximum bonus payable to the employees the excess shall carry forward for being **set on** in the succeeding accounting year.
2. There is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable shall be carried forward for being **set off**.

Eligibility for bonus

Every employer shall be entitled to be paid by his employer in an accounting year bonus. If he worked in the establishment for not less than thirty working days in the accounting year.

Disqualification for bonus

- a) Fraud
- b) Violent behavior while on the premises of the establishment.
- c) Theft, misappropriation of any property of the establishment.

THE WORKMAN'S COMPENSATION ACT, 1923

The Act considers compensation payable by an employer to his workmen in case of an accident as a measure of relief and social security. It enables a workman to get compensation irrespective of his negligence. It also lays down the various amounts payable in case of an accident depending upon the type and extent of injury.

Definitions:

Dependent (sec.2(d)): dependent refers to person who depends upon another for his livelihood.

Disablement: Disablement means loss of capacity to work or to move. Disablement of a workman may result in loss or reduction of his earning capacity.

Disablement may be (1) partial, or (2) total



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1. Partial disablement (sec.2 (1) (g)): This means any disablement as reduces the earning capacity of a workman as a result of some accident. Partial disablement may be temporary or permanent.
2. Total disablement (sec.2 (1) (i) : It refers to that condition where a workman becomes unfit for every type of work and is not able to get job anywhere due to that disablement.

Rules Regarding workman's compensation:

Employer's liability for compensation (sec.3):

An employer is liable to pay compensation to a workmen for

- 1). Personal injury caused to him by accident as well as for any
- 2). Occupational disease contracted by him.

1. **Personal injury by accident:** An employer is liable to pay compensation to a workmen if personal injury is caused to him by accident **arising out of and in the course of his employment** (sec.3(1)).
2. **Occupational diseases:** workers employed in certain occupations are exposed to certain diseases which are inherent in those occupations.

Amount of compensation:

The amount of compensation payable to a workman depends on-

1. The nature of the injury caused by accident.
2. The monthly wages of the workmen concerned, and
3. The relevant factor for working out lump-sum equivalent of compensation amount as specified in schedule IV.

New sec.4 provides for compensation for-

1. Death
2. Permanent total disablement,
3. Permanent partial disablement, and
4. Temporary disablement, whether total or partial,

For determining the amount of compensation, sec.4 has to be read with schedule IV

3. **Compensation for death [sec.4(1)(a)]:** where death results from an injury, the amount of compensation shall be equal to 50 percent of the monthly wages of the deceased workman multiplied by the relevant factor as given in column 2 of schedule IV for completed years of age or Rs.50,000, whichever is more.
4. **Compensation for permanent total disablement [sec.4(1) (b)]:** where permanent total disablement results from an injury, the amount of compensation payable shall be equal to 60 percent of the monthly wages of the injured workmen multiplied by the relevant factor, or Rs.60,000, whichever is more.



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5. **Compensation for permanent partial disablement [sec.4(1) (c)]:** part II of schedule I to the act gives a long list of injuries deemed to result in permanent partial disablement along with the percentage of loss of earning capacity which is deemed to result in each case. The amount of compensation shall be such percentage of the compensation which have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury.
6. **Compensation for temporary disablement – total or partial [sec.4 (1) (d), (2) and (3)]:** where temporary disablement, whether total or partial, results from the injury, the amount of compensation shall be a half-monthly payment of the sum equivalent to 25 percent of monthly wages of workmen. i.e., 25 percent of monthly wages of the workman shall be payable every half month. The half-monthly payment shall be payable on the 16th day-
 1. From the date of disablement where such disablement lasts for a period of 28days or more, or
 2. After the expiry of a waiting period of 3days from the date of disablement where such disablement lasts for a period of less than 28 days. Thereafter the compensation shall be payable half-monthly during the disablement or during a period of 5 years, whichever period is shorter.

THE EMPLOYEES' STATE INSURANCE ACT, 1948

The act is a piece of social security legislation conceived as a means of extinction of the evils of the society, namely, want, disease, dirt, ignorance and indigence. The act confers benefit on employees against sickness, maternity and other disabilities. These benefits are secured by financial contributions to the scheme both by employers and employees.

Who is an insurable workman?

Every employee of a factory or establishment to which the act applies is an insurable person. Sec.38 states that subject to the provisions of the act, all employees in factories or establishments to which the Act applies shall be insured in the manner provided by the act.

Administration of the Scheme (chapter II, sec.3 to 25):

The Employees State insurance scheme is being administered by the Employees State Insurance Corporation (E.S.I. Corp.) which has been set up by the Central Government under the Act (sec.3). A standing committee has been constituted from among the members of the E.S.I. Corporation to act as an executive body for the administration of the scheme under the general superintendence and control of the E.S.I. Corporation. A medical Benefit council has been set up to advise the E.S.I. Corporation on medical questions. Further the E.S.I. Corporation may appoint Inspectors for the purpose of the Act. (sec. 45).



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Finance and Audit (chapter III, sec.26 to 37):

The act provides for the creation of a Fund called the Employees' state Insurance Fund (E.S.I. Fund) for (1). Payment of benefits to the insured persons,

(2). Meeting cost of administration, and

(3). Making provisions for other authorized purposes.

The E.S.I. Fund is mainly derived from contributions from employees and employers. All such contributions and all other moneys received on behalf of the E.S.I. Corporation shall be paid into the E.S.I. Fund. The E.S.I. fund shall be held and administered by the E.S.I Corporation for the purpose of the Act.

Audit:

The accounts of the E.S.I. Corporation shall be audited annually by the comptroller and Auditor-General of India.

Contributions (chapter IV, sec. 38 to 45-B):

Subject to the provisions of the Act, all the employees in factories and establishments to which the act applies shall be insured (sec.38). The scheme of Employees state insurance is contributory. As such both the employers and employees have to pay their contributions in accordance with the provisions of the Act. The contributions payable by an employee is known as employee's contribution and the contribution payable by an employer is known as employer's contribution.

Rate of contribution:

Prior to the amendment of the Act in 1984, the employees were divided into 9 groups and their contribution varied according to wages and the employer's contribution was exactly double the employees' contribution. The Amendment act of 1984 delinked the employer's contribution from the employee's contribution.

Method of Calculation:

Rule 51 lays down the method of calculation of the employees' and the employers' contribution. According to it the amount of contribution for a wage-period shall be paid at a fixed percentage of wages.

(a). employer's contribution, a sum equal to 5 percent of the total wage bill of all employees rounded to the next higher multiple of 5 paise.

(b). employee's contribution, a sum equal to 2.25 percent of his wages rounded to the next higher multiple of 5 paise.



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Benefits (chapter V, sec. 46 to 73):

The Act provides for 6 types of benefits to which the insured persons, their dependents or certain other persons are entitled. These benefits are as follows:

1. Sickness benefit.
2. Maternity benefit.
3. Disablement benefit.
4. Dependants benefit.
5. Medical benefit.
6. Funeral expenses.
- 7.

Adjudication of Disputes and Claims (chapter VI, sec. 74 to 83):

Secs. 74 and 75 of the Act lay down that where a dispute arises under the provisions of the act, the matter in the dispute shall be decided by the Employees' Insurance court constituted under sec.74 and not by a civil court. Sec. 75 lays down the matters which shall be decided by this court.

Penalties (chapter VII, sec. 84 to 86):

Secs. 84 to 86 provide for penalties for certain offences. These penalties were substantially increased by the Employees' state Insurance (amendment) Act, 1975, which also introduced three new sections, i.e., secs.85-A, 85-B and 85-C. The Amendment Act, 1989 has made these penal provisions more stringent.

- Punishment for false statement (sec.84)
- Punishment for failure to pay contributions, etc. (sec.85)
- Enhanced punishment after previous conviction (sec. 85-A)
- Power to recover damages (sec.85 –B)
- Prosecution (sec. 86)
- Offences by companies (sec. 86 – A)

Miscellaneous (chapter VIII, sec.87 to 100):

Exemptions

Secs. 87 to 91 –A of the Act provide for the following exemptions:

- exemption of a factory or establishment or class of factories or establishments (sec.87)
- exemption of persons or class of persons (sec.88)
- E.S.I. Corporation to make representation (sec.89)
- Exemption of factories or establishments belonging to government or any local authority (sec. 90)
- Exemption from one or more provisions of the Act (sec.91)
- Exemptions to be either prospective or retrospective (sec. 91-A)



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The Amendment Act 1989 has inserted the following two new sections:

- Misuse of benefits (sec.91-B)
- Writing off of losses (sec.91 – C)
- Power of central government to give directions (sec.92)
- Liability in case of transfer of establishment (sec.93-A)
- Delegation of powers (sec.94-A)
- Power of central government to make rules (sec.95)
- Power of state government to make rules(sec.96)
- Power of E.S.I. Corporation to make regulations (sec.97)
- Medical care for the families of insured persons (sec.99)
- Power to remove difficulties (sec.99-A)

THE PAYMENT OF GRATUITY ACT, 1972

Gratuity is a kind of retirement benefit, like provident fund or pension. It is a payment which is intended to help an employee after his retirement whether the retirement is the result of the rules of superannuation or of some physical disability. The general principle underlying gratuity schemes is that by faithful service over a long period the employee is entitled to claim a certain amount as retirement benefit. Thus it is earned by an employee as a reward for long and meritorious service.

Payment and Forfeiture of Gratuity and exemption (sec. 4 and5):

Payment of gratuity (sec.4):

Sec. 4 deals with circumstances in which gratuity becomes payable to an employee and the cases when gratuity may be forfeited. The various provisions of sec.4 are discussed below.

1. **Gratuity payable on termination of employment:** gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than

(a). on his superannuation, or

(b). on his retirement or resignation, or

(c). on his death or disablement due to accident or disease

2. **Rate of gratuity:** For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned.

3. **Maximum gratuity:** The amount of gratuity payable to an employee shall not exceed Rs.3,50,000 (The Amendment Act of 1998).

4. **Forfeiture of gratuity:** The gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damages or loss so caused.



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Compulsory Insurance and Protection of Gratuity (sec.4-A and13):

Compulsory Insurance (sec.4 – A):

According to sec.4-A every employer shall obtain an insurance for his liability for payment towards the gratuity under the Act from the life insurance corporation or any other prescribed insurer with effect from such date as may be notified by the appropriate government in this behalf.

