

20PBA05-Legal Aspects of Business

Unit – 1 Indian Contract Act 1872

- Definition of Contract
- Types of a Contract and Formation of a Contract
- Essential elements of a Contract
- Performance of Contracts
- Breach (break up or end) of Contract and its remedies
- Quasi (partly, not real) Contract
- Nature of Sales Contract
- Guarantees and Warranties
- Performance of Sales Contracts
- Conditional Sales
- Rights of an Unpaid Seller.

Chapter 1: Definition of Contract

1.1 What is Law?

- Law means – “Set of Rules”
- “Law is a rule of civil conduct, prescribed by the supreme power of state, commanding what is right and prohibiting what is wrong.” – Blackstone
- Mercantile Law: Commercial Law – deals with the rights and obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property.

1.2 Meaning and Sources of Mercantile Law

- English Mercantile Law: Law of Contracts – a part of Common Law in England.
- Indian Statute Law: Acts passed by the Indian Legislature
- Judicial Decisions: The principle of Equity, Justice and good conscience.
- Customs and Usages

1.3 The Law of Contract

- The Law of Contract is contained in the Indian Contract Act, 1872.
- Covers the special provisions relating to contracts like Bailment, pledge, indemnity, guarantee and agency.
- Bailment – an act of delivering goods to a bailee for a particular purpose, without transfer of ownership.
- Pledge – a formal promise or agreement
- Indemnity – protection against damage or loss, especially in the form of a promise to pay for any that happens. (Or) an amount of money that is given as payment for damage or loss.
- Guarantee – a firm promise that something will be done or that something will happen (or) a written promise by a company that it will repair or replace a product if it breaks in a certain period of time.
- Agency – a business that provides a particular service (or) a government department.

1.4 What is a Contract?

- A Contract is an agreement made between two or more persons to do or to abstain from doing a particular act.
- A Contract is an agreement, creating and defining the obligation between parties. – Salmond.
- Every agreement and promise enforceable at law is a contract. – Sir Fredrick Pollock.
- A Contract essentially consists of two elements:
 - (i) An agreement
 - (ii) Its enforceability by law.

1.5 Agreement

- Section 2(e) of the Contract Act defines agreement as “Every promise and every set of promises forming the consideration for each other.
- Agreement = Offer + Acceptance.
- Consensus-ad-idem:

The parties to an agreement must have an identity of minds in respect of the subject matter. They must agree on the same thing in the same sense. This is also called Consensus-ad-idem

1.6 Legal Obligation (Enforceable by Law)

- An agreement may be regarded as a contract, it must give rise to a legal obligation i.e., it must be enforceable by law.
- Any obligation (duty) which is not enforceable by law is not regarded as a contract.
- Example 1: An agreement to take lunch together or to go to a picnic is not a contract because it does not create a duty enforceable by law.
- Example 2: An agreement to sell a scooter for Rs. 8,000 is a contract because it gives rise to an obligation enforceable by law.

1.7 Distinction between an Agreement and a Contract

Agreement	Contract
Offer and its acceptance constitute an agreement.	Agreement and its enforceability constitute a contract.
An agreement may not create a legal obligation.	A contract necessarily creates a legal obligation.
Every agreement may not be a contract.	All contracts are agreements.
Agreement is not a concluded or a binding contract.	Contract is concluded and binding on the concerned parties.

Chapter 2: Types of a Contract and Formation of a Contract

2.1 Classification of Contracts (Types of Contracts)

Contracts can be classified on a number of bases. They are:

- 1) On the basis of creation (Formation).
- 2) On the basis of Execution (Performance).
- 3) On the basis of enforceability (Validity).

1. On the basis of creation (Formation)

- A contract may be
 - (i) made in writing or by word of mouth
 - (ii) inferred from the conduct of the parties or circumstances of the case.

- (i) Express Contract:

terms are clearly stated in words, spoken or written.

Example: When A asks a scooter mechanic to repair his scooter and the mechanic agrees.

(ii) Implied Contract:

Created by the conduct or acts of parties (and not by their words spoken or written).

Example: When A boards a D.T.C bus, an implied contract comes into being. A is bound to pay the prescribed fare.

2. On the basis of Execution (Performance)

(i) Executed Contract:

where both the parties have fulfilled their respective obligations under the contract.

Example: A agrees to sell his book to B for Rs. 30. A delivers the book to B and B pays Rs. 30 to A. It is an executed contract.

(ii) Executory Contract:

where both the parties to the contract have still to perform their respective obligations.

- Unilateral Contract/ Bilateral Contract.

Example: A agrees to sell a book to B for Rs. 30. If the book has not been delivered by A and B has not paid the price. The contract is executory.

3. On the basis of Enforceability(Validity)

Enforceability – forced to obey

(i) Valid Contract:

which satisfies all the conditions prescribed by law is a valid contract.

(ii) Void (empty)Contract:

- A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
- Agreement can be Void ab-initio (Void from the beginning), but not contract.

(iii) Voidable Contract:

- An agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of the other or others, is a voidable contract.
- The consent of a party has not been free.

(iv) Illegal or Unlawful Contract:

- Illegal means contrary to law.
- Contract is an agreement enforceable by law and therefore, it cannot be illegal.
- Illegal agreement: For example, an agreement to sell a scooter to the minor is void but it is not illegal because the object of this agreement is not unlawful.

(v) Unenforceable Contract:

It is a contract which is actually valid but cannot be enforced because of some technical defect. This may be due to non-registration of the agreement, non payment of the requisite stamp fee.

2.2 Difference between Void and Illegal agreements

Void	Illegal
All void agreements are not necessarily illegal	All illegal agreement are void
Collateral transactions to a void agreements are not affected i.e., they do not become void.	Collateral transactions to an illegal agreements are also affected i.e., they also become void.
If a contract becomes void subsequently, the benefit received has to be restored to the other party.	The money advanced or thing given cannot be claimed back.

Chapter 3: Essentials of a Valid Contract

An agreement becomes a valid contract if it has the following elements

1. Proper Offer and Proper acceptance.
2. Intention to create legal relationship.
3. Free consent.
4. Capacity of parties to contract.
5. Lawful consideration.
6. Lawful object.
7. Agreement not expressly declared void.
8. Certainty of meaning.
9. Possibility of performance.
10. Legal formalities.

1. Proper offer and proper acceptance:

- ⊙ In order to create a valid contract it is necessary that there must be at least two parties, one making the offer and the other accepting it.

2. Intention to create legal relationship:

- ⊙ There must be an intention among the parties to create a legal relationship.
- ⊙ In case of social or domestic agreements, generally there is no intention to create legal relationship.

3. Free Consent:

- ⊙ For a contract to be valid, it is essential that there must be free and genuine consent of the parties to the contract.

4. Capacity of parties:

- ⊙ The parties to an agreement must be competent to contract i.e., they must be capable of entering into a contract.

Every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

5. Lawful Consideration:

- ⊙ An agreement must be supported by consideration. Consideration means something in return.
- ⊙ For example, A agrees to sell his book to B for Rs. 20. Here consideration for A is for Rs. 20, and for B it is the book.

6. Lawful Object:

- ⊙ The object of an agreement must be lawful.
- ⊙ The consideration as well as the object, of the agreement should be lawful.

7. Agreement not expressly declared void:

- ⊙ The agreement must not have been expressly declared void under Contract Act.
- ⊙ Agreement in restraint of marriage, agreement in restraint of legal proceedings.
- ⊙ For example, A agreed to pay Rs. 1,000 to B if he (B) does not marry throughout his life. B promised not to marry at all. This agreement shall not be valid because it is in restraint of marriage which has been expressly declared void under Section 26.

8. Certainty of meaning:

- ⊙ Agreements, the meaning of which is not certain or capable of being made certain, are void.
- ⊙ Thus to make a valid contract it is absolutely essential that its terms must be clear and not vague or uncertain.

9. Possibility of performance:

- ⊙ The terms of the agreement must also be such as are capable of performance.
- ⊙ An agreement to do an act impossible in itself is void.
- ⊙ If the act is impossible of performance, physically or legally, the agreement cannot be enforced by law.

10. Legal formalities:

- ⊙ An oral agreement is as good as is a written agreement.
- ⊙ The Contract Act does not require that a contract must be in writing to be valid.
- ⊙ For example, a promise to pay a time barred debt must be in writing and an agreement for a sale of immovable property must be in writing and registered under the Transfer of property Act, 1882. In such situation, the agreement must comply with the necessary formalities as to writing, registration, etc. If these legal formalities are not carried out, then the contract is not enforceable by law.

Chapter 4: Performance of Contract

- After the formation of the contract, the logical thing for parties is to perform their respective promises.

- When the parties to the contract perform the respective obligations, the contract comes to an end.

4.1 Topics in this Chapter

- Meaning of performance
- Types of performance
- Performance of joint promises
- The time, place and manner of performance.

4.2 Meaning of performance

- ▶ Every valid contract creates legal obligation on both the contracting parties and this obligation continues till the contract has been actually performed or otherwise discharged.
- ▶ The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or any other law.

4.3 Types of performance

- ▶ Actual Performance:

When a party to a contract has done, what he had undertaken to do and there remains nothing to be done by him the promise is said to have been actually performed and the liability of such a party comes to an end.

For example: A who is indebted to B for Rs. 1,000, promises to repay the amount after two months. A repays the amount on the due date. This is actual performance.

- ▶ Attempted Performance:

Sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance. This is known as “attempted performance”.

Promisor: a person who makes a promise (offer promise).

Promisee: a person to whom a promise is made (accept the promise).

4.4 Kinds of Tender

- ▶ Tender means “to offer or give something formally”
 - ▶ Tender or attempted performance can be of two types (i) tender of goods and services (ii) tender of money.
- (i) Tender of goods and services: A contract to deliver goods or render some service is completely discharged when the goods are tendered for acceptance according to the terms of the contract.

- (ii) Tender of Money: Where the debtor (promisor) makes a valid tender i.e., offers to pay the amount to the creditor and the creditor refuses to accept the same, the debtor is not discharged from his liability to pay the amount.

4.5 Essentials of a valid tender

- ▶ For a tender to be valid, the following conditions must be satisfied:
 - (i) It must be unconditional
 - (ii) It must be made at a proper time and place
 - (iii) In case of tender of goods, it must give a reasonable opportunity to the promisee of ascertaining that the goods offered are the same as the promisor is bound to deliver.
 - (iv) It must be for the whole obligation
 - (v) It must be made to the promisee or his duly authorized agent
 - (vi) In case of payment of money, tender must be of the exact amount due and it must be in the legal tender.

4.6 Who can demand Performance?

1. Promisee: Normally, the promisee is the only person who can demand performance of the promise under a contract. A third party cannot demand performance of the contract even if it was made for his benefit.

For example, A promises B to pay Rs.500 to C. The person who can demand performance is B and not C.

2. Legal Representative: In the case of death of the promisee, his legal representative can demand performance, unless a contrary intention appears from the contract or the contract is of a personal nature.

For example, A agrees to marry B. However, before marriage takes place, B dies. Since it is a contract of personal nature, the legal representative of B cannot demand performance of the promise from A.

3. Third Party: In some exceptional cases, the third party can also demand performance of the contract even though he is not a party to the contract.

4. Joint Promises: When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the performance of the promise may be demanded either (i) by all the promisees jointly; or (ii) in case of death of any of joint promisees, by the representatives of such deceased person jointly with the surviving promisees. Or (iii) in case of death of all joint promisees, by representatives of all of them jointly.

4.7 Who must perform?

1. Promisor himself: the promise should be performed by the promisor himself. This usually applies to contracts involving personal skill, taste or art work.

For Example, A promises to paint a picture for B. As this promise involves personal skill of A, it must be performed by A.

2. Promisor or Agent: the contract could be performed by the promisor himself or by any competent person employed by him for the purpose.

For Example, A promises to pay to B a sum of money, A may perform this promise either by paying the money personally to B or by casing it to be paid to B by his authorized agent.

3. Legal representative: The Contracts which do not involve any personal skill or taste, may be performed by his legal representative after the death of the promisor.

For Example, A promises to deliver goods to B on a certain day on payment of Rs. 2,000. A dies before the said day. A's legal representatives are liable to deliver the goods to B and B is bound to pay Rs.2,000 to A's representatives. If, however, the contract involves some personal skill or taste, it comes to an end with the death of the promisor.

4. Third person:

In some cases, a contract may be performed by a third person provided the promisee accepts the arrangement. According to Section 41, once the promisee accepts the performance from a third person, he cannot compel the promisor to perform the contract again.

5. Performance of Joint Promises: According to Section 42, when two or more persons have made a joint promise, the joint promisors must fulfill the promise jointly during their life time. For Example, A, B, and C jointly promised to pay Rs. 3,000 to D. In this case D may compel either A, or B or C to pay the entire amount of Rs. 3,000.

4.8 TIME AND PLACE FOR PERFORMANCE

It is for the parties to a contract to decide the time and place for the performance of the contract. The rules regarding the time and place of performance are given in sections 46 to 50 of the Contract Act.

1. Performance of a promise within a reasonable time:
2. Performance of promise where time is specified:
3. Performance of promise on an application by the Promisee:
4. Performance of promise where no place is specified and also no application is to be made by promisee:
5. Performance of promise in the manner and time prescribed or sanctioned by Promisee:

4.9 TIME AS THE ESSENCE OF THE CONTRACT

- ▶ Time is an essential factor and the concerned parties must perform their respective promises within the specified time.
- ▶ Time is generally considered to be the essence of the contract in the following cases.
 - (a) Where the parties have expressly agreed to treat it as the essence of the contract;
 - (b) Where the delay operates as an injury to the party; and
 - (c) Where the nature and necessity of the contract requires it to be performed within the specified time.

According to Section 55 Para I “where time is the essence of the contract and a party fails to perform his / her promise in time the contract becomes voidable at the option of the other party”

Chapter 5: Breach of Contract & Remedies for Breach of Contract

- Breach – break or violate

Breach of contract means a breaking of the obligation which a contract impose.

It occurs when a party to the contract without lawful excuse does not fulfill his obligation or by his own act makes it impossible that he should perform his obligation under it.

5.1 Breach of Contract may be

- ⊙ Actual breach of contract, or
- ⊙ Anticipatory or constructive breach of contract

(1) Actual breach of Contract:

It may take place

- (i) At the time when performance is due

Actual breach of contract occurs, when at the time when the performance is due, one party fails or refuses to perform his obligation under the contract.

Example: A agrees to deliver to B 5 bags of wheat on 1st January. He does not deliver the wheat on that day. There is breach of Contract.

- Anticipatory – preventive or blocking
- Due – unpaid or outstanding

- (ii) During the performance of the Contract

Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under the contract. This refusal to perform may be by

- (a) Express repudiation (by word or act)

Example: C contracted with a railway company to supply it 3,000 tons of railway chairs at a certain price, to be delivered in installments. After 1,787 tons had been supplied, the railway company asked C to deliver no more. Held, C could bring an action for breach of contract.

- Express – convey or communicate
- Repudiation – denial
- Implied – indirect, disguised

- (b) Implied Repudiation (impossibility created by the act of a party to the contract)

- Example: P, a British subject, was engaged by the captain of a warship owned by the Japanese Government to act as a fireman. Subsequently when the Japanese Government declared War with China, P was informed that the performance of

the contract would bring him under the penalties of the Foreign Enlistment Act. He consequently left the ship. Held, he was entitled to recover the wages agreed upon.

2. Anticipatory breach of contract

It occurs when a party to an executory contract declares his intention of not performing the contract before the performance is due. He may do so –

- ☉ (1) By expressly renouncing his obligation under the contract.

Example: A undertakes to supply certain goods to B on 1st January. Before this date, he informs B that he is not going to supply the goods. This is anticipatory breach of contract by express repudiation.

- Renouncing – giving up or rejecting

- ☉ (2) By doing some act so that the performance of his promise becomes impossible.

Example: A promised to assign to B, within seven years from the date of his promise, all his interest in a lease for the sum of \$. 140. Before the end of seven years he assigned his interest to another person. Held, this was anticipatory breach of contract by implied repudiation.

The rights of the promisee (the party not in breach or the aggrieved party) in case of anticipatory breach are as follows:

- ☉ (1) He can treat the contract as discharged so that he is absolved of the performance of his part of the promise.
- ☉ (2) He can immediately take a legal action for breach of contract or wait till the time the act was to be done.

Anticipatory breach does not necessarily discharge the contract, unless the promisee (the aggrieved party) so chooses.

- Aggrieved party – unhappy party

Example: D engaged H on 12th of April to enter into his service as courier and to accompany him upon a tour. The employment was to commence on 1st June. On 11th May D wrote to H telling him that his services would no longer be required. H immediately brought an action for damages although the time for performance had not yet arrived. Held, he was entitled to do so.

- Entitled – permitted or allowed.

5.2 Remedies for Breach of Contract

Where there is right, there is a remedy

- A contract gives rise to correlative rights and obligations.

- A remedy is the means given by law for the enforcement of a right.
- 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:

1. Rescission (rescind or cancel) of the contract
2. Suit for Damages
3. Suit upon quantum meruit
4. Suit for specific performance of the contract
5. Suit for injunction.

1. Rescission

- When a contract is broken by one party, the other party may sue to treat the contract as rescinded (cancelled) and refuse further performance. In such a case, he is absolved (freed) of all his obligations 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 a monetary compensation allowed to the injured party by the court for the loss or injury suffered by him by the breach of a contract.
- The object of awarding damages for the breach of a contract is to put the injured party in the same position, so far as money can do it, as if he had not been injured, i.e., in the position in which he would have been had there been performance and not breach. This is called the doctrine (law) of restitution (giving back) (restitution in integrum (law))
- The fundamental basis of awarding damages is compensation for the pecuniary (financial) loss which naturally flows from the breach.

The rules relating to damages

- (1) Damages arising naturally – ordinary damages:

When a contract has been broken, the injured party can recover from the other party such damages as naturally and directly arose in the usual course of things from the breach. This means that the damages must be the proximate (immediate or nearby) consequence of the breach of contract. These damages are known as ordinary damages.

- (2) Damages in contemplation (consideration or observation) of the parties – special damages:

Damages other than those arising from the breach of a contract may be recovered if such damages may reasonably be supposed to have been in the contemplation of both the parties as the probable result of the breach of the contract. Such damages, known as special damages, cannot be claimed as a matter of right. These can be claimed only if the special circumstances which would result in a special loss in case of breach of a contract, are brought to the notice of the other party.

- (3) Vindictive (hurtful) or exemplary (excellent) damages:

Damages for the breach of a contract are given by way of compensation for loss suffered, and not by way of punishment for wrong inflicted (caused). Hence, 'vindictive' or 'exemplary' damages have no place in the law of contract because they are punitive (involving punishment) by nature.

- (4) Nominal damages:

Where the injured party has not in fact suffered any loss by reason of the breach of a contract, the damages recoverable by him are nominal, i.e., very small, for example, a rupee. These damages merely acknowledge that the plaintiff (applicant) has proved his case and won.

- (5) Damages for loss of reputation:

Damages for loss of reputation in case of breach of a contract are generally not recoverable. An exception to this rule exists in the case of a banker who wrongfully refuses to honour a customer's cheque.

- (6) Damages for inconvenience and discomfort:

Damages can be recovered for physical inconvenience and discomfort. The general rule in this connection is that the measure of damages is not affected by the motive or the manner of the breach.

- (7) Mitigation of damages:

It is the duty of the injured party to take all reasonable steps to mitigate the loss caused by the breach.

- (8) Difficulty of assessment

Although damages which are incapable of assessment cannot be recovered, the fact that they are difficult to assess with certainty or precision does not prevent the aggrieved party from recovering them. The Court must do its best to estimate the loss and a contingency (emergency) may be taken into account.

- (9) Cost of decree:

The aggrieved party is entitled, in addition to damages, to get the cost of getting the decree (judgment) for damages. The cost of suit for damages is in the discretion (good judgment) of the court.

- (10) Damages agreed upon in advance in case of breach"

If a sum is named in a contract as the amount to be paid in case of its breach, or if the contract contains any other stipulation by way of a penalty for failure to perform the obligations, the aggrieved party is entitled to receive from the party who has broken the contract, a reasonable compensation not exceeding the amount .

3. Quantum Meruit

- The phrase “quantum meruit” literally means “as much as earned”. A right to sue on a quantum meruit arises where a contract, partly performed by one party, has become discharged by the breach of the contract by the other party.
- The right is founded not on the original contract which is discharged or is void but on an implied promise by the other party to pay for what has been done.

4. Specific Performance

In certain cases of breach of a contract, 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. This is a direction by the Court for specific performance of the contract at the suit of the party not in breach.

Some of the cases in which specific performance of a contract may, in the discretion of the Court, be enforced are as follows.

- (a) When the act agreed to be done is such that compensation in money for its non-performance is not an adequate relief.
- (b) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done.
- (C) When it is probable that the compensation in money cannot be got for the non-performance of the act agreed to be done.

5. Injunction (ban or order)

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 (control) him from doing what he promised not to do. Such an order of the Court is known as an “injunction”

Rectification (modification) or Cancellation

- When through fraud or a mutual mistake of the parties, a contract or other instrument does not express their real intention; either party may institute a suit to have the instrument rectified. In such a case, if the Court finds that there has been a fraud or mistake, it may ascertain the real intention of the parties, and may, in its discretion, rectify the instrument so as to express that intention. But this must not prejudice the rights acquired by third persons in good faith and for value. If rectification is not possible, the Court orders for the cancellation of the contract.

Chapter 6: Quasi Contract

6.1 Meaning: Although, There is no contract or agreement between the parties, they put in the same position as if there were a contract between them. Such relationships are termed “quasi contracts” or “constructive contracts” under the English Law and “certain relations resembling those created by contracts” under the Indian Law.

Quasi – that appears to be something but is not really so. Or partly.

- ⊙ A quasi-contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another. The principle of unjust enrichment requires:
- ⊙ First, that the defendant has been ‘enriched’ by the receipt of a ‘benefit’;
- ⊙ Secondly, that this enrichment is at the expense of the plaintiff; and
- ⊙ Thirdly, that the retention of the enrichment is unjust.

“Law of quasi contracts” is also known as the “law of restitution”

6.2 Kinds of Quasi – Contracts

Secs. 68 to 72 deal with the five kinds of quasi-contractual obligations. These are discussed below:

1. Supply of necessities:

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Example: A Supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B’s property.

2. Payment by an interested person:

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Example: B holds land in Bengal, on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrears, his land is advertised for sale by the Government. Under the revenue law the consequences of such sale will be annulment (Cancel or withdrawal) of B’s lease. B to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

3. Obligation to pay for non-gratuitous acts:

When a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay for them to A.

4. Responsibility of finder of goods:

A person, who finds belonging to another and takes them into his custody, is subject to the same responsibility as a bailee. He is bound to take as much care of the goods of the same bulk, quality and value.

Example: F picks up a diamond on the floor of S's shop. He hands it over to S to keep it till true owner is found out. No one appears to claim it for quite some weeks in spite of the wide advertisements in the newspapers. F claims the diamond from S who refuses to return the diamond to F who is entitled to retain the diamond against the whole world except the true owner.

5. Mistake or Coercion

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it to the person who paid it by mistake or under coercion.

Example: A pays some money to B by mistake. It is really due to C. B must refund the money to A. C, however, cannot recover the amount from B as there is no privity (relation by law) of contract between B and C.

Chapter 7: Nature of Sales Contract

7.1 Sales of Goods

- ✕ 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. A 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.

7.2 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 to goods to the buyer for a price.

The term 'contract of sale' is a generic term and includes both a sale and an agreement to sell.

- ✕ Sale and 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 thereafter to be fulfilled, the contract is called an "agreement to sell".

7.3 Essentials of a contract of sale

✖ 1. Two parties:

- ✚ There must be two distinct parties. i.e., a buyer and a seller, to effect a contract of sale and they must be competent to contract. “Buyer” means a person who buys or agrees to buy goods. “Seller” means a person who sells or agrees to sell goods.

✖ 2. Goods:

- ✚ There must be some goods the property in which is or is to be transferred from the seller to the buyer. The goods which form the subject –matter of the contract of sale must be movable. Transfer of immovable property is not regulated by the Sales of Goods Act.

✖ 3. Price:

- ✚ The Consideration for the contract of sale, called price, must be money. When goods are exchanged for goods, it is not a sale but a barter. There is, however, nothing to prevent the consideration from being partly in money and partly in goods.

✖ 4. Transfer of general property:

- ✚ There must be transfer of general property as distinguished from special property in goods from the seller to the buyer. If A owns certain goods, he has general property in the goods. If he pledges them with B, B has special property in the goods.

✖ 5. Essential elements of a valid contract:

- ✚ All the essential elements of a valid contract must be present in the contract of sale.

7.4 Difference between Sale and Agreement to sell

Difference based on	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 this sense, Sale is an executed contract.	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. An agreement to sell is an executory contract.
2. Type of goods	A sale can only be in case of existing and specific goods only.	An agreement to sell is mostly in case of future and contingent goods although in some cases it may refer to

		unascertained existing goods.
3. Risk of loss	In a sale, if the goods are destroyed the loss falls on the buyer even though the goods are in the possession of the seller.	In an agreement to sell, if the goods are destroyed, the loss falls on the seller, even though the goods are in the possession of the buyer.
Difference based on	Sale	Agreement to sell
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 even though the goods are still in his possession.	In an agreement to sell if there is a breach of contract by the buyer, the seller can only sue for damages and not for the price even though the goods are in the possession of the buyer.
5. Right to re-sell	In a sale, the seller cannot re-sell the goods. If he does so the subsequent buyer does not acquire title to the goods.	In an agreement to sell, in case of re-sale, the buyer who takes the goods for consideration and without notice of the prior agreement, gets a good title. In such a case, the original buyer can only sue the seller for damages.
Difference based on	Sale	Agreement to sell
6. General and particular property	A sale is a contract plus conveyance, and creates jus in rem i.e., gives right to the buyer to enjoy the goods as against the world at large including the seller.	An agreement to sell is merely a contract, pure and simple, and creates jus in personam, i.e., gives a right to the buyer against the seller to sue for damages.
7. Insolvency of buyer	In a sale, if the buyer becomes insolvent before he pays for the goods, the seller, in the absence of a lien over the goods must return them to the Official Receiver or Assignee. He can only claim a rateable dividend for the price of the goods.	In an agreement to sell, if the buyer becomes insolvent and has not yet paid the price, the seller is not bound to part with the goods until he is paid for.
Difference based on	Sale	Agreement to sell
8. Insolvency of seller	In a sale, if the seller becomes insolvent the buyer, being the owner is entitled to recover the	In an agreement to sell, if the buyer, who has paid the price, finds that the seller has become insolvent, he can

	goods from the Official Receiver or Assignee	only claim a rateable dividend and not the goods because property in them has not yet passed to him.
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7.5 SUBJECT MATTER OF CONTRACT OF SALE

✕ Goods form the subject–matter of a contract of sale:-

According to Sec. 2 (7), ‘goods’ means every kind of moveable 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 several before sale or under the contract of sale.

Trade marks, copyrights, patent rights, goodwill, electricity, water, gas are all goods.

✕ Actionable Claims and Money, are not goods:-

An actionable claim means a claim to any debt or any beneficial interest in moveable property not in possession. It is something which can only be enforced by action in a Court of Law.