Protection of gratuity (sec. 13):

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under sec.5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Determination and Recovery of Gratuity (sec.7 and8):

Determination of the amount of gratuity (sec.7)

Application for Gratuity: An employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall send an application to the employer ordinarily within 30 days from the date the gratuity became payable for payment of such gratuity.

Determination of gratuity: As soon as gratuity becomes payable the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable.

Payment of gratuity: The employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable.

Payment of Interest: This is a new provision made by the Amendment Act of 1987. If the amount of gratuity payable by the employer is not paid within a period of 30 days, the employer shall pay simple interest at such rate, not exceeding the rate notified by the central government from time to time.

Dispute as to gratuity: If there is any dispute-

- As to the amount of gratuity payable to an employee under the Act,
- As to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or
- As to the person entitled to receive the gratuity.

The employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity [sec.7 (4) (a)]

Where there is a dispute with regard to any matter or matters specified, the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute [sec.7(4) (b)].

Power of the controlling authority: The controlling authority for the purpose of conducting an inquiry as to the amount of gratuity payable to an employee or as to the admissibility of any claim of or in relation to an employee for payment of gratuity, or as to the person entitled to receive the

gratuity, shall have the same powers as are vested in a court.

Appeal: Any person aggrieved by an order of the controlling authority may, within 60 days from the date of the receipt of the order, prefer an appeal to the appropriate government or such other authority as may be specified by the appropriate government in this behalf.



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Recovery of gratuity (sec.8):

If the amount of gratuity payable under the Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the latter shall make an application to the controlling authority.

Inspectors (sec.7-A and 7-B):

The Amendment Act, 1984 has inserted two new sections, i.e., sec. 7-A and Sec. 7-B dealing with the appointment of Inspectors for the purpose of the Act and their powers.

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

The scheme of provident funds, as a social security measure, are meant to induce employees to save a portion from their present earnings for a rainy day.

The object of the employees provident funds and miscellaneous provisions Act, 1952 is to provide for the institution of provident funds and family pension and deposit linked insurance schemes for employees in factories and other establishments.

(I). EMPLOYEES PROVIDENT FUND SCHEME (1952):

Sec. 5 empowers the central government to frame, by notification in the Official Gazette, a scheme to be called the Employees' Provident Fund Scheme, for the establishment of provident funds under the act for employees or any class of employees.

Establishment of Fund: As soon as may be after the framing of employees Provident Fund scheme, there shall be established employees provident fund in accordance with the provisions of the Act and the Employees provident Fund scheme [sec.5(1)]. The fund shall vest in and be administered by the central Board constituted under sec.5-A[sec.5(1-A)].

Contributions (sec.6): The principal duty is laid upon the employer to put the employees provident fund and family pension schemes into operation and to make contributions of both their and employees share to the funds and to deduct from the wages of the employees their share.

Statutory rate of contribution: The employer's contribution to the Employees Provident Fund shall be 10 percent of the basic wages, dearness allowance and retaining allowance, for the time being payable to each of the employees.

(II). EMPLOYEES PENSION SCHEME AND FUND (1995):

By the labour provident fund laws (Amendment) Act, 1972, Provision was made for the creation of an Employees' Family Pension Fund and Family Pension scheme. By the Employees' Provident Funds and Miscellaneous Provisions (Amendment) ordinance, 1995, the family pension scheme has been replaced by pension scheme.



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Framing of Employees pension scheme:

Sec. 6-A of the Act empowers the Central Government to frame a scheme, by notification in the official Gazette, to be called the employees pension scheme for the purpose of providing pension and life assurance benefits to the employees of any establishment to which this act applies [sec.6-A(1)]

Establishment of Employees' Pension Fund:

Soon after the framing of employees pension scheme, a pension fund was established. The contributions amount are paid from time to time into the pension fund in respect of every employee covered by the family pension scheme.

(III). EMPLOYEES DEPOSIT LINKED INSURANCE SCHEME AND FUND (1976):

The employees' Deposit linked Insurance scheme (called Insurance scheme) was introduced by the Amendment Act of 1976.

Framing of Employees' Deposit linked Insurance Scheme:

According to new Sec.6-C (introduced by the Amendment Act of 1976), the central Government may, by notification in the official Gazette, frame a scheme to be called the employees' Deposit linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishment to which this act applies [sec.6-C(1)].

Establishment of Employees' Deposit linked Insurance Fund:

Soon after the framing of the employees Deposit linked Insurance Scheme, there was established an Employees' Deposit-linked Insurance Fund (Known as Insurance Fund).

CLARIFICATION PERTAINING TO CONTRIBUTIONS

After revision in wage ceiling from Rs.5,000 to Rs.6,500 per month, the Government will continue to contribute 1.16 per cent up to the actual wage or maximum @ Rs.6,500 per month towards Employees' Pension Scheme. The employer's share in the Pension scheme will be Rs.541 w.e.f. 1-6-2001.

Under Employees' Deposit linked Insurance Scheme, the contributions @ 0.50 per cent is required to be paid up to a maximum limit of Rs.6,500. The employer will pay administrative charges @0.01 per cent on a maximum limit of Rs.6,500.



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ADMINISTRATION OF THE SCHEMES:

Central Board (sec. 5-A): The central Government may, by notification in the official Gazette, constitute a Board of Trustees called the Central Board for administration the Employees Provident Fund, Pension fund and employees deposit linked Insurance fund established under the schemes. The board shall consist of the following persons as members, namely:

- a). a Chairman and Vice-Chairman appointed by the Central Government

Executive Committee: (sec.5-AA as introduced by the Amendment Act of 1988) to assist the central Board of Trustees in the discharge of its functions, the Amendment Act of 1988 has made a provision for the setting up of an Executive Committee by introducing new sec.5-AA to the Act.

State Board: (sec.5-B). The Central Government is empowered to constitute for any state a Board of trustees called the state board in consultation with that state government, by notification in the official Gazette.

Appointment of Officers:

- Appointment of Central Provident Fund Commissioner
- Appointment of a Financial Advisor and Chief Accounts Officer.



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MATERNITY BENEFITS ACT 1961

The Maternity Benefit Act, aims to regulate of employment of women employees in certain establishments for certain periods before and after child birth and provides for maternity and certain other benefits.

The Act extends to the whole of India and is applicable to:

1. Every factory, mine or plantation (including those belonging to Government) and
2. An establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees, and
3. To every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months.

The State Government may extend the Act to any other establishment or class or establishments; industrial, commercial, agricultural or otherwise.

However, the Act **does not apply** to any such **factory/other establishment** to which the provisions of the **Employees' State Insurance Act are applicable** for the time being.

But, where the factory/establishment is governed under the Employees' State Insurance Act, and the woman employee is not qualified to claim maternity benefit under section 50 of that Act, because her wages exceed Rs. 3,000 p.m. (or the amount so specified u/s 2(9) of the ESI Act), or for any other reason, then such woman employee is entitled to claim maternity benefit under this Act till she becomes qualified to claim maternity benefit under the E.S.I. Act.

WHAT IS MATERNITY BENEFIT?

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of the average daily wage for the period of her actual absence.

PERIOD FOR WHICH BENEFIT ALLOWED

The maximum period for which any woman shall be entitled to maternity benefit shall be 12 weeks in all whether taken before or after childbirth. However she cannot take more than six weeks before her expected delivery.

Prior to the amendment of 1989, a woman employee could not avail of the six weeks' leave preceding the date of her delivery; she was entitled to only six weeks leave following the day of her delivery.



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However, by the above amendment, the position has changed. Now, in case a woman employee does not avail of six weeks' leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, i.e. preceding and following the day of her delivery does not exceed 12 weeks.

WHO IS ENTITLED TO MATERNITY BENEFIT

1. Every woman employee, whether employed directly or through a contractor, who has actually worked in the establishment for a period of at least 80 days during the 12 months immediately preceding the date of her expected delivery, is entitled to receive maternity benefit.
2. The qualifying period of 80 days shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration.
3. For calculating the number of days on which a woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages shall also be counted.
4. There is neither a wage ceiling for coverage under the Act nor there is any restriction as regards the type of work a woman is engaged in.

5. Notice For Maternity Benefit

A woman employee entitled to maternity benefit may give a notice in writing (in the prescribed form) to her employer, stating as follows:

1. that her maternity benefit may be paid to her or to her nominee (to be specified in the notice);
2. that she will not work in any establishment during the period for which she receives maternity benefit; and
3. that she will be absent from work from such date (to be specified by her), which shall not be earlier than 6 weeks before the date of her expected delivery.

The notice may be given during the pregnancy or as soon as possible, after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from work after the day of her delivery. The failure to give notice, however, does not disentitle the woman to the benefit of the Act.

RESTRICTION ON EMPLOYMENT OF PREGNANT WOMEN

1. No employer should knowingly employ a woman during the period of 6 weeks immediately following the day of her delivery or miscarriage or medical termination of pregnancy. Besides, no woman should work in any establishment during the said period of 6 weeks.



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- Further, the employer should not require a pregnant woman employee to do an arduous work involving long hours of standing or any work which is likely to interfere with her pregnancy or cause miscarriage or adversely affect her health, during the period of 1 month preceding the period of 6 weeks before the date of her expected delivery, and any period during the said period of 6 weeks for which she does not avail of the leave.

DISCHARGE OR DISMISSAL TO BE VOID

When a pregnant woman absents herself from work in accordance with the provisions of this Act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that the notice will expire during such absence or to vary to her disadvantage any of the conditions of her services.

Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the Act except if it was on some other ground.

OTHER BENEFITS

LEAVE FOR MISCARRIAGE AND ILLNESS

In case of miscarriage or medical termination of pregnancy, a woman shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage or medical termination of pregnancy.

LEAVE FOR TUBECTOMY OPERATION

In case of tubectomy operation, a woman shall, on production of prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a period of two weeks immediately following the day of operation.

LEAVE FOR ILLNESS

Leave for a maximum period of one month with wages at the rate of maternity benefit are allowable in case of illness arising out of pregnancy, delivery, premature birth of child, miscarriage or medical termination of pregnancy or tubectomy operation.

MEDICAL BONUS

Every woman entitled to maternity benefit shall also be allowed a medical bonus of Rs. 250, if no pre-natal confinement and post-natal care is provided for by the employer free of charge



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DUTIES OF EMPLOYERS

Important obligations of employers under the Act are:

1. To pay maternity benefit and/or medical bonus and allow maternity leave and nursing breaks to the woman employees, in accordance with the provisions of the Act.
2. Not to engage pregnant women in contravention of section 4 and not to dismiss or discharge a pregnant woman employee during the period of maternity leave.

RIGHT OF EMPLOYEES

Important rights of an employee are:

1. To make a complaint to the Inspector and claim the amount of maternity benefit improperly withheld by the employer.
2. To appeal against an order of the employer depriving her of the maternity benefit or medical bonus or dismissing or discharging her from service, to the competent authority, within 60 days of the service of such order.

PENALTIES FOR CONTRAVENTION OF ACT BY EMPLOYER

For failure to pay maternity benefit as provided under the Act, the penalty is imprisonment upto one year and fine upto Rs. 5000. The minimum being 3 months and Rs. 2000 respectively.

For dismissal or discharge of a woman as provided for under the Act, the penalty is imprisonment upto one year and fine upto Rs. 5000. The minimum being 3 months and Rs.2000 respectively.

Disentitle the woman to the benefit of the Act

THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

The Object of the Contract Labour Regulation and Abolition) Act, 1970 is to prevent exploitation of contract labour and also to introduce better conditions of work. A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a Contractor. Contract workmen are indirect employees. Contract Labour differs from Direct Labour in terms of employment relationship with the establishment and method of wage payment. Contract Labour, by and large is not borne on pay roll nor is paid directly. The Contract Workmen are hired, supervised and remunerated by the Contractor, who in turn, is remunerated by the Establishment hiring the services of the Contractor.

REGISTRATION AND LICENSING

The Act applies to the Principal Employer of an Establishment and the Contractor where in 20 or more workmen are employed or were employed even for one day during preceding 12 months as Contract Labour. For the purpose of calculating the number, contract labour employed for different purposes through different contractor has to be taken into consideration. This Act does not apply to the Establishments where work performed is of intermittent or seasonal nature. If a Principal Employer or the Contractor falls within the vicinity of this Act then, such Principal Employer and the Contractor have to apply for Registration of the Establishment and License respectively. The contractor The Act also provides for Temporary Registration in case the Contract Labour is hired for a period not more than 15 days. Any change occurring in the particulars specified in the Registration or Licensing Certificate needs to be informed to the concerned Registering Officer within 30 days of such change. From combined reading of Section 7 and Rules 17 & 18 of the Contract Labour (Regulation and Abolition) Central Rules, 1971, it appears that the Principal Employer has to apply for registration in respect of each establishment. Other important point to note is that a License issued for One Contract cannot be used for entirely different Contract work even though there is no change in the Establishment.

PENAL PROVISIONS

Section 9 of the Act provides that the Principal Employer, to whom this Act is applicable, fails to get registered under the Act, then such Principal Employer cannot employ contract labour. It also appears that if the Establishment is not registered or if the Contractor is not licensed then the contract labour shall be deemed to be the direct workmen and the Principal Employer or the Establishment shall be liable for the wages, services and facilities of the contract labour etc. For contravention of the provisions of the Act or any rules made thereunder, the punishment is imprisonment for a maximum term upto 3 months and a fine upto a maximum of Rs.1000/-.

RESPONSIBILITIES

The Act enjoins Joint and Several responsibility on the Principal Employer and the Contractor. The Principal Employer should ensure that the Contractor does the following:

- a) Pays the wages as determined by the Government, if any, or;
- b) Pays the wages as may be fixed by the Commissioner of Labour.
- c) In their absence pays fair wages to contract labourer.
- d) Provides the following facilities:

- i. Canteen (if employing 100 or more workmen in one place) and if the work is likely to last for 6 months or more.
- ii. Rest rooms where the workmen are required to halt at night and the work is likely to last for 3 months or more.
- iii. Requisite number of latrines and urinals - separate for men and women.
- iv. Drinking water.
- v. Washing.
- vi. First Aid.
- vii. Crche
- e) Maintains various registers and records, displays notices, abstracts of the Acts, Rules etc.
- f) Issues employment card to his workmen, etc.

CHECKLIST FOR PRINCIPAL EMPLOYER

1. Registration of the Establishment.
2. Display of the following notices rate of wages, hours of work, wage period, date of payment of wages, date of payment of unpaid wages and name and address of the inspector having jurisdiction.
3. Maintenance and Preservation of Register of Contractor.
4. Filing of Return of Commencement and Completion of the Contract.
5. Filing of Annual Return.
6. Supervising the responsibilities of Contractor to avoid enjoining of the liabilities.
7. Ensure provision that facilities of Canteen, Drinking Water, Washing, Rest Room, Latrines and Urinals, First Aid, Crche are provided by the Contractor.

Questions:

1. What is a factory?
2. Explain the provisions relating to 1. Health 2. Safety 3.welfare
3. What are the provisions for employment of young person's?
4. What are the provisions for employment of women?
5. What is Minimum wages?
6. Explain the objectives of Minimum wages Act 1948?
7. Explain the procedure for fixing and revising minimum wages?
8. What is an Industrial dispute?
9. Define the term 1. Lay-off 2. Retrenchment 3 Lock-out 4.Strike 5.Unfair labour practice.
10. Explain the procedure for settlement of Industrial Dispute?
11. Define Bonus.
12. Explain the procedure for calculating the amount of bonus payable to employees.
13. Explain the concept "set on" and "setoff"
14. Explain the eligibility and disqualification for getting bonus?
15. What is disbursement?

16. What are the rules regarding workman compensation?
17. Who is an insurable workman?
18. Explain the types of benefits to the insured person as per ESI Act 1948?
19. What is gratuity?
20. Explain the provisions for determination and recovery of gratuity?

UNIT – V

Consumer Protection Act, Competition Act 2002, Cyber Crimes, IT Act 2002. Intellectual Property Rights: Types of Intellectual Property – Trademarks Act 1999 – The Copyright Act 1957 – International Copyright Order, 1999 – Design Act, 2000.

CONSUMER PROTECTION ACT, 1986

The Consumer Protection Act was passed by the Parliament in 1986 and it came into force from 1987. Its purposes to protect consumers against defective goods, unsatisfactory services, unfair trade practices, etc. The Act provides for three-tier machinery consisting of District Forum, State Commission and National Commission. It also provides for the formation protection councils in every state.

The consumers can file their complaints at the appropriate forum for quick redressal. The complaint may relate to defective refrigerator or TV set, non-functional telephone, lack of due cares in medical treatment and so on. Any service or product given free of charge is not covered by the Act.

Definitions of Important Terms

Before studying the provisions of the CPA, it is necessary to understand the terms used in the Act. Let us understand some of the more important definitions.

Complainant means:

1. A consumer; or
2. Any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or

3. The Central Government or any State Government, who or which makes a complaint; or one or more consumers where there are numerous consumers having the same interest.

Complaint means any allegation in writing made by a complainant that:

1. An unfair trade practice or a restricted trade practice has been adopted by any trader.
2. The goods bought by him or agreed to be bought by him suffer from one more defects.
3. The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect.
4. The trader has charged for the goods mentioned in the complaint a price excess. of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force, requiring traders to display information in regard to the contents, manner and effect of use of such goods; with a view to obtaining any relief provided by law under the CPA.

Consumer means any person who:

1. 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 (for example hire purchase or installment sales) and includes any other user of such goods when such use is made with the approval of the buyer, but does not include a person who obtains such goods for resale or for any commercial purpose; or
2. 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 when such services are availed of with the approval of the first mentioned person

For the purposes of this definition "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment.

Goods mean goods as defined in the Sale of Goods Act, 1930. Under that act, goods means every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Service is defined to mean service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information but does not include the rendering of any service free of charge or under a contract of personal service.

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

Restrictive Trade Practice means any trade practice which requires a consumer to buy, hire, or avail of any good or as the case may be, services as a condition precedent for buying, hiring or availing of any other goods or services.

Unfair Trade Practice means unfair trade practice as defined under the Monopolies and Restrictive Trade Practices Act. The MRTP act has defined certain practices to be unfair trade practices.

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trade in any manner whatsoever in relation to any goods.

Deficiency means any fault, imperfection or shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. A consumer is a user of goods and services. Any person paying for goods and services, which he uses, is entitled to expect that the goods and services be of a nature and quality promised to him by the seller.

The earlier principle of "Caveat Emptor" or "let the buyer beware" which was prevalent has given way to the principle of "Consumer is King". The origins of this principle lie in the fact that in today's mass production economy where there is little contact between the producer and consumer, often sellers make exaggerated claims and advertisements, which they do not intend to fulfill. This leaves the consumer in a difficult position with very few avenues for redressal. The onset on intense competition also made producers aware of the benefits of customer satisfaction and hence by and large, the principle of "consumer is king" is now accepted.

OBJECTS OF THE CONSUMER PROTECTION ACT, 1986

The preamble to the Act states that the Act is legislated 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 consumer's disputes and for matters connected therewith. The CPA extends to the whole of India except the State of Jammu and Kashmir and applies to all goods and services unless otherwise notified by the Central Government.

The basic rights of consumers as per the Consumer Protection Act (CPA) are:

1. Right to safety.
 2. Right to be informed.
 3. Right to choose.
 4. Right to representation (or to be heard).
 5. Right to seek redressal.
 6. Right to consumer education.
1. **Right to Safety :**
It is the consumer right to be protected against goods and services which is hazardous to health or life.
 2. **Right to be Informed:**

The consumer has the right to be informed about the quality, quantity, purity, standard and price of goods he intends to purchase. Therefore, the manufacturer must mention complete information about the product, its ingredients, date of manufacture, price, precaution of use, etc. on the label and package of the product.

3. Right to Choose:

The consumer should be assured of freedom to choose from a variety of products at competitive prices. Every consumer wants to buy a product on his free will. There should be free competition in the market so that the consumer may make the right choice in satisfying his needs.

4. Right to Representation (or to be Heard):

The consumer has right to register dissatisfaction with any product and get his complaint heard. Most of the reputed firms have set up consumer service cells to listen to the consumer's complaint and take appropriate steps to redress their grievances.

5. Right to Seek Redressal:

It is the right to seek redressal against any defect in goods or unfair trader suffered by the consumer. If the quality and performance of a product falls short of seller's claims, the consumer has a right to certain remedies. The Consumer Protection Act requires that the product must be repaired, replaced or taken back by the seller as provided under the contract between the buyer and the seller.

6. Right to Consumer Education:

It means right of acquiring knowledge and being a well-informed consumer throughout his life. He should also be made aware of his rights and the remedies available through publicity in the mass media.