A debt due from one person to another is an actionable claim and ‘cannot be bought or sold as goods’. It can only be assigned.

7.6 Classification of goods

The goods which form the subject of a contract of sale may be either existing goods, or future goods or contingent goods.

1. Existing goods:

These are the goods which are owned or possessed by the seller at the time of sale. Only existing goods can be the subject of a sale.

The existing goods may be –

- (i) Specific goods
- (ii) Ascertained goods
- (iii) Unascertained or generic goods.

2. Future goods:

There are the goods which a seller does not possess at the time of the contract but which will be manufactured or produced or acquired by him after the making of the contract of sale.

3. Contingent goods:

Though a type of future goods, these are the goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

4. Contingent and Future goods:

The procurement of contingent goods depends upon a contingency whereas it is not so in case of future goods. On non-acquisition of contingent goods, the parties are discharged whereas on non-acquisition or non-production of future goods the parties are not discharged.

* contingency – a possible future situation or event

Chapter 8: Contract of Indemnity

8.1 Contract of Indemnity (security)

- A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a ‘contract of indemnity’
- Indemnifier – the person who promises to make good the loss is called the ‘indemnifier’ (promisor) and the person whose loss is to be made good is called the ‘indemnified or indemnity holder (promisee)’

Example: A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of Rs. 200. This is a contract of indemnity.

8.2 Contract of Guarantee

“Contract of Guarantee”

- A “Contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the ‘surety’, the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’. A guarantee may be either oral or written. It may be express or implied and may even be inferred from the course of conduct of the parties concerned.
- S, P and C. Unless otherwise stated, in the following pages of this chapter, S stands for Surety, P for Principal debtor, and C for creditor.

Example: S requests C to lend Rs. 500 to P and guarantees that if P fails to pay the amount, he will pay. This is a contract of guarantee. S, in this case, is the Surety; C, the creditor and P, the Principal debtor.

8.3 Essential features of a contract of guarantee

1. Concurrence (agree):

A contract of guarantee requires the concurrence of all the three parties to it, viz., the principal debtor, the creditor and the surety.

Example: C enters into a contract with P. S, without any communication with P, undertakes for a consideration moving from C to indemnify C against any damages that may arise from a breach of P's obligation. This does not make S a surety for P, for a person cannot become a surety without the consent of the principal debtor.

2. Primary liability in some person:

There must be a primary liability in some person other than surety. The word 'liability' as used in the definition of guarantee means a "a liability which is enforceable at law". If that liability does not exist, there cannot be a contract of guarantee. But a guarantee given for the debt of a minor is an exception to this rule.

Example: P owes a debt to C. S gives a guarantee to C for the payment of the debt after it is barred by the Law of Limitation. S pays the amount to C. He cannot recover the amount from P as there is no enforceable liability against P.

3. Essentials of a valid contract:

A contract of guarantee must have all the essential elements of a valid contract. But the following two points should be noted.

- (a) All the parties must be capable of entering into a valid contract, though the principal debtor may be person suffering from incapacity to contract.
- (b) Consideration received by the principal debtor is sufficient for the surety, and it is not necessary that it must necessarily result in some benefit to the surety himself.

Example: P requests C to sell and deliver to him goods on credit. C agrees to do so, provided S will guarantee the payment of the price of the goods. S promises to guarantee the payment in consideration of C's promise to deliver the goods. This is a sufficient consideration for S's promise.

4. Writing not necessary:

A guarantee may be either oral or written. It may be express or implied. Implied guarantee may be inferred from the course of conduct of the parties concerned. But in England, a guarantee must be in writing and signed by the party to be charged.

8.4 Kinds of Guarantee

- The function of a contract of guarantee is to enable a person to get a loan, or goods on credit, or an employment. A guarantee may therefore be given for (1) the repayment of a debt, or (2) the payment of the price of the goods sold on credit, or (3) the good conduct or honesty of a person employed in a particular office.

Types of guarantee

- Specific Guarantee

When a guarantee extends to a single transaction or debt, it is called a specific or simple guarantee. It comes to an end when the guaranteed debt is duly discharged or the promise is duly performed.

- Continuing guarantee

When a guarantee extends to a series of transactions, it is called a continuing guarantee. The liability of the surety in case of a continuing guarantee extends to all the transactions contemplated until the revocation of the guarantee.

Example: S, in consideration that C will employ P in collecting the rents of C's Zamindari, promise C to be responsible to the amount of Rs. 5,000 for the due collection and payment by P of these rents. This is continuing guarantee.

Chapter 9: Conditions and Warranties

9.1 Conditions and Warranties

- ⦿ A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
- ⦿ Condition: A condition is a stipulation which is essential to the main purpose of the contract. It goes to the root of the contract. Fletcher Moulton L.J defined as an "Obligation which goes so directly to the substance of the contract or, in other words, is so essential to its very nature, that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all".

9.2 Warranties

- ⦿ A warranty is a stipulation which is collateral to the main purpose of the contract. It is not of such vital importance as a condition is. It is defined as an "Obligation which, though it must be performed, is not so vital that a failure to perform it goes to the substance of the contract." If there is a breach of a warranty, the aggrieved party can only claim damages and it has no right to treat the contract as repudiated.

9.3 Distinction between a condition and a warranty

Topic	Condition	Warranty
1. Difference as to Value	A condition is a stipulation which is essential to the main purpose of the contract.	A warranty is a stipulation which is collateral to the main purpose of the contract.
2. Difference as to breach	If there is a breach of a condition, the aggrieved party can repudiate the contract of sale;	In case of a breach of a warranty, the aggrieved party can claim damages only.

3. Difference as to treatment	A breach of a condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contented with damages only.	A breach of a warranty, however, cannot be treated as a breach of a condition.
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9.4 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.
- ☉ Example: H bought oats from S a sample of which had been shown to H. H erroneously thought that the oats were old. The oats were, however, new. Held, H could not avoid the contract.

Chapter 10: Performance of a sales contract

10.1 Performance of a contract of sale

- Performance of a contract of sale means as regards the seller, delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract of sale.

10.2 Delivery of goods

- Delivery means voluntary transfer of possession from one person to another. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or his agent.

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. Delivery of goods may also be made by doing anything which has the effect of putting the goods in the possession of the buyer.
- 2. Symbolic Delivery: Where goods are ponderous or bulky and incapable of actual delivery, e.g., haystack in a meadow, the delivery may be symbolic. Handing over of the key of a warehouse to the buyer is symbolic delivery of the goods to the buyer and is as effective as actual delivery, even though there is no change in the possession of the goods.

- 3. Constructive delivery or Delivery by attornment (formal transference of something): Where a 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 delivery.

*attornment – formal transference of something

(e.g., attorney – legal advisor)

10.3 Rules as to delivery of goods

- 1. Mode of delivery: Delivery should have the effect of putting the goods in the possession of the buyer or his duly authorised agent.
- 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 effect, for the purpose of passing the property in such goods, as a delivery of the whole.
- 4. Buyer to apply for delivery: Apart 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 that place during business hours on a working day.
- 6. Time of delivery: Where under the contract of sale the 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
- 8. Cost of delivery:
- 9. Delivery of wrong quantity:
- 10. Installment deliveries:
- 11. Delivery to a carrier or wharfinger: (owner or keeper of a wharf (ship boats are tied up platform)).

10.4 Rights and Duties of the buyer

- Rights of the buyer:

1. Right to have delivery as per contract
2. Right to reject the goods

3. Right to repudiate (deny)
4. Right to notice of insurance
5. Right to examine
6. Rights against the seller for breach of contract.

Rights and Duties of the buyer

- Duties of the buyer:
 1. Duty to accept the goods and pay for them in exchange for possession.
 2. Duty to apply for delivery
 3. Duty to demand delivery at a reasonable hour.
 4. Duty to accept installment delivery and pay for it.
 5. Duty to take risk of deterioration in the course of transit.
 6. Duty to intimate the seller where he rejects the goods.
 7. Duty to take delivery
 8. Duty to pay price
 9. Duty to pay damages for non-acceptance

Chapter 11: Rights of an unpaid seller

11.1 Who is an Unpaid seller?

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

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

The following conditions must be fulfilled before a seller of goods can be deemed to be an unpaid seller:

- (1) He must be unpaid and the price must be due.
- (2) He must have an immediate right of action for the price
- (3) A bill of exchange or other negotiable instrument was received but the same has been dishonoured.

- *negotiable instruments – a signed document that promises a sum of payment to a specified person.

I. Rights of an unpaid seller against the goods

- ☉ Where the property in the goods has passed to the buyer, an unpaid seller has the following rights against the goods.

- ☉ 1. Right of lien:- (lien – to keep possession)

A lien is a right to retain possession of goods until payment of the price. It is available to the unpaid seller of the goods who is in possession of them where –

- (a) The goods have been sold without any stipulation as to credit
- (b) The goods have been sold on credit, but the term of credit has expired
- (c) The buyer becomes insolvent.

- ☉ 2. Right of stoppage in transit:

(Stoppage in transit – stopping products over the span of their delivery at a distance)

The right of stoppage in transit is a right of stopping the goods in transit after the unpaid seller has parted with the possession of the goods. He has the further right to resuming possession of the goods as long as they are in the course of transit, and returning possession until payment or tender of the price.

It is available to the unpaid seller –

- (i) When the buyer becomes insolvent; and
- (ii) When the goods are in transit.

3. Right of re-sale

- ☉ The unpaid seller can re-sell the goods:-

(i) Where the goods are of a perishable nature; (or)

(ii) where he gives notice to the buyer of his intention to re-sell the goods and the buyer does not within a reasonable time pay or tender the price.

If, on re-sale, there is a loss to the seller (i.e., the difference between the contract price and the amount realised on re-sale of the goods), he can claim it from the buyer as damages for breach of contract.

II. Rights of an unpaid seller against the buyer personally

- ☉ These are the rights which an unpaid seller may enforce against the buyer personally. These rights of the seller against the buyer are called rights in personam as against the rights in rem (i.e., rights against the goods), and are in addition to his rights against the goods.

Unit II - The Company Law (Amended on 3.5.2018)

Topics in Unit II

- ☉ Nature of Company
- ☉ Major Principles or Characteristics of a company
- ☉ Types of Companies
- ☉ Formation of company
- ☉ Memorandum and Articles of Association
- ☉ Prospectus, Power, Duties and liabilities of Directors
- ☉ Winding up of Companies
- ☉ Corporate Governance
- ☉ Amendments of Companies Act, 2013

2.1 Nature of Company

- ☉ A Company, in common parlance, means a group of persons associated together for the attainment of a common end, social or economic.
- ☉ The 'registered Company' means a company incorporated under the companies Act, 1956.
- ☉ Companies incorporated under the companies Act, 1956 are mostly business companies but they may also be formed for promoting art, charity, research, religion, commerce, or any other useful purpose.
- ☉ The law relating to companies in India is contained in the Companies Act, 1956, as amended up-to-date.

2.1.1 Definition of Company

- ☉ **A Voluntary association of persons:** A Company, in broad sense, may mean an association of individuals formed for some common purpose. But it is a voluntary association of persons. It has capital *divisible* into parts, known as *shares*. At the same time it is an *artificial* person created by a *process of law*. It has a *perpetual succession* and a *common seal*.

*perpetual-continuing for a long period of time without stopping

*seal- an official design or mark

- ☉ **An Artificial person – has no body or soul:**

A company has no body, no soul and no conscience nor is it subject to imbecilities (utter foolishness) of the body. It is not visible, save to the eye of the law. These physical disabilities make a company an **artificial person**. But then a company really exists and it is not a fictitious (not real) entity.

Lindley's definition

- ☉ 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 (i.e., for a common purpose), and who share the profit or loss (as the case may be) 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 transferable although the right to transfer them is often more or less restricted”
- ☉ On incorporation a company becomes a body corporate or corporation with a perpetual succession and a common seal. It also acquires a personality distinct from its members.

Example

- ☉ **Reserve bank of India** – Central bank and regulatory body -Ministry of Finance, Government of India
- ☉ **Life Insurance Corporation of India** – Statutory insurance and investment corporation. It is under the ownership of Ministry of Finance, Government of India.
- ☉ All private and public limited companies.
- ☉ Example: **Private companies**: Flipkart, ola, snapdeal, Carat Lane, and Zoom car are private entities. Zomato, MakeMyTrip and Infibeam are among the first Indian internet startups to have gone public.
- ☉ Example: **Public Companies** are Reliance Industries, Tata Motors, Bharti Airtel, Larsen & Tourbo

2.1.2 Company law in India

- ☉ Company legislation in India owes its origin to the English Company Law. The Companies Acts passed from time to time in India have been following the English Companies Acts with certain modifications to suit Indian conditions.

☉ The Companies Act, 1956

- After the end of World War II, the need for a further revision of the company law was felt. Many changes had taken place in the organization and management of joint stock companies. The Government of India therefore appointed, on 25th October, 1950, a committee of 12 members representing various interests under the chairmanship of Mr. H.C.Bhabha.

2.1.3 Companies Act, 2013

- ⊙ Companies Bill 2012 was passed in Lok Sabha on 18th December, 2012 and by Rajya Sabha on 8th August 2013 and 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. 282 sections have been notified and made effective from September 2013 and 1-4-2014.

Objectives

- ⊙ The Companies Act, 2013 broadly seeks to achieve the following objectives:
- ⊙ (i) To achieve transparency, accountability and high standards of corporate governance/management.
- ⊙ (ii) To enforce stricter action against fraud and gross non-compliance with latest company law provisions.
- ⊙ (iii) To set up institutional structures in the form of various authorities, bodies and panels as well as by recognition of various roles for professionals and other experts; and
- ⊙ (iv) To implement more effective and time bound approvals and compliance requirements.
- ⊙ (v) To recognize various new concepts and procedures to protect interests of all the stakeholders that is, shareholders, debentures-holders, company personnel, creditors, financial institutions, bankers, tax authorities, management personnel, etc.,

Real Case study

- ⊙ Major Corporate frauds as for instance, SATYAM COMPUTER FRAUD, January 2009 had been witnessed in recent times. These were the consequences of mismanagement and gross neglect or 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 the experts and professionals associated with such companies.

2.2 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. Any of its members can enter into contracts with it in the same manner as any other individual can and he cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The company's money and property belong to the company and not to the shareholders (although the shareholders own the company).

- **2. Limited liability:** A Company may be a company *limited* by *shares* or a company *limited* by *guarantee*.

- In a company limited by shares, the liability of members is limited to the unpaid value of the shares. For example, if the face value of a share in a company is Rs.10 and a member has already paid Rs.7 per share, he can be called upon to pay not more than Rs.3 per share during the lifetime of the company.
- In a company limited by guarantee, the liability of members is limited to such amount as the members may undertake to contribute to the assets of the company, in the event of its being wound up.

3. Perpetual Succession

- A Company is a juristic person with a perpetual succession. It is not susceptible to “the thousand natural shocks that flesh is heir (the person with the legal right to receive money, property)to.” As such it never dies; nor does its life depend on the life of its members. It is not in any manner affected by insolvency, (financial distress) mental disorder or retirement of any of its members. It is created by a process of law and can be put an end to only by a process of law.

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 transferable, so that no shareholder is permanently or necessarily wedded to company. When the joint stock companies were established the great object was that the shares should be capable of being easily transferred.

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 its 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. It can in fact do or have done to it most of the things which may be done by or to a human being.

2.3 KINDS OF COMPANIES

2.3.1 Classification on the basis of Incorporation

- 1. Statutory Companies: These are the components which are created by a special Act of the Legislature, e.g., the Reserve Bank of India, the State Bank of India, the Life Insurance Corporation, the Industrial Finance Corporation, the Unit Trust of India.
- 2. 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.

2.3.2 Classification on the basis of liability

- On the basis of liability companies may be classified into:

- 1. Companies with limited liability. These may be –

(a) Companies limited by shares

(b) companies limited by guarantee, or

- 2. Companies with unlimited liability

1. Companies with limited liability

(1) 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. The liability can be enforced during the existence of the company as also during the winding up of the company.

(2) Companies limited by guarantee: where the liability of the members of a company is limited to a fixed amount which the members undertake to contribute to the assets of the company in the event of its being wound up, the company is called a company limited by guarantee.

Companies limited by guarantee are not formed for the purpose of profit but for the promotion of art, science, culture, charity, sports, commerce, or for some similar purposes. They may or may not have a share capital.

2. Unlimited companies

Sec. 12 specifically provides that any 7 or more persons (2 or more in case of a private company) may form an incorporated company, with or without limited liability. A Company without limited liability is known as an unlimited company. In case of such a company, every member is liable for the debts of the company.

2.3.3 Classification on the basis of number of members

- From the point of view of the general public and on the basis of number of members, a company may be –

- 1. a private company, or
- 2. a public company

1. Private Company: According to Sec 3 (1) (b) two or more persons, where the company to be formed is to be a private company a ‘private company’ means a company which has a minimum paid-up capital of Rs. 1,00,000 or such higher paid-up capital as may be prescribed, and which by its Articles-

- (a) **restricts** the right to transfer its shares, if any. This restriction is meant to preserve the private character of the company;
- (b) **limits** the number of its members to 200 not including its employee-members (present or past)
- (c) **prohibits** any invitation to the public to subscribe for any shares in, or debentures of, the company.
- (d) *prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.*

2. Public Company:

A public company means a company which –

- (a) Has a minimum paid – up capital of Rs. 5 lakh or such higher paid – up capital, as may be prescribed;
- (b) Is a private company which is a subsidiary of a company which is not a private company.

2.3.4 Distinction between a public company and a private company

Based on	Public Company	Private Company
1. Minimum capital	A public limited company must have a minimum paid – up capital of Rs. 5,00,000.	A private company must have a minimum paid – up capital of Rs. 1,00,000.
2. Minimum number	The minimum number of persons required to form a public company is 7.	it is 2 in case of a private company.
3. Maximum number	There is no restriction on maximum number of members in a public company,	The maximum number cannot exceed 50 in a private company.
4. Number of directors	A public company must have at least 3 directors	A private company must have at least 2 directors. Companies Act, 2013, one director in the case of one – person company.
Based on	Public Company	Private Company
5. Restriction on appointment of directors	In the case of a public company, the directors must file with the Registrar a consent to act as directors or	The directors of a private company need not do so.

	sign an undertaking for their qualification shares.	
6. Restriction on invitation to subscribe for shares	A public company invites the general public to subscribe for the shares in, or the debentures of, the company.	A private company employs no such privileges.
7. Transferability of shares/debentures	In a public company, the shares and debentures are freely transferable.	In a private company the right to transfer shares and debentures is restricted by the articles.
Based on	Public Company	Private Company
8. Special privileges	A public company enjoys no such privileges	A private company enjoys some special privileges
9. Quorum	If the Articles of a company do not provide for a larger quorum, 5 members personally present in the case of a public company if number of members is not more than one thousand are quorum for a meeting of the company 15 members upto 5000 members, 30 members exceed 5000 members.	It is 2 in the case of a private company.
10. Managerial remuneration	Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits.	No such restriction applies to a private company.

2.3.5 Classification on the basis of control

- On the basis of control, companies may be classified into:
 - 1. Holding companies, and
 - 2. Subsidiary companies
- 1. Holding Company: A Company is known as the holding company of another company if it has control over that other company.

- 2. **Subsidiary Company:** A Company is known as a subsidiary of another company when control is exercised by the latter (called holding company) over the former called a subsidiary company.

2.3.6 Classification on the basis of ownership

- On the basis of ownership, a company may be a –
 - 1. Government company, or
 - 2. Non-Government company
- **Government Company**
 - A Government company means any company in which not less than 51 per cent of the paid-up share capital is held by –
 - (a) the central Government, or
 - (b) any State Government or Governments, or
 - (c) partly by the Central Government and partly by one or more State Governments. For example, State Trading Corporation of India Ltd. And Minerals and Metals Trading Corporation of India Ltd. Are Government Companies. The subsidiary of a Government company is also a Government company.

2.3.7 Companies Incorporated Outside India

- Documents, etc., to be delivered to Registrar by foreign companies
- (1) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration-
 - (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language.
 - (b) the full address of the registered or principal office of the company.
 - (c) a list of the directors and secretary of the company containing such particulars as may be prescribed.
 - (d) the name and address or the names and addresses of one or more persons resident in India authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company.

2.3.8 Foreign Company:

- It means any company incorporated outside India which has an established place of business in India.

- Where not less than fifty per cent of the paid-up share capital whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies of bodies corporate incorporated in India, whether singly or in the aggregated, such company shall comply with the provisions of this Act as may be prescribed with regard to the business carried on by it in India as if they were a company in corporate in India.

2.3.9 ASSOCIATIONS NOT FOR PROFIT

- According to Sec. 8 of Companies Act, 2013 the name of a limited company must end with the word 'Limited' in the case of a public company, and with the words 'Private Limited' in the case of a private company. Sec. 8 of the Act, however, permits the registration, under a licence granted by the Central Government, of an association not for profit with limited liability without using the word 'Limited' or the words Private Limited to its name.
- Conditions for grant of licence. The Central Government may grant such a licence to an association where it is proved to the satisfaction of the Central Government that it –
 - (a) is about to be formed as a limited company for promoting commerce, research, social welfare, art, science, sports, education, religion, charity, protection of environment or any other useful object; and
 - (b) intends to apply its profit, if any, or other income in promoting its objects and
 - (c) to prohibit the payment of any dividend to its members.

2.3.10 ONE-PERSON COMPANY or OPC

- Sec.2 (62) means a company which has only one person as a member.
- This is a company (usually private) in which one man holds practically the whole of the share capital of the company. And in order to meet the statutory requirement of minimum number of members, some dummy members who are mostly his relations or friends, hold just 1 or 2 shares each. The dummy members are usually nominees of the principal shareholder who is the virtual owner of the business and who cares it on with limited liability.
- Example: A private company is registered with a share capital of Rs. 5,00,000 divided into 5,000 shares of Rs.100 each. Of these shares 4,999 are held by A and one share is held by A's wife, B. This is a one-man company.

2.3.11 Small Company

- Small Company means a company other than a public company-
 - (i) paid up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees or

- (ii) turn over of which as per last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.
- Provided that it shall not apply to –
 - (a) holding company / subsidiary company
 - (b) a company registered under Sec. 8
 - (c) a company governed by any special Act.

2.3.12 Dormant Company

- This is a new initiative of Ministry of Corporate Affairs to introduce the concept of Dormant Companies, which means Companies which are not carrying on any significant accounting transaction for a period of two years can apply to Registrar of Companies for getting declared itself as Dormant Companies. In today's economic environment, a lot of companies are formed for the purpose of holding any assets particularly real assets or any IPR or for a future project and such Company just keeps on complying with the laws even if no actual business is being done or transacted.

2.4 Formation of Company

2.4.1 MCA-21 – ELECTRONIC FILING OF FORMS FROM 15-9-2006

- PRIOR to THE COMPANIES ACT, 2013, there was ELECTRONIC FILING OF FORMS, from 15-9-2006
- MCA-21 – ELECTRONIC FILING OF FORMS FROM 15-9-2006
 - Ministry of Corporate Affairs (MCA) had launched a programme for managing the work relating to filling of documents, etc. with Registrar of Companies (ROCs) , etc. and getting approvals from Ministry of Corporate Affairs. The physical filing of all forms had been discontinued and converted into electronic filing. It was almost a paperless working of MCA except in a few cases where paper work is unavoidable due to legal and statutory requirements. Presently, winding up procedures have not been covered in the programme. This project is termed as 'MCA-21'. The project became fully operational on 15-9-2006. Most of physical filing of papers has been discontinued at the Offices of Registrars of Companies.
 - MCA – 21 project is designed to fully automate all processes related to enforcement and compliance of legal requirements under Companies Act, 1956.

2.4.2 The following nine matters are covered under MCA – 21 project since 15-9-2006

- (i) Registration and incorporation of new companies.

- (ii) Filling of annual returns and balance sheets.
- (iii) Filling of forms for change of name / address/ director's details.
- (iv) Registration, modification and verification of charges.
- (v) Inspection of documents.
- (vi) Issue of certified copies.
- (vii) Applications for permissions required under various provisions of company law.
- (viii) Approvals from Central Government, Regional Director and ROC. (It will be sent physically by post.)
- (ix) Investor grievance redressal.

MCA-21 Scheme does not cover matters relating to liquidation (insolvency) of companies.

- Provisions relating to filing of applications, documents, inspection, etc., in electronic form (Sec. 398 of New Companies Act, 2013)
- Inspection, production and evidence of documents kept by Registrar (Sec. 399)
- Electronic form to be exclusive, alternative or in addition to physical form (Sec.400)
- Provision of value added services through electronic form (Sec. 401)
- Application of provisions of Information Technology Act, 2000(Sec.402)

MCA-21 Scheme for filing of statutory documents and other transactions by companies in electronic mode.

2.4.3 Incorporation of Company

- Before a company is formed, certain preliminary decisions are necessary, e.g., whether it should be a private company or a public company, what its capital should be, and whether it is worthwhile forming a new company or taking over the business of an already established concern. All these decisions are taken by certain persons known as 'promoters'. They do all the necessary preliminary work incidental to the formation of a company.

2.4.4 Mode of forming incorporated Company (Sec. 3)

- Any 7 or more persons (2 or more in case of a private company) associated for any lawful purpose may form an incorporated company, with or without limited liability. They shall subscribe their names to a Memorandum of Association and also comply with other formalities in respect of registration. A company so formed may be –

- (1) a company limited by shares, or
- (2) a company limited by guarantee, or
- (3) an unlimited company

2.4.5 Incorporation of Company

- (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be suited, the following documents and information for registration, namely:-
 - (a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
 - (b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with;
 - (c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.
 - (d) the address for correspondence till its registered office is established.
 - (e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.
 - (f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and
 - (g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.
- (2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that subsection in the registrar and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

- (3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.
- (4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.
- (5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.
- (6) Without prejudice (unfairness or injustice) to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.
- (7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal (Court) may, on an application made to it, on being satisfied that the situation so warrants,-
 - (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - (b) direct that liability of the members shall be unlimited; or
 - (c) direct removal of the name of the company from the registrar of companies; or
 - (d) pass an order for the winding up of the company; or
 - (e) pass such other as it may deem fit: Provided that before making any order under this sub-section;-
 - (i) the company shall be given a reasonable opportunity of being heard in the matter; and
 - (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

2.4.6 CERTIFICATE OF INCORPORATION

- When the requisite documents are filled with the Registrar, the Registrar shall satisfy himself that the statutory requirements regarding registration have been duly complied with. In exercising this duty, the Registrar is not required to carry out any investigation. If the Registrar is satisfied as to the compliance of statutory requirements, he retains and

registers the Memorandum, the Articles and other documents filed with him and issues a 'certificate of incorporation', i.e., of the formation of the company (Se.7 (2))

Conclusiveness of certificate of incorporation

- A certificate of incorporation given by the Registrar in respect of a company is conclusive evidence that all the requirements of the Companies Act have been complied with in respect of registration. This is known as Rule in Peel's Case.