CONSUMER RESPONSIBILITIES

- (i) **To provide adequate information to the seller:** The consumer has the responsibility to provide adequate information about his needs and expectation to the sellers.
- (ii) **To exercise caution in purchasing:** The consumer must try to get full information on the quality, design, utility, quantity, price, etc. of the product before purchasing it.
- (iii) **To insist on cash memo or receipt:** The consumer must get a cash memo or receipt as a proof of purchase of goods from the seller. This would help him in making a complaint to the seller in case of any defect in the goods.
- (iv) **To file complaint against genuine grievance:** The consumer must file a complaint with the seller or manufacturer about any defects or shortcoming in the products and services.
- (v) **To be quality conscious:** The consumer should never compromise on the quality of goods. While making purchases, the consumers must look for standard quality certification marks such as ISI, Agmark, Woolmark, FPO, etc. For example, electric iron must carry ISI mark.

REDRESSAL MACHINERY UNDER THE ACT

Consumer Protection Councils

The interests of consumers are enforced through various authorities set up under the CPA. The CPA provides for the setting up of the Central Consumer Protection Council, the State Consumer Protection Council and the District Forum.

Central Consumer Protection Council

The Central Government has set up the Central Consumer Protection Council, which consists of the following members:

- (a) The Minister in charge of Consumer Affairs in the Central Government who is its Chairman, and
- (b) Other official and non-official members representing varied interests. The Central council consists of 150 members and its term is 3 years. The Council meets as and when necessary but at least one meeting is held in a year.

State Consumer Protection Council

The State Council consists of:

- (a) The Minister in charge of Consumer Affairs in the State Government who is its Chairman, and
- (b) Other official and non-official members representing varied interests. The State Council meets as and when necessary but not less than two meetings must be held every year.

REDRESSAL MACHINERY UNDER THE ACT

The CPA provides for a 3-tier approach in resolving consumer disputes. The District Forum has jurisdiction to entertain complaints where the value of goods / services complained against and the compensation claimed is less than Rs. 20 lakhs, the State Commission for claims exceeding Rs. 20 lakhs but not exceeding Rs. 1 crore and the National Commission for claims exceeding Rs.1 crore.

District Forum

Under the CPA, the State Government has to set up a district Forum in each district of the State. The government may establish more than one District Forum in a district if it deems fit.

Each District Forum consists of:

- (a) A person who is, or who has been, or is qualified to be, a District Judge who shall be its President
- (b) Two other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

Appointments to the State Commission shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Committee, the Secretary - Law Department of the State and the secretary in charge of Consumer Affairs

Every member of the District Forum holds office for 5 years or up to the age of 65 years, whichever is earlier and is not eligible for re-appointment. A member may resign by giving notice in writing to the State Government whereupon the vacancy will be filled up by the State Government.

The District Forum can entertain complaints where the value of goods or services and the compensation, if any, claimed is less than rupees twenty lakhs. However, in addition to jurisdiction over consumer goods services valued upto Rs.20 lakhs, the District Forum also may pass orders against

traders indulging in unfair trade practices, sale of defective goods or render deficient services provided the turnover of goods or value of services does not exceed rupees twenty lakhs.

A complaint shall be instituted in the District Forum within the local limits of whose jurisdiction-

- (a) The opposite party or the defendant actually and voluntarily resides or carries on business or has a branch office or personally works for gain at the time of institution of the complaint; or
- (b) Any one of the opposite parties (where there are more than one) actually and voluntarily resides or carries on business or has a branch office or personally works for gain, at the time of institution of the complaint provided that the other opposite party/parties acquiescence in such institution or the permission of the Forum is obtained in respect of such opposite parties; or
- (c) The cause of action arises, wholly or in part.

State Commission

The Act provides for the establishment of the State Consumer Disputes Redressal Commission by the State Government in the State by notification.

Each State Commission shall consist of:

- (a) A person who is or has been a judge of a High Court appointed by State Government (in consultation with the Chief Justice of the High Court) who shall be its President;
- (b) Two other members who shall be persons of ability, integrity, and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom must be a woman.

Every appointment made under this is made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission, Secretary -Law Department of the State and Secretary in charge of Consumer Affairs in the State.

Every member of the District Forum holds office for 5 years or upto the age of 65 years, whichever is earlier and is not eligible for re-appointment. A member may resign by giving notice in writing to the State Government whereupon the vacancy will be filled up by the State Government.

The State Commission can entertain complaints where the value of goods or services and the compensation, if any, exceeds Rs. 20 lakhs but does not exceed Rs. 1 crore.

The State Commission also has the jurisdiction to entertain appeal against the orders of any District Forum within the State

The State Commission also has the power to call for the records and appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State if it appears that such District Forum has exercised any power not vested in it by law or has failed to exercise a power rightfully vested in it by law or has acted illegally or with material irregularity.

National Commission

The Central Government provides for the establishment of the National Consumer Disputes Redressal Commission. The National Commission shall consist of:-

- (a) A person who is or has been a judge of the Supreme Court, to be appoint by the Central Government (in consultation with the Chief Justice of India) who be its President;

- (b) Four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman

Appointments shall be by the Central Government on the recommendation of a Selection Committee consisting of a Judge of the Supreme Court to be nominated by the Chief Justice of India, the Secretary in the Department of Legal Affairs and the Secretary in charge of Consumer Affairs in the Government of India.

Every member of the National Commission shall hold office for a term of five years or upto seventy years of age, whichever is earlier and shall not be eligible for reappointment.

The National Commission shall have jurisdiction:

- (a) to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one crores:
- (b) to entertain appeals against the orders of any State Commission; and
- (c) to call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

Complaints may be filed with the District Forum by:

1. The consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided
2. Any recognized consumer association, whether the consumer to whom goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided, is a member of such association or not
3. One or more consumers, where there are numerous consumers having the same interest with the permission of the District Forum, on behalf of or for the benefit of, all consumers so interested
4. The Central or the State Government. On receipt of a complaint, a copy of the complaint is to be referred to the opposite party, directing him to give his version of the case within 30 days. This period may be extended by another 15 days. If the opposite party admits the allegations contained in the complaint, the complaint will be decided on the basis of materials on the record. Where the opposite party denies or disputes the allegations or omits or fails to take any action to represent his case within the time provided,

The dispute will be settled in the following manner:

In case of dispute relating to any goods: Where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, a sample of the goods shall be obtained from the complainant, sealed and authenticated in the manner prescribed for referring to the appropriate laboratory for the purpose of any analysis or test whichever may be necessary, so as to find out whether such goods suffer from any other defect. The appropriate laboratory' would be required to report its finding to the referring authority, i.e. the District Forum or the State Commission within a

period of forty- five days from the receipt of the reference or within such extended period as may be granted by these agencies.

LIMITATION PERIOD FOR FILING OF COMPLAINT:

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

POWERS OF THE REDRESSAL AGENCIES:

The District Forum, State Commission and the National Commission are vested with the powers of a civil court under the Code of Civil Procedure while trying a suit in respect of the following matters:-

1. The summoning and enforcing attendance of any defendant or witness examining the witness on oath;
2. The discovery and production of any document or other material producible as evidence;
3. The reception of evidence on affidavits;
4. The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
5. Issuing of any commission for the examination of any witness; and
6. Any other matter which may be prescribed.

Under the Consumer Protection Rules, 1987, the District Forum, Commission and the National Commission have the power to require any person: -

- (i) to produce before, and allow to be examined by an officer of any authorities, such books of accounts, documents or commodities as may be required and to keep such book, documents etc. under its custody for the purposes of the Act;
- (ii) to furnish such information which may be required for the purposes to any officer so specified.

THEY HAVE THE POWER TO:

- (i) To pass written orders authorizing any officer to exercise power of entry and search of any premises where these books, papers, commodities, or documents are kept if there is any ground to believe that these may be destroyed, altered, falsified or secreted. Such authorized officer may also seize books, papers, documents or commodities if they are required for the purposes of the Act, provided the seizure is communicated to the District Forum / State Commission / National commission within 72 hours. On examination of such documents or commodities, the agency concerned may order the retention thereof or may return it to the party concerned.
- (ii) to issue remedial orders to the opposite party.
- (iii) to dismiss frivolous and vexatious complaints and to order the complainant to make payment of costs, not exceeding Rs. 10,000 to the opposite party

REMEDIES GRANTED UNDER THE ACT :

The District Forum / State Commission / National Commission may pass one or more of the following orders to grant relief to the aggrieved consumer: -

1. To remove the defects pointed out by the appropriate laboratory from goods in question;
2. To replace the goods with new goods of similar description, which shall be free from any defect;
3. To return to the complainant the price, or, as the case may be, the charges paid by the complainant;
4. To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to negligence of the opposite party;
5. To remove the defects or deficiencies in the services in question;
6. To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
7. Not to offer the hazardous goods for sale;
8. To withdraw the hazardous goods from being offered for sale;
9. To provide for adequate costs to parties.

APPEALS :

Any person aggrieved by an order made by the Forum may prefer an appeal to the State Commission in the prescribed form and manner. Similarly, any person aggrieved by any original order of the State Commission may prefer an appeal to the National Commission in the prescribed form and manner. Any person aggrieved by any original order of the National Commission may prefer an appeal to the Supreme Court.

All such appeals are to be made within thirty days from the date of the order provided that the concerned Appellate authority may entertain an appeal after the said period of thirty days if it is satisfied that there was sufficient cause for not filling it within that period. The period of 30 days is to be computed from the date of receipt of the order by the appellant.

Where no appeal has been preferred against any of the orders of the authorities, such orders would be final. The District Forum, State Commission or National Commission may enforce respective orders as if it was a decree or order made by a Court and in the event of their inability to execute the same; they may send the order to the Court for execution by it as if it were a Court decree or order.

PENALTIES :

Failure or omission by a trader or other person against whom a complaint is made or the complainant to comply with any order of the State Commission or the National Commission shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to 3 years, or with fine of not less than Rs. 2,000 but which may to Rs. 10000 or with both.

However, if it is satisfied that the circumstances of any case so requires, then the District Forum or the State Commission or the National Commission may impose a lower fine or a shorter term of imprisonment.

COMPETITION ACT, 2002 :

Competition Law for India was triggered by *Articles 38 and 39* of the Constitution of India. These Articles are a part of the *Directive Principles of State Policy*. Based on the Directive Principles, the first Indian competition law was enacted in 1969 and was labeled the MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 (MRTP Act).