2.4.7 PROMOTER

- Who is a promoter?
 - "promoter" means a person-
 - (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
 - (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
 - (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act;

Promoter

- A promoter is a person who does the necessary preliminary work incidental to the formation of a company. It is a compendious term used for a person who undertakes, does and goes through all the necessary and incidental preliminaries, keeping in view the object, to bring into existence an incorporated company.

Functions of a Promoter

- The promoter of a company decides its name and ascertains that it will be accepted by the Registrar of Companies. He settles the details of the company's Memorandum and Articles, the nomination of directors, solicitors (lawyer), bankers, auditors, and secretary and the registered office of the company.

2.5 Memorandum of Association

2.5.1 Fundamental Document

- "memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act(Sec.2(56))
- The memorandum of Association is a document of great importance in relation to the proposed company. It contains the fundamental conditions upon which alone the company is allowed to be incorporated. It is the charter of the company and defines its *raison d'être (i.e., reason for existence)*. It lays down the area of operation of the company. It also *regulates the external affairs* of the company in relation to outsiders.

2.5.2 Purpose of memorandum

- The purpose of the Memorandum is two-fold:

- 1. The prospective shareholders shall know the field in, or the purpose for, which their money is going to be used by the company and what risk they are undertaking in making investment.
- 2. The outsiders dealing with the company shall know with certainty as to what the objects of the company are and as to whether the contractual relation into which they contemplate to enter with the company is within the objects of the company.

2.5.3 Printing and signing of Memorandum

- The Memorandum of Association of a company shall be-
 - (a) printed
 - (b) divided into paragraphs numbered consecutively, and
 - (c) signed by 7 (2 in case of a private company) subscribers.
 Each subscriber shall sign (and add his address, description and occupation, if any) in the presence of at least 1 witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

The Memorandum of Association printed on computer laser printers should be accepted by the Registrar for registration of a company provided it is neatly and legibly printed.

2.5.4 Form of Memorandum

- The memorandum of Association of a company shall be in such one of the Forms in Tables A, B, C, D and E in Schedule I to the Companies Act, as may be applicable to the case of the company, or in a Form as near thereto as circumstances admit.

2.5.5 CONTENTS OF MEMORANDUM

- The Memorandum of every company shall contain the following clauses (described as conditions of the company's incorporation):
 - 1. The name of the company, with the last word 'Limited' in the case of a public limited company, or the last words 'Private Limited' in the case of a private limited company.
 - 2. The State in which the registered office of the company is to be situated.
 - 3. The Objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.
 - 4. Limited liability. The Memorandum of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them.
 - 5. Share capital. In the case of a company having a share capital, the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount. In such a company each subscriber shall take at least one share and shall write opposite his name the number of shares he takes.
 - The Memorandum of a company limited by guarantee shall also state that each member undertakes to contribute a certain sum to the assets of the company, if need be, in the event of its being wound up.

The Memorandum shall conclude with an 'association clause' which states that the subscribers desire to form a company and agree to take shares in it.

2.5.6 These Clauses are now considered in detail:

- **1. The Name Clause.** The name of a company establishes its identity and is the symbol of its existence. A Company may, subject to the following rules, select any suitable name –
 - (1) Undesirable name to be avoided. A company cannot be registered by a name which, in the opinion of the Central Government, is undesirable. Broadly speaking, a name is undesirable and therefore rejected if it is either-
 - (a) identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
 - (b) *misleading* , i.e., suggesting that the company is connected with or having the patronage of, the Central Government, any State Government or any local authority, corporation or body constituted by the central Government or any State Government under any law for the time being in force.
 - (c) search word or expression, as may be prescribed.
 - (2) 'Limited' or 'Private Limited' as the last word or words of the name. The memorandum shall state the name of the company with 'Limited' as the last word of the name in case of a public limited company, and with 'Private limited' as the last words of the name in case of a private limited company.
 - (3) Prohibition of use of certain names. The Emblems and Names (Prevention of Improper Use) Act, 1950 prohibits, the use of or registration of a company or firm with, any name or emblem specified in the Schedule to the Act. The Schedule specifies, amongst others, the following items, i.e., the name, emblem or official seal of the United Nations Organisation, the World Health Organisation, the United Nations Educational, Scientific and Cultural Organisation, the Indian National Flag, the name, emblem or official seal of the President of India or Governor of any State.

2. Publication of name

- Every company shall –
 - (a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefore are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
 - (b) have its name engraved in legible characters on its seal;

- (c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any e-mail and website addresses, if any, printed in all its business letters, bill heads, letter papers, and in all its notices and other official publications. And
- (d) have its name printed on hundies (financial Instrument), promissory notes, bills of exchange and such other documents as may be prescribed:
- Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under Clauses (a) and (c):
- Provided further that the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

3. The registered office clause (Sec. 12 of New Companies Act, 2013)

- (1) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
- (2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.
- The situation of the registered office of a company determines its domicile (residence)

4. The Objects Clause

- The object of a company shall be clearly set forth in the Memorandum, for a company can do what is within, or incidental to, the objects stated in the Memorandum. The objects clause both defines and confines scope of the company’s powers, and once registered, it can only be altered as provided by the Act.

The purpose of the objects clause is –

- (1) to enable subscribers to the Memorandum to know the uses to which their money may be put, and
- (2) to enable creditors and persons dealing with the company to know what its permitted range of enterprise or activities.

5. The capital clause

- 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’, ‘authorised’ or ‘nominal’ capital. A company cannot issue more shares than are authorised for the time being by the Memorandum.

6. The liability clause

- The Memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited. This means that the members can only be called upon to pay to the company at any time the uncalled or unpaid amount on the shares held by them, or up to the maximum of the amount which they have guaranteed.

7. The association clause

- The association clause states: “We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names”.

The memorandum shall be signed by at least 7 subscribers in the case of a public company, and by at least 2 subscribers in the case of a private company one person, where the company to be formed is to be one person company that is to say, a private company. The signature of each subscriber shall be attested by at least 1 witness who cannot be any of the other subscribers.

2.6 Articles of Association

2.6.1 Contents of Articles

- The Articles of Association or just Articles are the rules, regulations and bye-laws for the *internal management* of the affairs of a company. They are framed with the object of carrying out the aims and objects as set out in the Memorandum of Association.
- The Articles are next in importance to the Memorandum of Association which contains the *fundamental conditions* upon which alone a company is allowed to be incorporated. They are as such subordinate to, and controlled by, the Memorandum.
- In framing the Articles of a company care must be taken to see that regulations framed do not go beyond the powers of the company itself as contemplated (considered) by the Memorandum of Association.

2.6.2 Contents of Articles

- **Articles usually contain provisions relating to the following matters:**
- (1) Share capital and variation of rights.
- (2) Lien.
- (3) Calls on shares.
- (4) Transfer of shares.
- (5) Transmission of shares.
- (6) Forfeiture of shares.

- (7) Alteration of capital.
- (8) Capitalisation of profits.
- (9) Buy-back of shares.
- (10) General meetings.
- (11) Proceedings at general meetings.
- (12) Adjournment of meeting.
- (13) Voting rights.
- (14) Proxy.
- (15) Board of Directors.
- (16) Proceedings of the Board.
- (17) Chief executive officer, Manager, Company Secretary or Chief Financial officer.
- (18) The Seal.
- (19) Dividends and reserves.
- (20) Accounts.
- (21) Winding up.
- (22) Indemnity (Insurance).

2.6.3 Companies which must have their own Articles

- The following companies shall have their own Articles, namely,
- (a) unlimited companies,
- (b) companies limited by guarantee,
- (c) private companies limited by shares.

The Articles shall be signed by the subscribers of the Memorandum and registered along with the Memorandum.

A public company may have its own Articles of Association. If it does not have its own Articles, it may adopt Table F given in Schedule I to the Act.

2.6.4 Regulations required in case of an unlimited company, a company limited by guarantee and a private company

- 1. Unlimited company. In the case of an unlimited company, the Articles shall state –

- (a) the number of members with which the company is to be registered, and
- (b) if it has a share capital, the amount of share capital with which the company is to be registered.
- 2. Company limited by guarantee. In the case of a company limited by guarantee, the Articles shall state the number of members with which the company is to be registered.
- 3. Private Company. In the case of a private company having a share capital, the Articles shall contain provisions which –
 - (a) restrict the right to transfer shares,
 - (b) limit the number of its members to 50 (not including employee-members), and
 - (c) prohibit any invitation to the public to subscribe for any shares in, or debentures of, the company.

2.6.5 Distinction between Memorandum of Association and Articles of Association

Memorandum of Association	Articles of Association
1. It is the <i>charter</i> of the company indicating the nature of its business, its nationality, and its capital. It also defines the company's relationship with outside world.	1. They are the regulations for the internal management of the company and are subsidiary to the Memorandum.
2. It defines the <i>scope</i> of the activities of the company, or the area beyond which the actions of the company cannot go.	2. They are the rules for carrying out the objects of the company as set out in the Memorandum.
3. It, being the charter of the company, is the <i>supreme</i> document.	3. They are <i>subordinate</i> to the Memorandum. If there is a conflict between the Articles and the Memorandum, the latter prevails.
4. Every company must have its own Memorandum.	4. A company limited by shares need not have Articles of its own. In such a case, Table F applies.
5. There are strict restrictions on its alteration. Some of the conditions of incorporation contained in it cannot be altered except with the sanction of the Company Law Board.	5. They can be altered by a special resolution, to any extent, provided they do not conflict with the Memorandum and the Companies Act.
6. Any act of the company which is ultra vires the Memorandum is wholly void and cannot be ratified even by the whole body of shareholders.	6. Any act of the company which is ultra vires the Articles (but is Intra vires the Memorandum) can be confirmed by the shareholders.

- 'Ultra' means 'beyond' and 'vires' means 'powers'. The term *ultra vires* for a company means that the doing of the act is beyond the legal power and authority of the company.
- 'Intra' means 'within' and 'vires' means 'powers'. The term *intra vires* for a company means that the doing of the act is within the legal powers and authority of the company.

2.7 Prospectus, Power, Duties and liabilities of Directors

2.7.1 Prospectus

Prospectus – a legal document which outlines the company's financial securities for sale to the investors.

CONTENTS OF PROSPECTUS / DISCLOSURES IN PROSPECTUS

- ◎ **The 'Golden Rule' as to framing of prospectus.** The 'golden rule as to framing of prospectuses' was laid down by V.C. Kindersley in the following words:

Prospectus is the window through which an investor can look into the soundness of a company's venture. The investor must, therefore, be given a complete picture of the company's intended activities and its position. This is done through prospectus which must secure the fullest disclosure of all material and essential particulars and lay the same in full view of all intending purchasers of shares.

Matters to be stated in prospectus (Section 26)

1. Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall-

(a) Information to be stated in the prospectus state the following information, namely:-

(i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilized and unutilized monies out of the previous issue in the prescribed manner;

(iv) Details about underwriting of the issue;

(v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(vi) the authority for the issue and the details of the resolution passed there for;

- (vii) procedure and time schedule for allotment and issue of securities;
- (viii) capital structure of the company in the prescribed manner;
- (ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
- (x) main objects and present business of the company and its location, schedule of implementation of the project;
- (xi) particulars relating to –
 - (A) management perception of risk factors specific to the project;
 - (B) gestation period of the project;
 - (C) extent of progress made in the project;
 - (D) deadlines for completion of the project; and
 - (E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company.
- (xii) Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- (xiii) Details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
- (xiv) Disclosures in such manner as may be prescribed about sources of promoter's contribution;

(b) Reports to be included in the prospectus set out the following reports for the purposes of the financial information, namely:-

- (i) Reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;
- (ii) Reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed;
- (iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus;
- (iv) (iv) Reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;

(c) **Declaration to be included in the prospectus** make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under; and

(d) **Other matters and Reports to be included in the prospectus** state such other matters and set out such other reports, as may be prescribed.

2.7.2 Power

Meeting of Board and its Powers

Meeting of Board (Section 173)

- (1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.
- (2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time:
- (3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means:
- (4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousands rupees.
- (5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Powers of Board (Section 179)

- (1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.
- (2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.
- (3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:-
 - (a) to make calls on shareholders in respect of money unpaid on their shares;

- (b) to authorize buy-back of securities under section 68;
- (c) to issue securities, including debentures, whether in or outside India;
- (d) to borrow monies;
- (e) to invest the funds of the company;
- (f) to grant loans or give guarantee or provide security in respect of loans;
- (g) to approve financial statement and the Board's report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;
- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed:

Restrictions on powers of Board (Section 180)

- (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:-
 - (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
 - (b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
 - (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;
 - (d) to remit, or give time for the repayment of, any debt due from a director.
- (2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub –section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors.
- (3) Nothing contained in clause (a) of sub-section (1) shall affect –
 - (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or
 - (b) The sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.

- (4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions:
- (5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

2.7.3 Duties and liabilities of Directors

Duties/responsibilities of directors

- For the first time, duties of directors have been specified in the Act.
- A director shall:
 - (i) Act in accordance with the company's Articles
 - (ii) Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company
 - (iii) Exercise his duties with due and reasonable care, skill & diligence.

A director shall not:

- (i) Involve in a situation where he may have direct or indirect interest
- (ii) Achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives
- (iii) Shall not assign his office

Liabilities of Director

- Companies Act, 2013 cast a criminal liability and civil liability on “officer who is in default” which includes Executive Director and KMP.
- Definition of Officer in default is as follows:
 - “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—
 - (i) whole-time director;
 - (ii) key managerial personnel;

- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

2.8 Winding up of Companies

Meaning of Winding up

- ⊙ Winding up or liquidation (business to an end) of a company represents the last stage in its life. It means a proceeding by which a company is dissolved. The assets of the company are disposed of, the debts are paid off out of the realised assets (or from contributions from its members), and the surplus, if any, is then distributed among the members in proportion to their holdings in the company. The two terms 'winding up' and 'liquidation' are used interchangeably.
- ⊙ According to Prof. Gower, winding up of a company is a process whereby its life is ended and its property administered for the benefit of its creditors and members.
- ⊙ An administrator, called liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

Modes of Winding up (Section 270)

(1) The winding up of a company may be either-

- (a) by the Tribunal; or
- (b) voluntary.

(2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (1).

Part 1- Winding up by the Tribunal (Section 271 – 303)

- ⊙ Circumstances in which company may be wound up by Tribunal (Section 271)
 - **(1) A company may, on a petition under section 272, be wound up by the Tribunal –**

- (a) if the company is unable to pay its debts;
- (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (c) if the company has acted against the interests of the sovereignty (authority of a state) and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- (d) if the Tribunal has ordered the winding up of the company under Chapter XIX;
- (e) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
- (f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.
- **(2) A company shall be deemed to be unable to pay its debts,-**
- (a) if a creditor, by assignments or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or restructure or compound the debt to the reasonable satisfaction of the creditor;
- (b) If any execution or other process issued on a *decree* or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

PART II – Voluntary winding up (Section 304 – 323)

- ⊙ Circumstances in which company may be wound up voluntarily (Section 304)
- ⊙ A company may be wound up voluntarily:-
- ⊙ (a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or
- ⊙ (b) if the company passes a special resolution that the company be wound up voluntarily.

PART III – Provisions Applicable to Every Mode of Winding Up (Section 324 – 358)

- ◎ Debts of all descriptions to be admitted to proof (Section 324)
 - In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

2.9 Corporate Governance

CONCEPT OF CORPORATE GOVERNANCE

- The [Cadbury Report](#) which was released in the UK in 1991 outlined that "Corporate governance is the system by which businesses are directed and controlled".

Corporate Governance is the system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of the many stakeholders like shareholders, management, customers, suppliers, financiers, government and the community in a company.

BASIC PRINCIPLES OF CORPORATE GOVERNANCE - 4

- **Disclosure of material** matters concerning the organisation's performance and activities should be timely and accurate to ensure that all investors have access to clear, factual information which accurately reflects the financial, social and environmental position of the organisation.
Organisations should clarify and make publicly known the roles and responsibilities of the board and management to provide shareholders with a level of accountability
- **Fairness** - Fairness refers to equal treatment, for example, all shareholders should receive equal consideration for whatever shareholdings they hold.
In addition to shareholders, there should also be fairness in the treatment of all stakeholders including employees, communities and public officials. The fairer the entity appears to stakeholders, the more likely it is that it can survive the pressure of interested parties
- **Accountability** - Corporate accountability refers to the obligation and responsibility to give an explanation or reason for the company's actions and conduct.
- **Responsibility** - The Board of Directors are given authority to act on behalf of the company. The Board of Directors are responsible for overseeing the management of the business, affairs of the company, appointing the chief executive and monitoring the performance of the company. In doing so, it is required to act in the best interests of the company.
- Accountability goes hand in hand with responsibility. The Board of Directors should be made accountable to the shareholders for the way in which the company has carried out its responsibilities.

- **Transparency** - A principle of good governance is that stakeholders should be informed about the company's activities, what it plans to do in the future and any risks involved in its business strategies.
- Transparency means openness, a willingness by the company to provide clear information to shareholders and other stakeholders. For example, transparency refers to the openness and willingness to disclose financial performance figures which are truthful and accurate.

2.10 Amendments of Companies Act, 2013

Companies Act, 2013 - An Insight into Latest Amendments

1. COMPULSORY REQUIREMENT FOR DEMATERIALISATION OF SECURITIES

New Rule 9A has been inserted, which requires that;

1. Every unlisted public company (except, WOS, Nidhi and Govt. Company) shall –

(a) issue the securities only in dematerialized form;

(b) facilitate Dematerialization of all its existing securities

2. Dematerialization is a pre-requisite condition to making any offer for issue of any securities; or buyback; or issue of bonus or rights offer, transfer or subscription of securities after 2nd Oct., 2018.

Comments: Public company includes subsidiary of public company

3. This rules shall not apply to an unlisted public company which is:—

(a) a Nidhi; (b) a Government company or (c) a wholly owned subsidiary.

2. Specified Companies (Furnishing of information about payment to micro and small enterprise) Order, 2019.

MCA Notification No. GSR 368(E) dated 22.01.2019 read with the Notification SO 5622(E) dated 2nd Nov., 2018

Meaning of Specified Company:

All companies, who get supplies of goods or services from micro and small enterprises and whose payments to them exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services (as at 22.01.2019) as per the provisions of section 9 of the MSMED Act, 2006.

Criteria of Micro and Small Enterprises:

Section 9 of the MSMED Act, 2006 defines them as per investment In P & M /Equipments:

Type of Enterprise	Manufacturing Industry	Service Industry
Micro	Does Not Exceed Rs. 25 Lakhs	Does Not Exceed Rs. 10 Lakhs
Small	Exceeds Rs. 25 Lakhs but does not exceed Rs. 5 Crore	Exceeds Rs. 10 Lakhs but does not exceed Rs. 2 Crore
Medium	Exceeds Rs. 5 Crore but does not exceed Rs. 10 Crore	Exceeds Rs. 2 Crore but does not exceed Rs. 5 Crore

3. Companies (Acceptance of Deposits) -Amendment Rules, 2014. Amended by MCA Notification No. 42(E) dated 22.01.2019

In the Rule 2(1)(c)(xviii) in the exempted category of deposits “any amount received by a company from Alternate Investment Funds, Domestic Venture Funds, Infrastructure Investment Trusts, (*Real Estate Investment Trusts*) and Mutual Funds registered with SEBI in accordance with regulations made by it.” has been inserted.

In Rule 16 which provides that every company to which deposits rules apply, shall on or before the 30th day of June, of every year, file with the RoC, a return in Form DPT-3 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company. In the said rule the following explanation has been inserted:

“It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company”

4. COMPANY (Amendment) Ordinance, 2019

Section 2(41) read with Rule 40 of Companies (Incorporation) (Fourth Amendment) Rules, 2018: (W.e.f. 02.11.2018) Rules Notified on 18.12.2018)

“Financial year”, in general Financial year means the period ending on the 31st day of March every year and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year.

Existing proviso has been substituted as; Provided that where a company or body corporate, which is a holding company or a subsidiary or Associate of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made to Regional Director in Form RD-1, allow any period as its financial year, whether or not that period is a year;

- All the applications pending before the Tribunal on the date 02.11.2018 shall be disposed by Tribunal in accordance with the previous rules

UNIT III INDUSTRIAL LAW

Topics in Unit – III

- **Factories act 1948**
- **Provisions related to welfare, health, safety and working conditions**
- **Industrial dispute mechanism**
- **The Industrial Dispute act 1947**
- **Forms of Industrial dispute and settlement mechanism**
- **The minimum wages act 1948**
- **Procedure for regulating wages**
- **Advisory boards and committees in wage fixation**
- **ESI Act 1948 Need importance and benefits under the act**
- **Claiming mechanism**

3.1 FACTORIES ACT 1948

THE FACTORIES ACT, 1948 ACT NO. 63 OF 1948

An Act to consolidate and amend the law regulating labour in factories. WHEREAS it is expedient to consolidate and amend the law regulating labour in factories;

It is hereby enacted as follows:—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Factories Act, 1948.

²[(2) It extends to the whole of India ^{3***.}.]

(3) It shall come into force on the 1st day of April 1949.

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “adult” means a person who has completed his eighteenth year of

age;

(b) “adolescent” means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

⁴[(*bb*) “calendar year” means the period of twelve months beginning with the first day of January in any year;]

(c) “child” means a person who has not completed his fifteenth year of age;

(*cb*) “hazardous process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would—

(i) cause material impairment to the health of the persons engaged in or connected therewith, or

(ii) result in the pollution or the general environment:

(a) “day” means a period of twenty-four hours beginning at midnight;

(b) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;

(c) “power” means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

(d) “machinery” includes prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied;

(e) “manufacturing process” means any process for—

i. making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or

b. “worker” means a person ⁴[employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process,

or the subject of the manufacturing process ³[but does not include any member of the armed forces of the Union];

c. “factory” means any premises including the precincts thereof—

i. whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

ii. whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

(d) “occupier” of a factory means the person who has ultimate control over the affairs of the factory^{5***}.

⁴[Provided that—

(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, any one of the directors shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier:]

CHAPTER II - THE INSPECTING STAFF

Inspectors.—(1) The State Government may, by notification in the Official Gazette, appoint such persons as possess the prescribed qualification to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(2) The State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector who shall, in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State.

(3) No person shall be appointed under sub-section (1), sub-section (2) ¹[, sub-section (2A)] or sub-section (5) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly

interested in a factory or in any process or business carried on therein or in any patent or machinery connected there with.

(4) Every District Magistrate shall be an Inspector for his district.

(5) The State Government may also, by notification as aforesaid, appoint such public officers as it thinks fit to be additional Inspectors for all or any of the purposes of this Act, within such local limits as it may assign to them respectively.

(6) In any area where there are more Inspectors than one the State Government may, by notification as aforesaid, declare the powers, which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

9. Powers of Inspectors.—Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, with such assistants, being persons in the service of the Government, or any local or other public authority, ¹[or with an expert] as he thinks fit, any place which is used, or which he has reason to believe is used, as a factory;

²[(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

10. Certifying surgeons.—(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

(2) A certifying surgeon may, with the approval of the State Government, authorise any qualified medical practitioner to exercise any of his powers under this Act for such period as the certifying surgeon may specify and subject to such conditions as the State Government may think fit to impose, and references in this Act to a certifying surgeon shall be deemed to include references to any qualified medical practitioner when so authorised.

PROVISIONS RELATED TO WELFARE, HEALTH, SAFETY AND WORKING CONDITIONS

CHAPTER III HEALTH

11. Cleanliness.—(1) Every factory shall be kept clean and free from

effluvia arising from any drain, privy or other nuisance, and in particular—

12. Disposal of wastes and effluents.—³[(1) Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.]

13. Ventilation and temperature.—(1) Effective and suitable provision shall be made in every factory for securing and maintaining in every workroom—

(a) adequate ventilation by the circulation of fresh air, and

(b) such a temperature as will secure to workers therein reasonable conditions of comfort and prevent injury to health;

And in particular,—

14. Dust and fume.—(1) In every factory in which, by reason of the manufacturing process carried on, there is given off any dust or fume or other impurity of such a nature and to such an extent as is likely to be injurious or offensive to the workers employed therein, or any dust in substantial quantities, effective measures shall be taken to prevent its inhalation and accumulation in any workroom, and if any exhaust appliance is necessary for this purpose, it shall be applied as near as possible to the point of origin of the dust, fume or other impurity, and such point shall be enclosed so far as possible.

15. Artificial humidification.—(1) In respect of all factories in which the humidity of the air is artificially increased, the State Government may make rules,—

(a) prescribing standards of humidification;

(b) regulating the methods used for artificially increasing the humidity of the air;

(c) directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;

(d) Prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

16. Overcrowding.—(1) No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein.

(2) Without prejudice to the generality of sub-section (1) there shall be in every workroom of a factory in existence on the date of the commencement of this Act at least ¹[9.9 cubic metres] and of a factory

built after the commencement of this Act at least ²[14.2 cubic metres] of space for every worker employed therein, and for the purposes of this sub-section no account shall be taken of any space which is more than ³[4.2 metres] above the level of the floor of the room.

17. Lighting.—(1) In every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both.

(2) In every factory all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and, so far as compliance with the provisions of any rules made under sub-section (3) of section 13 will allow, free from obstruction.

18. Drinking water.—(1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked “drinking water” in a language understood by a majority of the workers employed in the factory, and no such point shall be situated within ¹[six metres of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination] unless a shorter distance is approved in writing by the Chief Inspector.

19. Latrines and urinals.—(1) In every factory—

(a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory;

(b) separate enclosed accommodation shall be provided for male and female workers;

20. Spittoons.—(1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

(2) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.

CHAPTER IV SAFETY

21. Fencing of machinery.—(1) In every factory the following, namely:—

(i) every moving part of a prime mover and every flywheel connected to a prime mover, whether the prime mover or flywheel is

in the engine house or not;

(ii) the headrace and tailrace of every water-wheel and water turbine:

(iii) any part of a stock-bar which projects beyond the head stock of a lathe; and

(iv) unless they are in such position or of such construction as to be safe to every person employed in the factory as they would be if they were securely fenced, the following, namely:—

(a) every part of an electric generator, a motor or rotary converter;

(b) every part of transmission machinery; and

(c) every dangerous part of any other machinery;

22. Work on or near machinery in motion.—(1) ³[Where in any factory it becomes necessary to examine any part of machinery referred to in section 21, while the machinery is in motion, or, as a result of such examination, to carry out—

(a) in a case referred to in clause (i) of the proviso to sub-section (1) of section 21, lubrication or other adjusting operation; or

(b) in a case referred to in clause (ii) of the proviso aforesaid, any mounting or shipping of belts or lubrication or other adjusting operation,

[(2) No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any adjacent machinery.]

23. Employment of young person's on dangerous machines.—(1) No young person ²[shall be required or allowed to work] at any machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed and—

(a) has received sufficient training in work at the machine, or

(b) Is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) Sub-section (1) shall apply to such machines as may be prescribed by the State Government, being machines which in its opinion are of such a dangerous character that young person's ought not to work at them unless the foregoing requirements are complied with.

24. Striking gear and devices for cutting off power.—(1) In every

factory—

(a) suitable striking gear or other efficient mechanical appliance shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley;

Driving belts when not in use shall not be allowed to rest or ride upon shafting in motion.