Articles 38 and 39 of the Constitution of India mandate, inter alia, that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice – social, economic and political – shall inform all the institutions of the national life, and the State shall, in particular, direct its policy towards securing

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

One of the *main goals* of the MRTP Act was to *encourage fair play* and *fair deal* in the market besides promoting healthy competition. They seek to afford protection and support consuming public *by reducing* Monopolistic, Restrictive and Unfair Trade Practices from the market

Globalization has the fundamental attributes of relying significantly in the market forces, ensuring competition and keeping market functioning efficiently.

In the *Pre-1991* Reforms period, India's planned strategic and economic development stressed the broad policy objectives of

1. The development of an industrial base with a view to achieving self reliance and
2. The promotion of social justice

The MRTP Act has become *obsolete* in certain areas in the light of international economic developments relating to competition laws and hence focus was shifted from *curbing monopolies* to *promoting competition*

In October, Central government appointed high level committee under the chairmanship of Mr. Raghavan, the aim of the committee was to formulate the competition law in tune with economic reforms and international development. The committee presented its report on May 2000, The draft competition law was presented on November 2000. After certain amendments the parliament passed the new law, called competition Act 2002. The act came into force on *January 2003* The Act was amended by the Competition Amendment Act, 2007 and became fully operational from **1 June 2011**,

- The provisions relating to competition advocacy was notified *in 2003*,
- The provisions regulating anti-competitive agreements and abuse of dominance were notified with effect from **20 May 2009**
- The provisions regulating mergers and acquisitions were notified on **June 2011**

Both the Competition Commission of India (CCI) (which administers the law) and the Competition Appellate Tribunal (CAT) are operational.

The Framework of Competition Act 2002 has essentially four compartments:

1. Anti- Competitive Agreements [Section 3]
2. Abuse of Dominance [Section 4]
3. Combination Regulation [Section 5 & 6]
4. Competition Advocacy [Section 49]

The Competition Act, 2002 was enacted to fill the gaps left open by the MRTP Act — certain offending trade practices such as

1. abuse of dominance,
2. cartels,
3. bid rigging,
4. collusive agreements,
5. price fixing,
6. Predatory pricing, etc.

Salient Features of the Competition Act, 2002

Objective of the Act

- Facilitate & Foster Competition
- Establish a Commission to prevent practices having adverse effect on competition
- Promote and sustain competition in markets
- Protect the interests of consumers
- Ensure freedom of trade in the Indian markets

Duties of the Commission [Sec 18]

- Eliminate Practices that have an adverse effect on competition
- Promote & Sustain Competition
- Protect the interest of Consumers, economy and nature

Scope or Focus of the Act

1. Enquire into Anti Competitive Agreements [Section - 3]
2. Enquire Abuse of Dominant Position [Section – 4]
3. Regulation of Combination & Mergers [Section – 5 to 6]
4. Undertake Competition Advocacy [Section – 49]

Exclusion from Jurisdiction

1. Those right protected as intellectual property
2. Agreement exclusively for experts

1. ANTI-COMPETITIVE AGREEMENTS [Section 3] Any agreement for goods or services which has *appreciable adverse effect on competition* in India is *prohibited*. These kinds of agreements are known as anti-competitive agreements.

Anti competitive agreement of entered into shall be **void**

Section 3 of the Act states that no enterprise shall enter into:

1. Any agreement With respect to **production, supply distribution, storage, acquisition or control of goods/provision of services** which is anti-competitive is prohibited and void.
2. Such agreements must cause or be likely to cause appreciable adverse effect on competition (AAEC) in a relevant market in India.

The relevant market may be a geographical or a products market.

There are Two kinds of agreements

1. Horizontal agreements (□)
2. Vertical agreements. (|)

Horizontal agreements (see Table 1) They are Agreements Between Parties in the same line of production. Example - Agreement between Manufactures, Agreement between Distributors. Horizontal agreements are presumed to have AAEC if they:

1. Directly or indirectly determine purchase or sale prices
2. Limit or control output, technical development, services etc.
3. Share or divide markets
4. Indulge in rigging or collusive bidding

Cartels prohibited (Use the same definition Cartel and Horizontal Agreement)+ Add

1. Agree to limit,
2. Control or attempt to control production, distribution, sale or price

Types of Horizontal Agreements

1) Price Fixing Agreement a) Agreement to raise or stabilize price

b) Establish uniform discount or eliminate discount

c) Set uniform price as Starting point for negotiation

d) Discontinue free service

e) Impose Mandatorily surcharge

f) Restrict price advertising

2) Facilitating practices

This include agreements that make it easier for competitors to collectively exercise market power, and to avoid competing with each other Eg- Agreements to share information Sellers agrees either to meet

any price, The buyer is able to obtain from another supplier or release the buyer to purchase from another seller

3) Quiet Life Agreements

They are Agreements that restrict competition by free competitors from some significant aspect of competition

Eg- Agreement not to advertise Agreements to limit business hours

4) Group Boycotts

These are agreements among competitors not to deal with other competitors, suppliers distributors or retailers

5) Trade Associations

Vertical Agreements

Vertical agreement are those agreements between Non-Competition undertaking operating at different levels of manufacturing and distribution process

between producers and whole- sellers or between producers, whole sellers and retailers

They are prohibited if such agreements cause or are likely to cause AAEC

Types of Vertical Agreements

1. **Tie-in arrangement** Agreement between manufacturer and distributor not to sell manufactures product at or above a price floor at or below a price ceiling (e.g. requiring a purchaser of goods to purchase some other goods as condition of such purchase)
2. **Exclusive supply arrangement** Agreement restricting the purchase in course of trade from acquiring the goods of trade from acquiring the goods of any other seller (e.g. restricting a purchaser in course of his trade from dealing in any goods other than those of the seller)
3. **Exclusive distribution arrangement** Agreement to limit or restrict the output or supply of any goods to ant market or area (e.g. limiting/restricting supply of goods or allocate any area or market for sale of goods)
4. **Refusal to deal** (e.g. restricting by any method any person/classes of persons to whom goods are sold)
5. **Resale price maintenance** (e.g. selling goods with condition on resale at stipulated prices)

2. ABUSE OF DOMINANT POSITION (Section 4)

It means a position of *strength*, enjoyed by an enterprise, in the *relevant market* in India, which enables it to:

- *Operate independently* of competitive forces prevailing in the relevant market or,
- *affects its competitors or consumers* of the relevant market in its favor

Meaning of Relevant Market sec 2 (r)

In order to ascertain whether an enterprise has a dominant position it is to be determined on what the relevant market is. There are two kinds of relevant market

1. **Relevant product Market** sec 2 (t) On the demand side, Relevant product market include all the close Substitutes to which the consumer will shift to, if the price of the product increases On Supply side, Relevant product market include all the producers who can produce substitutes with the existing production facility

2. **Relevant Geographical Market** sec 2 (s) The geographic dimension within which competition can take place in the relevant market can be local ,National, International or global depending upon the product , Here pattern of consumption , Transportation are important factors

Enterprise or group *shall not abuse* its dominant position. Agreement by enterprise or group abusing its dominant position is *prohibited*

An Enterprise or group is said to have abused its dominant position if it *directly or indirectly*:

- Imposes *unfair condition or price*
- *Predatory pricing*
- Limit or restrict : • *Production* of goods or provision of services or market
- *Technical or scientific development* relating to goods or services
- Creating *barriers to entry*
- Denying of market access
- Uses its dominant position in one market to *gain advantage in other market*

Where there is abuse of dominant position then the CCI will issue the following orders Under Section 27 And Section 28

Criteria Considered by CCI while determining Abuse of Dominant position

1. Market Share
2. Size & importance of competitors
3. Economic Power of enterprise including Commercial advantage
4. Vertical integration of the enterprise

5. Dependence of consumers
6. Monopoly enjoyed by means of being a Government company or PSU
7. Counter veiling buying power
8. Market Structure
9. Social Obligation & Social Cost
10. Relative Advantage by way of contribution to economic development
11. Any other relevant factor considered by CCI

3. REGULATION OF COMBINATION (Section 5 to 6)

What is Combination

The Acquisition of one or more enterprise by way of *merger or amalgamation or control over* enterprise is regarded as combination

A Combination is an *acquisition of one or more enterprises* by one or more persons, *merger or amalgamation* of enterprises, if it meets the prescribed *monetary thresholds* and involves:

- Any acquisition of control, shares, voting rights or assets of any enterprise
- Any acquisition of control by a person over an enterprise, where such person already has direct/indirect control over another enterprise in a similar business
- Any merger or amalgamation of enterprises

Combinations above the defined monetary thresholds require filing and prior approval of the CCI before they can be made effective. CCI has powers to investigate combinations and modify/reject them. Separate provisions exist in case of acquisitions pursuant to loan/ investment agreements of public financial institutions, FII, banks or VC funds.

The CCI must be notified within **30 days** of the ‘**trigger event**’ of such combinations

4. COMPETITION ADVOCACY [sec 49]

- Central government may *obtain opinion* of CCI on the possible effect of the policy on competition while formulating competition policy
- On receipt of deference, commission is required to give its opinion to central Government *within 60days*
- The *role* of commission is *advisory*
- Opinion given by commission is not binding upon the central Government

The commission has also been assigned the role to take following suitable measures for: o *Promotion* of competition advocacy

o *Creating* awareness about competition

- o **Imparting** Training about competition issue

Competition Appellant Tribunal

- Central Government shall by **notification** establish competition appellant tribunal
- Any person aggrieved by the order of the commission may appeal to CAT within **60days**.
- CAT may accept the petition after 60days if it is satisfied that there was sufficient cause for not filing appeal with in specified time
- CAT may **confirm/modify/setting side** decision of commission after giving **opportunity to both parties**
- CAT shall send copy of order to parties to appeal
- CAT shall dispose the appeal **within six months**

Major changes made by the Competition (Amendment) Act, 2007

The Competition (Amendment) Act, 2007 was approved by the Parliament in September 2007 and received Presidential assent on **24 September, 2007**. The amendment brought significant changes in the then existing regulatory infrastructure established under the Competition Act. The major changes are:

1. Notification of all “**combinations**” i.e. mergers, acquisitions and amalgamations to CCI made **compulsory**.
2. CCI to be an **expert body** which will function as a **market regulator** for preventing anti competitive practices in the country and would also have advisory role and advocacy functions.
3. CCI to function as a **collegium** and its decisions would be based on **simple majority**. Omits power of CCI to award compensation to parties against proven anti competitive practices indulged in by enterprises.
4. Establishment of a **Competition Appellate Tribunal** with a **three-member quasi judicial body** to be headed by a retired or serving Judge of the Supreme Court or Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the CCI.
5. Competition Appellate Tribunal to also adjudicate upon claims of compensation and to pass orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Competition Act, 2002.
6. **Orders** of Competition **Appellate Tribunal** can be executed as a **decree of a civil court**.
7. **Appeal** against the orders of the Competition **Appellate Tribunal** to the **Supreme Court**.

8. New Powers upon *sectorial regulators* to make *suo moto reference to CCI* on competition issues in addition to the earlier provision of making a reference on a request made by any party in a dispute before it. Also, similar powers conferred upon CCI.

9. Allows continuation of the *MRTPC till two years* after the constitution of CCI for trying pending cases under the MRTP Act and to dissolve the same thereafter.

With the enforcement of *sections 3 and 4* of Competition Act, w.e.f. 20 May, 2009, there appeared *no valid reason to keep MRTPC* functional any more. More so, in terms of Section 66 of the Competition Act, MRTPC has to be dissolved within a period of two years of the constitution of the CCI and the MRTP Act repealed. The Government has now decided to remove this anomaly and *section 66 has been notified from 1 September, 2009*. Consequently, the *MRTPC will cease* to exist after a “*sun set period of two years i.e. on 31 August, 2011*”.

CYBER CRIMES:

In order to define Cyber Crime, we can say, it is a crime associated with or committed with the help of computers. To put it in simple words ‘an offence or a crime in which a computer is used can be said to be a cyber crime’.

CLASSIFICATIONS OF CYBER CRIMES

The number of Cyber Crimes committed is increasing with each passing day, and it is very difficult to find out as to what is actually a cyber crime and what is the conventional crime. However, to deal with this challenge, the most common cyber crimes can be categorized and discussed under the following heads:

- i. Cyber Crime Against Person;
- ii. Cyber Crime Against Property;
- iii. Cyber Crime Against Government;
- iv. Cyber Crime Against Society.

1. Cyber Crimes against Persons

There are certain offences which affect the personality of an individual and can be defined as:

(i) Harassment via E-Mails : It is a very common type of harassment done through letters, attachments of files & folders, i.e., via e-mails. At present, harassment is common with the increase in the usage of social networking sites, like Facebook.com, Twitter.com, etc.

(ii) Cyber-Stalking : It means expressed or implied a physical threat that creates fear through the use to computer technology such as internet , e-mail, phones, text messages, webcam, websites or videos.

(iii) Dissemination of Obscene Material : It includes Indecent exposure/ Pornography (basically child pornography), hosting of web site containing these prohibited materials. These obscene matters may cause harm to the mind of the adolescent and tend to deprave or corrupt their mind.

iv) Malware : Malware is software that takes control of any individual's computer to spread a bug to other people's devices or social networking profiles. Such software can also be used to create a 'bot net' — a net work of computers controlled remotely by hackers, known as 'herders,' — to spread spam or viruses.

(v) Defamation : It is an act of imputing any person with intent to lower down the dignity of the person by hacking his mail account and sending some mails with vulgar language to unknown persons mail account.

(vi) Hacking : It means unauthorized control/access over computer system and act of hacking completely destroys the whole data as well as computer programmes. Hackers usually hack telecommunication and mobile network.

(vii) Cracking : It is amongst the gravest cyber crimes known till date. It is a dreadful feeling to know that a stranger has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information.

(viii) E-Mail Spoofing : A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates.

(ix) SMS Spoofing : Spoofing is a blocking through spam which means the unwanted uninvited messages. Here an offender steals identity of another in the form of mobile phone number and sending SMS via internet and receiver gets the SMS from the mobile phone number of the victim. It is very serious cyber crime against any individual.

(x) Carding : It means false ATM cards, i.e., Debit and Credit cards used by criminals for their monetary benefits through withdrawing money from the victim's bank account mala-fidely. There is always unauthorized use of ATM cards in this type of cyber crimes.

(xi) Cheating & Fraud : It means the person who is doing the act of cyber crime i.e. stealing password and data storage has done it with wrongful intention which leads to fraud and cheating.

(xii) Child Pornography : It involves the use of computer networks to create, distribute, or access materials that sexually exploit underage children.

(xiii) Phishing : Phishing is just one of the many frauds on the Internet, Phishing trying to fool people into parting with their money. Phishing refers to the receipt of unsolicited emails by customers of financial institutions, requesting them to enter their username, password or other personal information to access their account for some reason. Customers are directed to a fraudulent replica of the original institution's website when they click on the links on the email to enter their information, and so they remain unaware that the fraud has occurred. The fraudster then has access to the customer's online bank account and to the funds contained in that account

(xiv) Vishing : Vishing is the criminal practice of using social engineering and Voice over IP (VoIP) to gain access to private personal and financial information from the public for the purpose of financial reward. The term is a combination of "voice" and phishing.

(xv) Bot networks : A cyber crime called 'Bot Networks', wherein spammers and other perpetrators of cyber crimes remotely take control of computers without the users realizing it, is increasing at an alarming rate. Computers get linked to Bot Networks when users unknowingly download malicious codes such as Trojan horse sent as e-mail attachments. Such affected computers, known as zombies, can work together whenever the malicious code within them get activated, and those who are behind the Bot Networks attacks get the computing powers of thousands of systems at their disposal. Attackers

often coordinate large groups of Botcontrolled systems, or Bot networks, to scan for vulnerable systems and use them to increase the speed and breadth of their attacks. Bot networks create unique problems for organizations because they can be remotely upgraded with new exploits very quickly and this could help attackers pre-empt security efforts.

(xvi) Assault by Threat : It refers to threatening a person with fear for their lives or lives of their families through the use of a computer network, i.e., E-mail, videos or phones.

(xvii) Buffer overflow : This is the most common way of breaking into a computer. Buffers are created to hold a finite amount of data. When it overflows, it goes into adjacent buffers which can cause data to be overwritten. In buffer overflow attacks, the extra data can contain instructions that trigger specific actions. These actions can cause damage to files and/or change data.

2. Crimes against Persons' Property:

As there is rapid growth in the international trade where businesses and consumers are increasingly using computers to create, transmit and to store information in the electronic form instead of traditional paper documents. There are certain offences which affect person's properties which are as follows:

(i) . Intellectual Property Crimes : Intellectual property consists of a bundle of rights. Any unlawful act by which the owner is deprived completely or partially of his rights is an offence. The common form of IPR violation may be said to be software piracy, infringement of copyright, trademark, patents, designs and service mark violation, theft of computer source code, etc.

(ii) Software piracy : Many people do not consider software piracy to be theft. They would never steal a rupee from someone but would not think twice before using pirated software. There is a common perception amongst normal computer users to not consider software as "property". This has led the software piracy to become a flourishing business. The software pirate sells the pirated software in physical media (usually CD ROMs) through a close network of dealers. The suspect uses high speed CD duplication equipment to create multiple copies of the pirated software. This software is sold through a network of computer hardware and software vendors

(iii). Cyber Squatting : It means where two persons claim for the same Domain Name either by claiming that they had registered the name first on by right of using it before the other or using something similar to that previously. For example two similar names, i.e., www.yahoo.com and www.yaahoo.com.

(iv) Cyber Vandalism : Vandalism means deliberately destroying or damaging property of another. Thus cyber vandalism means destroying or damaging the data when a network service is stopped or disrupted. It may include within its purview any kind of physical harm done to the computer of any person. These acts may take the form of the theft of a computer, some part of a computer or a peripheral attached to the computer.

(v) Hacking Computer System : Hacktivism attacks those included Famous Twitter, blogging platform by unauthorized access/control over the computer. Due to the hacking activity there will be loss of data as well as computer. Also research especially indicates that those attacks were not mainly intended for financial gain too and to diminish the reputation of particular person or company.

(vi) Transmitting Virus : Viruses are programs that attach themselves to a computer or a file and then circulate themselves to other files and to other computers on a network. They usually affect the data on

a computer, either by altering or deleting it. Worm attacks plays major role in affecting the computerize system of he individuals.

(vii) Packet Sniffing : This is used by hackers and forensic experts. Data travels in the form of packets and vary in size depending on the network bandwidth and amount of data. The hacker intercepts the transmission between computer A and B. All the hacker needs is the IP address from one of the computers and any data can be stolen. The data is not stolen because sniffers don't do that. Instead they copy the hex and translate it into original data. This is why it is hard for firewalls to detect this because they only provide application level security.

(viii) Cyber Trespass : It means to access someone's computer without the right authorization of the owner and does not disturb, alter, misuse, or damage data or system by using wireless internet connection.

(ix) Salami Attack : Those attacks are used for the commission of financial crimes. The key here is to make the alteration so insignificant that in a single case it would go completely unnoticed. e.g., a bank employee inserts a program into bank's servers, that deducts a small amount from the account of every customer.

(x) Internet Time Thefts : Basically, Internet time theft comes under hacking. It is the use by an unauthorised person, of the Internet hours paid for by another person. The person who gets access to someone else's ISP user ID and password, either by hacking or by gaining access to it by illegal means, uses it to access the Internet without the other person's knowledge. You can identify time theft if your Internet time has to be recharged often, despite infrequent usage.

(xi) Trojan and Rats : Trojan horses are programs that appear to be doing what the user wants while they are actually doing something else such as deleting files or formatting disks. All the user sees is the interface of the program that he wants to run. RATs are remote access Trojans that provide a backdoor into the system through which a hacker can snoop into your system and run malicious code.

(xii) Data Diddling : Data diddling involves changing data prior or during input into a computer. In other words, information is changed from the way it should be entered by a person typing in the data, a virus that changes data, the programmer of the database or application, or anyone else involved in the process of having information stored in a computer file. The culprit can be anyone involved in the process of creating, recording, encoding, examining, checking, converting, or transmitting data. This is one of the simplest methods of committing a computer-related crime, because it requires almost no computer skills whatsoever. Despite the ease of committing the crime, the cost can be considerable.

(xiii) Email account hacking : Emails are increasingly being used for social interaction, business communication and online transactions. Most email account holders do not take basic precautions to protect their email account passwords. Cases of theft of email passwords and subsequent misuse of email accounts are becoming very common.