(2) In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom:

25. Self-acting machines.—No traversing part of a self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of ²[forty-five centimeters] from any fixed structure which is not part of the machine:

26. Casing of new machinery.—(1) In all machinery driven by power and installed in any factory after the commencement of this Act,—

(a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger;

(b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased, unless it is so situated as to be as safe as it would be if it were completely encased.

27. Prohibition of employment of women and children near cotton-openers.—No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is artwork:

28. Hoists and lifts.—(1) In every factory—

(a) every hoist and lift shall be—

(i) of good mechanical construction, sound material and adequate strength;
properly maintained, and shall be thoroughly examined by a competent person at least once in every period of six months, and a register shall be kept containing the prescribed particulars of every such examination;

²[**29. Lifting machines, chains, ropes and lifting tackles.**—(1) In

any factory the following provisions shall be complied with in respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:—

30. Revolving machinery.—(1) ³[In every factory] in which the process of grinding is carried on there shall be permanently affixed to or placed near each machine in use a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon which the wheel is mounted, and the diameter of the pulley upon such shaft or spindle necessary to secure such safe working peripheral speed.

31. Pressure plant.—⁴[(1) If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.]

32. Floors, stairs and means of access.—In every factory—
all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained ⁶[and shall be kept free from obstructions and substances likely to cause persons to slip], and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails;

33. Pits, sumps openings in floors, etc.—(1) In every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced.

34. Excessive weights.—(1) No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.

35. Protection of eyes.—In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves—

- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process,

²[**36. Precautions against dangerous fumes, gases, etc.**—(1) No person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

³[**36A. Precautions regarding the use of portable electric light.**—in any factory—

(a) no portable electric light or any other electric appliance of voltage exceeding twenty-four volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space **Explosive or inflammable dust, gas, etc.**—(1) Where in any factory any manufacturing process produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition, all practicable measure shall be taken to prevent any such explosion by—

¹[**38. Precautions in case of fire.**—(1) In every factory, all practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain—

(a) safe means of escape for all persons in the event of a fire, and

(b) the necessary equipment and facilities for extinguishing fire.

39. Power to require specifications of defective parts or tests of stability.—If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it may be dangerous to human life or safety, he may serve on ¹[the occupier or manager or both] of the factory an order in writing requiring him before a specified date—

40. Safety of buildings and machinery.—(1) If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on ¹[the occupier or manager or both] of the factory an order in writing specifying the measures which in his opinion should be adopted, and requiring them to be carried out before a specified date.

²[**40 A. Maintenance of buildings.**—If it appears to the Inspector that any building or part of a building in a factory is in such a state of disrepair as is likely to lead to conditions detrimental to the health and welfare of the workers, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures which in his opinion should be taken and requiring the same to be carried out before such date as is specified in the order.]

40B. Safety Officers.—(1) In every factory—

(i) wherein one thousand or more workers are ordinarily employed, or

(ii) wherein, in the opinion of the State Government, any manufacturing process or operation is carried on, which process or

operation involves any risk of bodily injury, poisoning or disease, or any other hazard to health, to the persons employed in the factory,

CHAPTER V WELFARE

41. Washing facilities.—(1) In every factory—

(a) adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein;

(b) separate and adequately screened facilities shall be provided for the use of male and female workers;

(c) Such facilities shall be conveniently accessible and shall be kept clean.

(2) The State Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing.

42. Facilities for storing and drying clothing.—The State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

43. Facilities for sitting.—(1) In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

44. First-aid appliances.—(1) There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed ¹[at any one time] in the factory.

45. Canteens.—(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.]

47. Shelters, rest rooms and lunch rooms.—(1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room, with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers:

(a)

48. Creches.—(1) In every factory wherein more than ²[thirty women workers] are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

49. Welfare officers.—(1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

50. Power to make rules to supplement this Chapter.—The State Government may make rules—

(a) exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter;

3.2 The Industrial Dispute act 1947

The Industrial Disputes Act, 1947

An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

CHAPTER-I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called The Industrial Disputes Act, 1947.

¹[(2) It extends to the whole of India.]

²[***]

(3) It shall come into force on the first day of April, 1947.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

(a) “appropriate Government “means—

In relation any industrial dispute concerning [***] any industry carried on by or under the authority of the

Central Government, or by a railway company⁵[or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute.

(ii) In relation to any other industrial dispute, the State Government;

⁸[(aa) “arbitrator” includes an umpire;]

¹[²[(aaa)] “average pay” means the average of the wages payable to a workman—

- (i) in the case of monthly paid workman, in the three complete calendar months,
 - (ii) in the case of weekly paid workman, in the four complete weeks,
- [(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10-A;]
- ⁴[(bb) “banking company” means a banking company as defined in Section 5 of the ⁵[Banking Companies Act, 1949 (10 of 1949),
- ¹²[(cc) “closure” means the permanent closing down of a place of employment or part thereof;
- (c) “conciliation officer” means a conciliation officer appointed under this Act;
 - (d) “conciliation proceeding” means any proceeding held by a conciliation officer or Board under this Act;
 - (e) “Court” means a Court of Inquiry constituted under this Act;
 - (f) “employer “means-
 - (i) in relation to an industry carried on by or under the authority of any department of [the Central Government Government or a State Government] the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
 - (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;
- ⁴[(gg) “executive”, in relation to a trade union, means the body by whatever name called, to which the management of the affairs of the trade union is entrusted;]

“INDUSTRY” MEANS ANY BUSINESS, TRADE, UNDERTAKING, MANUFACTURE OR CALLING OF EMPLOYERS AND INCLUDES ANY CALLING, SERVICE, EMPLOYMENT, HANDICRAFT, OR INDUSTRIAL OCCUPATION OR AVOCATION OF WORKMEN;

“industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

1[2A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute. - Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

INDUSTRIAL DISPUTE MECHANISM

CHAPTER II AUTHORITIES UNDER THIS ACT

3. Works Committee:- (1) In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment, so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

4. The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

5. Board of Conciliation :- (1) the appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

(2) A Board shall consist of a Chairman and two or four other members, as the appropriate Government thinks fit.

(3) The Chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the

(4) A Board, having the prescribed quorum, may act notwithstanding the absence of the Chairman or any of its members or any vacancy in its number:

Courts of Enquiry:- (1) The appropriate Government may as occasion arises by notification in the Official Gazette, constitute a Court of Inquiry for enquiring into any matter appearing to be connected with or relevant to an industrial dispute.

(2) A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit and where a Court consists of two or more members, one of them shall be appointed as the Chairman.

(3) A Court, having the prescribed quorum, may act, notwithstanding the absence of the Chairman or any of its members or any vacancy in its number:

1[7. Labour Courts.-

(1)The appropriate Government may, by notification in The Official

Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to the munder this Act.

(2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless-

2[(a) he is, or has been, a Judge of a High Court; or

(b) He has, for a period of not less than three years, been a District Judge or an Additional District Judge;

4[(d) he has held any judicial office in India for not less than seven years; or

5[(e) he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.]

7A.Tribunals.-(1)The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act].

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-

(a) he is, or has been, a Judge of High Court ;or

1[(aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge;

(b) 3[***]

(4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

7B. National Tribunals.-

(1) The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

(2) A National Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a National Tribunal⁴ [unless he is, or has been, a Judge of a High Court.]

(4) The Central Government may, if it so thinks fit, appoint two persons as assessors to advise the National Tribunal in the proceeding before it.

FORMS OF INDUSTRIAL DISPUTE AND SETTLEMENT MECHANISM

STRIKES AND LOCK-OUTS

16. Prohibition of strikes and lock-outs.- (1) No person employed in a public utility service shall go on strike in breach of contract-

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Illegal strikes and lock-outs.- (1) A strike or a lock-out shall be illegal

I

- f- (i) it is commenced or declared in contravention of Section 22 or Section 23; or
 - (ii) it is continued in contravention of an order made under sub-section (3) of Section 10⁴ [or sub-section (4-A) of Section 10-A]
- (2) Where a strike or lock-out in pursuance of an industrial dispute has

already commenced and is in existence at the time of the reference of the dispute to a Board, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of Sec.10⁷ [or sub-section 4(A) of Section10-A].

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

Prohibition of financial aid to illegal strikes and lock-outs. - No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

LAY-OFF AND RETRENCHMENT

25A. Application of Sections 25-C to 25-E.- (1) Sections 25-C to 25-E inclusive⁹[shall not apply to industrial establishments to which Chapter V-B applies,] or to industrial establishments in which less than fifty workmen on an average per working day have been employed in the preceding calendar month; or

(e) To industrial establishments which are of a seasonal character or in which work is performed only intermittently?

(2) If a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final

¹[*Explanation.* - In this section and in Sections 25-C, 25-D and 25-E, “industrial establishment” means-

- (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);or
- (ii) a mine as defined in clause(f) of Section 2 of the Mines Act,1952 (35 of 1952);or
- (iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of1951).]

²[25B. Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar

months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) One hundred and twenty days, in any other case.

Right of workmen laid off for compensation.- Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty percent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:

Explanation.- "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.]

3.3 THE MINIMUM WAGES ACT 1948

Minimum Wages Act, 1948 [11 OF 1948]

An Act to provide for fixing minimum rates of wages in certain employments. WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments;

It is hereby enacted as follows.-

Section 1:

Short title and extent.

(1) This Act may be called the Minimum Wages Act, 1948.

(2) It extends to the whole of India [1]

Section 2:

Interpretation.

In this Act, unless there is anything repugnant in the subject or context,-

(a) "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) "adult" means a person who has completed his eighteenth year of age

(b) "appropriate Government" means,-

(i) in relation to any scheduled employment carried on by or under the authority of the [3] [Central Government, or a railway administration], or in relation to a

mine, oilfield or major port, or any corporation established by

[4] [a Central Act], the Central Government, and

(ii) in relation to any other scheduled employment, the State Government; (bb) "child" means a person who has not completed his fourteenth year of age;

(c) "competent authority" means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

(d) cost of living index number", in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment;

(e) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub- section (3) of section 26,-

PROCEDURE FOR REGULATING WAGES

Minimum rate of wages.

Minimum rate of wages.-(1) any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of—

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or
- (ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorized; or
- (iii) An all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the

competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES.

Procedure for fixing and revising minimum wages.- (1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either--

- (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or
- (b) By notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise

ADVISORY BOARDS AND COMMITTEES IN WAGE FIXATION

[Advisory committees and sub-committees.]-Rep. by the Minimum Wages (Amendment) Act, 1957 (30 of 1957)

Advisory Board.

For the purpose of co-coordinating the work of 1*[committees and sub-committees appointed under section 5] and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.

Central Advisory Board.

Central Advisory Board. - (1) For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-coordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

(2) The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman of the Board by the Central Government.

Composition of committees

Composition of committees, etc. - Each of the committees, sub- committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.

3.4 ESI ACT 1948

THE EMPLOYEES' STATE INSURANCE ACT, 1948

[Act No. 34 of 1948]

1

An Act to provide for certain benefits to employees in case of sickness, maternity and 'employment injury' and to make provision for certain other matters in relation thereto.

WHEREAS it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto;

It is hereby enacted as follows: —

CHAPTER I

PRELIMINARY

1. Short title, extent, commencement and application. — (1) This Act may be called the Employees' State Insurance Act, 1948.

(2) It extends to ²[the whole of India]³

(3) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and ¹[for different States or for different parts thereof].

(4) It shall apply, in the first instance, to all factories (including factories belonging to the ²[Government]) other than seasonal factories.

³[Provided that nothing contained in this sub-section shall apply to a factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.].

(5) The appropriate Government may, in consultation with the Corporation and ⁴[where the appropriate Government is a State Government, with the approval of the Central Government], after giving ⁵[one month's] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment, or class of establishments, industrial, commercial, agricultural or otherwise.

⁶[Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar

establishment or class of establishments in another part of that State.]

¹[(6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.]

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,

(1) “Appropriate Government” means, in respect of establishments under the control of the Central Government or ²[a railway administration] or a major port or a mine or oil-field, the Central Government, and in all other cases, the ³[State] Government;

(3) “confinement” means labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead;

(4) “contribution” means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act;

(6) “Corporation” means the Employees’ State Insurance Corporation setup under this Act ;

¹[(6-A) “dependant” means any of the following relatives of a deceased insured person, namely:—

²[(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter ;]

³[(ia) a widowed mother;]

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of ⁴[twenty-five] and who is infirm;

(iii) if wholly or in part dependent on the earnings of the insured person at the time of his death,—

(a) a parent other than a widowed mother,

(b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,

(c) a minor brother or an unmarried sister or a widowed sister if a minor,

(d) a widowed daughter-in-law,

(e) a minor child of a pre-deceased son,

(f) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) a paternal grand-parent if no parent of the insured person is alive;]

(7) “duly appointed” means appointed in accordance with the provisions of this Act or with the rules or regulations made there-under;

¹[(8) “ employment injury ” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India ;]

(9) “ employee ” means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and—

- (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere ; or
- (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment ; or
- (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service ; ²[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment ;

NEED IMPORTANCE AND BENEFITS UNDER THE ACT

BENEFITS

45. *Benefits.* — (1) Subject to the provisions of this Act, the insured persons, ¹[their dependants or the persons here in after mentioned, as the case may be,] shall be entitled to the following benefits, namely :—

- (a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner ²[or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf] (hereinafter referred to as sickness benefit);
- ³[(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);]
- (c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

- (d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit) ;¹[***]
- (e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit) ;²[and]
- ³[(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as ⁴[funeral expenses].

Provided that the amount of such payment shall not exceed ⁵[such amount as may be prescribed by the Central Government] and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.]

(2) The Corporation may, at the request of the appropriate Government, and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person.