3. Cybercrimes Against Government:

There are certain offences done by group of persons intending to threaten the international governments by using internet facilities. It includes:

(i) Cyber Terrorism : Cyber terrorism is a major burning issue in the domestic as well as global concern. The common form of these terrorist attacks on the Internet is by distributed denial of service

attacks, hate websites and hate e-mails, attacks on sensitive computer networks etc. Cyber terrorism activities endanger the sovereignty and integrity of the nation.

(ii) Web defacement : Website defacement is usually the substitution of the original home page of a website with another page (usually pornographic or defamatory in nature) by a hacker. Religious and government sites are regularly targeted by hackers in order to display political or religious beliefs. Under the scenario, the homepage of a website is replaced with a pornographic or defamatory page. In case of Government websites, this is most commonly done on symbolic days (e.g., the Independence Day of the country). The defacer may exploit the vulnerabilities of the operating system or applications used to host the website. This will allow him to hack into the web server and change the home page and other pages. Alternatively he may launch a brute force or dictionary attack to obtain the administrator passwords for the website. He can then connect to the web server and change the WebPages.

(iii) Cyber Warfare : It refers to politically motivated hacking to conduct sabotage and espionage. It is a form of information warfare sometimes seen as analogous to conventional warfare although this analogy is controversial for both its accuracy and its political motivation.

(iv) Use of Internet and Computers by terrorists: Many terrorists are using virtual as well as physical storage media for hiding information and records of their illicit business. They also use emails and chat rooms to communicate with their counterparts around the globe. The suspects carry laptops wherein information relating to their activities is stored in encrypted and password protected form. They also create email accounts using fictitious details. In many cases, one email account is shared by many people. E.g., one terrorist composes an email and saves it in the draft folder. Another terrorist logs into the same account from another city / country and reads the saved email. He then composes his reply and saves it in the draft folder. The emails are not actually sent. This makes email tracking and tracing almost impossible. For committing this crime the terrorists purchase small storage devices with large data storage capacities. They also purchase and use encryption software. The terrorists may also use free or paid accounts with online storage providers.

(v) Distribution of pirated software: It means distributing pirated software from one computer to another intending to destroy the data and official records of the government.

(vi) Possession of Unauthorized Information: It is very easy to access any information by the terrorists with the aid of internet and to possess that information for political, religious, social, ideological objectives.

4. Cybercrimes Against Society at large:

An unlawful act done with the intention of causing harm to the cyberspace will affect large number of persons. These offences include:

(i) Child Pornography : It involves the use of computer networks to create, distribute, or access materials that sexually exploit underage children. It also includes activities concerning indecent exposure and obscenity.

(ii) Cyber Trafficking : It may be trafficking in drugs, human beings, arms weapons etc. which affects large number of persons. Trafficking in the cyberspace is also a gravest crime.

(iii) Online Gambling : Online fraud and cheating is one of the most lucrative businesses that are growing today in the cyber space. There are many cases that have come to light are those pertaining to credit card crimes, contractual crimes, offering jobs, etc.

(iv) Financial Crimes : This type of offence is common as there is rapid growth in the users of networking sites and phone networking where culprit will try to attack by sending bogus mails or messages through internet. Ex: Using credit cards by obtaining password illegally.

(v) Forgery : It means to deceive large number of persons by sending threatening mails as online business transactions are becoming the habitual need of today's life style.

INFORMATION TECHNOLOGY ACT , 2000:

Mid 90's saw an impetus in globalization and computerisation, with more and more nations computerizing their governance, and e-commerce seeing an enormous growth. Until then, most of international trade and transactions were done through documents being transmitted through post and by telex only. Evidences and records, until then, were predominantly paper evidences and paper records or other forms of hard-copies only. With much of international trade being done through electronic communication and with email gaining momentum, an urgent and imminent need was felt or recognizing electronic records i.e. the data what is stored in a computer or an external storage attached thereto.

The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on e-commerce in 1996. The General Assembly of United Nations passed a resolution in January 1997 inter alia, recommending all States in the United Nations to give favourable considerations to the said Model Law, which provides for recognition to electronic records and according it the same treatment like a paper communication and record.

Therefore, with a view to promote electronic transactions and to give favourable consideration to the Model Law on e-commerce, the Government of India has led to the enactment of Information Technology Act, 2000. The Information Technology Act, 2000, was thus passed as the Act No.21 of 2000, got Presidential Assent on 9 June and was made effective from 17 October, 2000.

OBJECTIVES OF INFORMATION TECHNOLOGY ACT, 2000

The Information Technology Act 2000 has been enacted with the following objectives:

1. To give legal recognition to any transaction this is done by electronic way or use of internet
2. To give legal recognition to digital signature for accepting any agreement via computer.
3. To provide facility of filling document online relating to school admission or registration in employment exchange.
4. To facilitate that any company can store their data in electronic storage.
5. To stop computer crime and protect privacy of internet users.
6. To give legal recognition for keeping books of accounts by bankers and other companies in electronic form.
7. To make more power to IPO, RBI and Indian Evidence act for restricting electronic crime.

The major focus of the Act is to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books

Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.”

The Act essentially deals with the following issues:

- Legal Recognition of Electronic Documents.
- Legal Recognition of Digital Signatures.
- Offenses and Contraventions.
- Justice Dispensation Systems for cyber crimes.

SCOPE OF INFORMATION TECHNOLOGY ACT, 2000

Every electronic information is under the scope of I.T. Act, 2000 but following electronic transaction are not under I.T. Act 2000:

1. Information Technology Act, 2000 is not applicable on the attestation for creating trust via electronic way. Physical attestation is must.
2. I.T. Act, 2000 is not applicable on the attestation for making will of any body. Physical attestation by two witnesses is must.
3. A contract of sale of any immovable property.
4. Attestation for giving power of attorney of property is not possible via electronic record.

APPLICABILITY OF INFORMATION TECHNOLOGY ACT, 2000

The Act extends to the whole of India and except as otherwise provided, it applies to also any of offence or contravention there under committed outside India by any person. There are some specific exclusion to the Act (i.e., where it is not applicable) as detailed in the First Schedule, stated below:

- (a) Negotiable Instrument (Other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881;
- (b) A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882;
- (c) A trust as defined in section 3 of the Indian Trusts Act, 1882;
- (d) A will as defined in clause
- (h) of section 2 of the Indian Succession Act, 1925 including any other testamentary disposition;
- (e) Any contract for the sale or conveyance of immovable property or any interest in such property;
- (f) Any such class of documents or transactions as may be notified by the Central Government.

CHAPTERS AND PROVISIONS:

There are 13 chapters in law and all provision is included in this chapters.

Chapter I: Preliminary

This chapter deals with the introduction applicability and scope of the Act.

Chapter II: Digital Signature and Electronic Signature

This chapter states that any contract which is done by subscriber can be executed through online medium too; if he signs the electronic agreement by digital signature. Then it will be valid and will be called e-contract. In this case the verification of digital signature can be on the basis of key pair.

Chapter III: Electronic Governance

This chapter explains the detail that all electronic records of government are acceptable unless any other law has any rules regarding written or printed record.

Chapter IV: Attribution, Acknowledgement and Dispatch of Electronic Records

This chapter deals with receipts or acknowledgement of any electronic record. Every electronic record has any proof that is called receipt and it should be in the hand who records electronic way.

Chapter V: Secure Electronic Records and Secure Electronic Signatures

This chapter discusses the powers to organization for securing the electronic records and secure digital signature. They can secure by applying any new verification system.

Chapter VI: Regulation of Certifying Authorities

This chapter states that government of India will appoint controller of certifying authorities and he will control all activities of certifying authorities. "Certifying authority is that authority who issues digital signature certificate."

Chapter VII: Electronic Signature Certificates

In this chapter powers and duties of certifying authority is given. Certifying Authority (C.A.) will issue digital signature certification after getting Rs. 25000. If it is against public interest, then C.A. can suspend he digital signature certificate.

Chapter VIII: Duties of Subscribers

This chapter tells about the duties of subscribers regarding digital signature certificate. It is the duty of subscriber to accept that all information in digital signature certificate that is within his knowledge is true.

INTELLECTUAL PROPERTY RIGHTS:

Intellectual property (IP) rights are the rights awarded by the society to individuals or organizations principally over creative works: Inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. They give the creator the right to prevent others from making unauthorized use of their property for a limited period.

IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, protection of layout design of integrated circuits and protection of undisclosed information (trade secrets). IPRs refer to the legal ownership by a person or business of an invention/discovery attached to particular product or processes which protects the owner against unauthorized copying or imitation.(Source: Business Guide to Uruguay Round, WTO, 1995)

HISTORICAL BACKGROUND

- Great depression of 1930s of international trade
- Many countries imposed restriction for their safe guards.
- 30 October 1947:23 countries signed on GATT.
- To settle disputes regarding who gets what share of the world trade.
- Enforced on 1st Jan 1948.
- 8th round: September 1986: Uruguay.

- Mr. Arther Dunkel, then Director General compiled detailed document known as DUNKEL PROPOSAL.
- In this, namely, agriculture, service & TRIPs, were included.
- 15th April 1994: Morocco: 124 countries signed an accord to give rise to WTO.

IPR DEVELOPMENTS IN INDIA

- **1947:** Patents & Designs Act, 1911
- **1995:** India joins WTO
- **1998:** India joins Paris Convention/PCT
- **1999:** Patent amendment provided EMR retrospectively from 1/1/95
- **2003:** 2nd amendment in Patents Act
- Term of Patent – 20 years after 18 months publication
- Patent Tribunal Set up at Chennai
- **2005:** Patents (Amendment) Act 2005
- **1999 – 2005:** Plant Varieties and Farmers' Rights Act & Biodiversity Act. Designs, TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

Need of IPR

1. "Monetary profit is the most important, in most cases, the only motive behind man's relentless toil, inventiveness and ingenuity".
2. With the advent of biotechnology one of issue is legal characterization of the new invention.
3. It is created to protect the rights of individual to enjoy their creations and invention.
4. Created to insure protection against unfair trade practices.
5. To assure the world a flow of useful, informative and intellectual works.
6. To encourage the continuing innovativeness and creativity of owners of IP.

Types of IPRs:

The intellectual property are classified into different types

1. Patents
2. Trademarks
3. Copyright
4. Designs
5. Trade Secrets
6. Geographical Indications
7. Integrated Layout circuit Designs
8. Plant varieties and farmers rights
9. Biological Diversity and Traditional knowledge.

1. Patents:

In India the law relating to patents – Patents Act, 1970 was enforced on April 20, 1972. A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e. 20 years.

A patent describes an invention for which the inventor claims the exclusive right to make, use and sell an invention for a specific period.

Invention is a new solution to “technical” problem. (product, process and new use)

Patentable Subject Matter

What can be patented? Section 2(1) (i)

1. Machines
2. Articles of Manufacture
3. Compositions of Matter
4. Plants (asexually reproducing).
5. Designs.
6. Processes – Method of purifying a protein or nucleic acid; method of screening for useful drugs; business methods.
7. Improvements on the above.

Unpatentable Subject Matter

1. Laws of Nature, discovery, mathematical method or scientific theory.
2. Naturally occurring compounds (i.e., as they exist in nature)
3. Abstract ideas, Mere presentation of information.
4. Technology already known.
5. A literary, dramatic, musical or artistic work or any other aesthetic creation.
6. A scheme, rule or method for performing any mental act, playing a game or a program for a computer.

A patent has 3 basic parts:

- A grant
- A description ("specification") telling how to make the invention,
- Claims (in words, what is protected)

Types of Patents

1. Utility Patents: machines, Compositions of matter, processes, And Biotech patents.
2. Design patents: ornamental design, layout of an article, style of a chair.

3. Plant patents: asexually reproducing plants. Sexually reproducing plants are covered under the PVP Act.

A Patent Specification includes four main components:

- Background (technical field of the invention)
- Drawings (showing the invention);
- Detailed Description (enables readers to make and use the invention)
- Claims, define the limits of coverage.
- Provisional Patent Application must meet written description* requirements.

*The application must fully describe how to make and use the invention and the best mode to carry out the invention.

Term of protection – Twenty years counted from filing date.

REQUIREMENTS FOR PATENTABILITY

1. Useful
2. Novel
3. Not Obvious failure to meet any of these criteria will prevent a patent from being issued.

USE OF PATENTS

1. **Rights of the Patent Owner** can make, use or sell the patented invention and prevent others to do so.
2. **Owner can License the rights to someone else** can make, use or sell the patented invention and prevent others to do so (ownership does not change).
3. **Owner can assign the rights of invention to someone else** (Ownership changes)

Rights

- Granted within geographical territory of country where filed
- Rights are for the period of Grant
- Rights can be revoked if shown that grant was not correct
- Patents to be kept alive by paying fees

FOREIGN PATENTS

- Patent have a territorial effect. An Indian patent is enforceable only in the India, its territories, and possessions.
- There is no “World Patent” to give protection worldwide.
- Patents must be obtained in individual countries or territories. Each country has its own patent laws.
- Prosecution done with the aid of a Foreign Associate.

The Patent Cooperation Treaty (PCT) provides preliminary examination of international application prior to entering the patent process for individual countries.

2. Trademarks:

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. Trademarks may be one or combination of words, letters, and numerals. They may also consist of drawings, symbols, three dimensional signs such as shape and packaging of goods, or colours used as distinguishing feature.

A trademark provides to the owner of the mark the exclusive right to use it to identify goods or services, or to authorize others to use it in return for some consideration (payment).

Enactment of the Indian Trademarks Act 1999 is a big step forward from the Trade and Merchandise Marks Act 1958.

Trade and Service Marks

A trade mark is a sign used in connection with marketing of goods or services. Appear on container or wrapper also in which they are sold.

A service mark identifies and distinguishes source of service rather than a product.

Category of Trade Marks

Classified and protected according to their level of distinctiveness.

1. Arbitrary or fanciful marks (most distinctive) not related to goods (e.g. Apple for computers) Fanciful marks coined or invented names (e.g. Kodak film). Highest level of protection.
2. Descriptive marks (medium distinctiveness) describe function or use, purpose of the goods (e.g. Video Buyer's Guide) only trademark protection.
3. Generic Marks (least distinctive) are common name for product or service (e.g. COLA). Not protected under trademark law Marks turn generic unless used properly: e.g. ASPIRIN; CELLOPHANE.

Registration procedure for trade marks.

Application for

1. Search.
 2. Registration.
- Advertisement of TM.
 - Filing of opposition.
 - Certificate issued or hearing set
 - Term- For a period of ten years but may be renewed from time to time for an unlimited period by payment of the renewal fees.

3. Copyrights:

India has one of the most modern copyright protection laws in the world. Major development in the area of copyright during 1999 was the amendment to the copyright Act of 1957 to make it fully compatible with the provisions of the TRIPS Agreement. Called the copyright (Amendment) Act, 1999, this amendment was signed by the president of India on December 30, 1999 and came into force on January 15, 2000.

The **Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)** is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.

Copyright Act of 1957 provides protection to all original literary, dramatic, musical and artistic works, cinematography, films and sound recordings. It has also included sectors such as satellite broadcasting, computer software and digital technology under Indian copyright protection in the new Act.

The other important development during 1999 was the issuance of the International copyright order, 1999 extending the provisions of the copyright act to nationals of all world trade organization (WTO) member countries.

Exclusive privilege to authors to reproduce, distributes, perform, or display their creative works.

Requirements

- Must be an original work
- expressed in a tangible medium

Rights to owner:

- Making copies of the work;
- distributing the copies;
- display the work publicly
- make “derivative works”
- Making modifications, other new uses of a work, or translating to another media.

Copyright includes

- Literary
- Artistic works
- Computer programs.
- Musical works

4.Designs:

On May 25, 2000, the new Design Act was publicly notified. The international classification

will now come into effect and priority may now be claimed from applications filed in the world trade organization and the Paris convention countries. The design registration in India is intended to protect designs, which have an industrial or commercial use, and protects only for the appearance of the article and not how it works.

5. Trade Secrets

A trade secret is the legal term for confidential business information. It can include any information that is valuable to its owner and that the latter wants to keep secret. Trade secret may include customer lists, recipes and formulas, special processes, devices, methods, techniques, business plans, research and development information, etc.

An organisation must behave in a way that demonstrates its desire to keep the information secret. To meet the criteria for a trade secret the information should meet the three criteria determined by law, these are:

- The information must not be in the public domain - some legislation states that the information must not be “generally known or readily ascertainable”. If someone can learn how to make a product by simply examining it then trade secret protection does not apply.
- The information must have an economic value that depends upon its secrecy, i.e. its economic value arises from the inaccessibility of the information to others who could obtain value from the information.
- Lastly, the trade secret holder must use “reasonable measures under the circumstances to protect” the secrecy of the information. Apart from preventing public disclosure, those who have potential access to the secret information should acknowledge its secret nature.
- These essential principles for trade secret protection are recognised by NAFTA, GATT, WTO/TRIPS and the national laws protecting trade secrecy around the world.

6. Geographical Indication

A **geographical indication (GI)** is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country). The use of a GI may act as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin.

Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.

7. Integrated Layout circuit Designs

The **Semi-Conductor Integrated Circuits Layout-Design Act, 2000** has been enacted to provide for the protection of semiconductor integrated circuits layout-designs and for matters connected therewith or incidental thereto. According to the Act, the term 'layout-design' means "a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit". Here, the term 'semiconductor integrated circuit' means "a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function".

The Act is implemented by the **Department of Information Technology**, Ministry of Information Technology. The Act is applicable for Integrated Circuits Layout-Design IPR applications filed at the Registry in India. The **Semiconductor Integrated Circuits Layout-Design Registry (SICLDR)** is the office where the applications on Layout-Designs of integrated circuits are filed for registration of created IPR. The Registry has jurisdiction all over India.

The main provisions of the Act are:-

- The Central Government may, by notification in the Official Gazette, appoint a person to be known as the 'Registrar of Semiconductor Integrated Circuits Layout-Design' for the purposes of this Act. Also, there shall be a 'Semiconductor Integrated Circuits Layout-Design Registry' for the purposes of facilitating the registration of layout-designs at such places as the Central Government may specify.
- For the purposes of this Act, a record called the 'Register of Layout-Designs' shall be kept at the

head office of the Semiconductor Integrated Circuits Layout-Design Registry, wherein shall be entered all registered layout-designs with the names, addresses and descriptions of the proprietor and such other matters related to the registered layout-designs as may be prescribed.

8.Plant varieties and farmers rights

The TRIPS Agreement states that "Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof." In order to fulfill its obligations under the TRIPS Agreement, India has implemented the Protection of Plant Varieties and Farmers' Rights Act, 2001 (hereinafter known as the "Act"). This Act has been passed in order to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development of new varieties of plants. The Act helps to stimulate investment for research and development to produce new plant varieties. Such protection is also likely to facilitate the growth of the seed industry that will ensure the availability of high quality seeds and planting material to the farmers.

Registration of a plant variety gives protection only in India and confers upon the rights holder, its successor, agent, or licensee the exclusive right to produce, sell, market, distribute, import, or export the variety.

9.Biological Diversity and Traditional knowledge

In 2000, WIPO(World Intellectual Property organisation) members established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), and in 2009 they agreed to develop an international legal instrument (or instruments) that would give traditional knowledge, genetic resources and traditional cultural expressions (folklore) effective protection. Such an instrument could range from a recommendation to WIPO members to a formal treaty that would bind countries choosing to ratify it.

Traditional knowledge is not so-called because of its antiquity. It is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity. As such, it is not easily protected by the current intellectual property system, which typically grants protection for a limited period to inventions and original works by named individuals or companies. Its living nature also means that "traditional" knowledge is not easy to define.

Genetic resources themselves are not intellectual property (they are not creations of the human mind) and thus cannot be directly protected as intellectual property. However, inventions based on or developed using genetic resources (associated with traditional knowledge or not) may be patentable or protected by plant breeders' rights. In considering intellectual property aspects of use of genetic resources, WIPO's work complements the international legal and policy framework defined by the Convention on Biological Diversity(CBD), and its Nagoya Protocol, and the International Treaty on Genetic Resources for Food and Agriculture of the United Nations Food and Agriculture Organization

In India, for example, peasant producers now cultivate some 50,000 varieties of rice[7] , developed through traditional practices over the millennia. This astonishing variety arose from subtle differences in soil and climatic conditions through mutation, evolution, and the deliberate application of cultural preferences. The GATT-TRIPs rules would prohibit these farmers from harvesting and reusing the seed of any rice variety that has been patented. (Unlike hybrid species cultivated by plant breeders, genetically engineered plants do produce viable seed.) Lack of access to seed stocks will cause the abandonment of much of India's biologically diverse agriculture, which in turn sustains healthy diversity in surrounding ecosystems.