⁶[47. *When person eligible for sickness benefit.* — ***]

¹[48. *When person deemed available for sickness benefit.* — ***]

²[49. *Sickness benefit.* — The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rate and period thereof shall be such as may be prescribed by the Central Government.

50. *Maternity Benefit.* — The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.]

³[51. *Disablement benefit.* — Subject to the provisions of this Act ⁴[* * *] —

- (a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment ⁵[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government] ;
- (b) a person, who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment ⁶[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government].

¹[* * *]

51-A. *Presumption as to accident arising in course of employment. — For the purposes of this Act, an accident arising in the course of ²[an employee's] employment shall be

presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

***51-B. Accidents happening while acting in breach of regulations, etc.** — An accident shall be deemed to arise out of and in the course of ²[an employee's] employment notwithstanding that he is at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he is acting without instructions from his employer, if—

- (a) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be ;and
- (b) the act is done for the purpose of and in connection with the employer's trade or business.

***51-C. Accidents happening while travelling in employer's transport.** — (1) An accident happening while an ³[employee] is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if—

- (a) the accident would have been deemed so to have arisen had he been under such obligation ;and
- (b) at the time of the accident, the vehicle—
 - (i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer ;and
 - (ii) is not being operated in the ordinary course of public transport service.

(2) In this section “vehicle” includes a vessel and an aircraft.

***51-D. Accidents happening while meeting emergency.** — An accident happening to an ¹[employee] in or about any premises at which he is for the time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperiled, or to avert or minimize serious damage to property.]

²[51-E. Accidents happening while commuting to the place of work and vice versa. — An accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established.]

³[52. Dependants' benefit. — (1) If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependants' benefit shall be payable ¹[at such rates and for such periods and subject to such conditions as may be

prescribed by the Central Government] to his dependants specified in ²[sub-clause (i), sub-clause (i-a) and] sub-clause (ii) of clause (6-A) of section 2.

(2) In case the insured person dies without leaving behind him the dependants as aforesaid, the dependants' benefit shall be paid to the other dependants of the deceased ³[at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.]

***52-A. Occupational disease.** — (1) If an employee employed in any establishment specified in Part A of the Third Schedule contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee employed in the employment specified in Part B of that Schedule for a continuous period of not less than six months contracts any disease specified therein as an occupational disease peculiar to that employment or if an employee employed in any employment specified in Part C of that Schedule for such continuous period as the Corporation may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall, unless the contrary is proved, be deemed to be an “employment injury” arising out of and in the course of employment.

(2) (i) Where the Central Government or a State Government, as the case may be, adds any description of employment to the employment specified in Schedule III to the Workmen's Compensation Act, 1923* (8 of 1923) by virtue of the powers vested in it under sub-section (3) of Sec. 3 of the said Act, the said description of employment and the occupational diseases specified under that sub-section as peculiar to that description of employment shall be deemed to form part of the Third Schedule.

(ii) Without prejudice to the provisions of clause (i), the Corporation after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in the Third Schedule and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively and thereupon the provisions of this Act shall apply, as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(3) Save as provided by sub-sections (1) and (2), no benefit shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(4) The provisions of section 51-A shall not apply to the cases to which this section apply.]

CLAIMING MECHANISM

ADJUDICATION OF DISPUTE AND CLAIMS

68. Constitution of Employees' Insurance Court. — (1) The ¹[State] Governments shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of judges as the ¹[State] Government may think fit.

Any person who is or has been a judicial officer or is a legal practitioner of five years' standing shall be qualified to be a Judge of the Employees' Insurance Court.

(3) The ¹[State] Governments may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(4) Where more than one Court has been appointed for the same local area, the ¹[State] Government may by general or special order regulate the distribution of business between them.

69. Matters to be decided by the Employees' Insurance Court. — (1) If any question or dispute arises as to—

- (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
- (b) the rate of wages or average daily wages of an employee for the purposes of this Act, or
- (c) the rate of contribution payable by a principal employer in respect of any employee, or
- (d) the person who is or was the principal employer in respect of any employee, or
- (e) the right of any person to any benefit and as to the amount and duration thereof, or
- ¹[(ee) any direction issued by the Corporation under section 55-A on a review of any payment of dependants' benefits, or]
- ²[(f) * * *]
- (g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, ³[or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act],

such question or dispute ⁴[subject to the provisions of sub-section (2A)] shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

(2) ⁵[Subject to the provisions of sub-section (2A), the following claims] shall be decided by the Employees' Insurance Court, namely :—

- (a) claim for the recovery of contribution from the principal employer;
- (b) claim by a principal employer to recover contributions from any immediate employer ;

¹[(c) * * *]

- (d) claim against a principal employer under section 68;

- (e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto ;and
- (f) If any claim for the recovery of any benefit admissible under this Act.

²[(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it.]

³[(2-B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.]

(3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by ¹[a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court].

70. Institution of proceedings, etc. — (1) Subject to the provisions of this Act and any rules made by the ²[State] Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose.

(2) If the Court is satisfied that any matter arising out of any proceedings pending before it can be more conveniently dealt with by any other Employees' Insurance Court in the same³[State], it may, subject to any rules made by the ²[State] Government in this behalf, order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other Court the records connected with that matter.

(3) The ² [State] Governments may transfer any matter pending before any Employees' Insurance Court in the ³[State] to any such Court in another ³[State] with the consent of the²[State] Government of that State.

(4) The Court to which any matter is transferred under sub-section (2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it.

71. Commencement of proceedings. — (1) The proceeding before an Employees' Insurance Court shall be commenced by application.

⁴[(1-A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation. — For the purpose of this sub-section, —

(a) the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable;

¹[(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time :

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates;

(c) The cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.].]

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

72. Powers of Employees' Insurance Court. — (1) The Employees' Insurance Court shall have all the powers of a civil Court for the purposes of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering oath and recording evidence and such Court shall be deemed to be a civil Court within the meaning of ¹[section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

(2) The Employees' Insurance Court shall follow such procedure as may be prescribed by rules made by the ²[State] Government.

(3) All costs incidental to any proceeding before an Employees' Insurance Court shall, subject to such rules as may be made in this behalf by the ²[State] Government, be in the discretion of the Court.

(4) An order of the Employees' Insurance Court shall be enforceable as if it were a decree passed in a suit by a civil Court.

73. Appearance by legal practitioners, etc. — Any application, appearance or act required to be made or done by any person to or before an Employees' Insurance Court (other than appearance of a person required for the purpose of this examination as a witness) may be made or done by a legal practitioner or by an officer of a registered trade union authorised in writing by such person or, with the permission of the Court, by any other person so authorised.

³[**80. Benefit not admissible unless claimed in time.** — * * *]

81. Reference to High Court. — An Employees' Insurance Court may submit any question of law for the decision of the High Court and if does so shall decide the question pending before it in accordance with such decision.

82. *Appeal.* — (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of sections 5 and 12 of the ¹[Limitation Act, 1963 (36 of 1963)] shall apply to appeals under this section.

Stay of payment pending appeal. — Where the Corporation has presented an appeal against an order of the Employees' Insurance Court, that Court may, and if so directed by the High Court shall, pending the decision of the appeal, withhold the payment of any sum directed to be paid by the order appealed against.

UNIT - IV

CORPORATE TAX AND GST

Topics in Unit – IV

- Corporate Tax planning
- Income Tax
- Goods and Services Tax
- Introduction& fundamentals
- Objectives
- Dual GST model
- IGST, CGST, SGST & UTGST
- Input Tax Credit
- Simple problems Practical implications of GST

4.1 Corporate Tax planning

Introduction

Tax planning involves conceiving of and implementing various strategies in order to minimise the amount of taxes paid for a given period. For a small business, minimising the tax liability can provide more money for expenses, investment, or growth. In this way, tax planning can be a source of working capital. There are several general areas of tax planning that apply to all sorts of small businesses. These areas include the choice of accounting and inventory-valuation methods, the timing of equipment purchases, the spreading of business income among family members, and the selection of tax-favoured benefit plans and investments. So, before one can embark on a study of the tax planning, it is absolutely vital to understand the meaning of tax planning and the concept of tax evasion, tax avoidance, tax planning and tax management. The purpose of this unit is to enable the students to comprehend basic expressions. Therefore, all such basic terms are explained and suitable illustrations are provided to define their meaning and scope.

Concept of Tax Planning

Tax planning is a broad term that is used to describe the processes utilised by individuals and businesses to pay the taxes due to local, state, and federal tax agencies. The process includes such elements as managing tax implications, understanding what type of expenses are tax deductible under current regulations, and in general planning for taxes in a manner that ensures the amount of tax due will be paid in a timely manner.

One of the main focuses of tax planning is to apply current tax laws to the revenue that is received during a given tax period. The revenue may come from any revenue producing mechanism that is currently in operation for the entity concerned. For individuals, this can mean income sources such as interest accrued on bank accounts, salaries, wages and tips, bonuses, investment profits, and other sources of income as currently defined by law. Businesses will consider revenue generated from sales to customers, stock and bond issues, interest bearing bank accounts, and any other income source that is currently considered taxable by the appropriate tax agencies.

Tax planning involves conceiving of and implementing various strategies in order to minimise the amount of taxes paid for a given period. For a small business, minimising the tax liability can provide more money for expenses, investment, or growth. In this way, tax planning can be a source of working capital. Tax planning is not a device to reduce tax burden. In fact, it helps savings by investments in government securities. Savings reduce extravagance, and correspondingly inflation. Tax savings are permitted only for investment made in government securities and bonds of priority sectors which ultimately help the nation. Therefore, the savings in tax help the Central and State Governments to mobilise funds by way of investments and as such the government earns much by way of other benefits, by sacrificing small amount of tax. The Supreme Court in one case observed that “Tax planning may be legitimate provided it is within the framework of Law”. By tax planning, the government is equally benefited.

Tax planning is an essential part of your financial planning. Efficient tax planning enables you to reduce your tax liability to the minimum. This is done by legitimately taking advantage of all tax exemptions, deductions rebates and allowances while ensuring that your investments are in line with your long term goals.

In many cases, a primary goal of tax planning is to apply current laws in a manner that allows the individual or business to reduce the amount of taxable income for the period. Thus, planning for taxes involves knowing which types of income currently qualify for as exempt from taxation. The process also involves understanding what types of expenses may be legitimately considered as deductions, and what circumstances have to exist in order for the deduction to be claimed on the tax return.

General Areas of Tax Planning

There are several general areas of tax planning that apply to all sorts of small businesses. These areas include the choice of accounting and inventory-valuation methods, the timing of equipment purchases, the spreading of business income among family members, and the selection of tax-favoured benefit plans and investments. Some of the general taxes planning strategies are described below:

1. **Accounting Methods:** Accounting methods refer to the basic rules and guidelines under which businesses keep their financial records and prepare their financial reports. There are two main accounting methods used for record-keeping: the cash basis and the accrual basis. Small business owners must decide which method to use depending on the legal form of the business, its sales volume, whether it extends credit to customers, and the tax requirements set forth by the Internal Revenue Service (IRS). The choice of accounting method is an issue in tax planning, as it can affect the amount of taxes owed by a small business in a given year.

Accounting records prepared using the cash basis recognises income and expenses according to real-time cash flow. Income is recorded upon receipt of funds, rather than based upon when it is actually earned, and expenses are recorded as they are paid, rather than as they are actually incurred. Under this accounting method, therefore, it is possible to defer taxable income by delaying billing so that payment is not received in the current year. Likewise, it is possible to accelerate expenses by paying them as soon as the bills are received, in advance of the due date. The cash method is simpler than the accrual method, it provides a more accurate picture of cash flow, and income is not subject to taxation until the money is actually received.

In contrast, the accrual basis makes a greater effort to recognise income and expenses in the period to which they apply, regardless of whether or not money has changed hands. Under this system, revenue is recorded when it is earned, rather than when payment is received, and expenses recorded when they are incurred, rather than when payment is made. The main advantage of the accrual method is that it provides a more accurate picture of how a business is performing over the long-term than the cash method. The main disadvantages are that it is more complex than the cash basis, and that income taxes may be owed on revenue before payment is actually received. However, the accrual basis may yield favourable tax results for companies that have few receivables and large current liabilities.

Hence, we can conclude. Some form of record-keeping is required by law and for tax purposes, but the resulting information can also be useful to managers in assessing the company's financial situation and making decisions. It is possible to change accounting methods later, but the process can be complicated. Therefore it is important for small business owners to decide which method to use up front, based on what will be most suitable for their particular business.

2. **Cash vs. Accrual Basis:** A taxpayer chooses his accounting method when he files his first income tax return. The Tax Code requires that taxpayers use a consistent method of accounting from year to year. Thus, if a taxpayer wishes to change its accounting method it must get permission to do so from the IRS. To request a change in accounting method you must file IRS Form 3115. This is a highly complex form and should not be completed without the assistance of a qualified CPA or tax attorney.

The two most commonly used methods of accounting are the Accrual and the Cash methods. The Cash Method of accounting allows taxpayers to report their revenues when received and expenses when paid. More than 95% of individual taxpayers use the Cash Method of accounting to report their taxable income and deductible expenses on their Forms 1040. Under the Accrual Method of accounting a taxpayer records his income when a sale occurs, not when payment is received. Likewise, he records a deductible expense when it's incurred, not when it's paid.

Since the recognition of revenues and expenses under the cash method depends upon the timing of various cash receipts and disbursements, however, it can sometimes provide a misleading picture of a company's financial situation. In contrast, the accrual basis makes a greater effort to recognise income and expenses in the period to which they apply, regardless of whether or not money has changed hands. Under this system, revenue is recorded when it is earned, rather than when payment is received, and expenses recorded when they are incurred, rather than when payment is made.

The main advantage of the accrual method is that it provides a more accurate picture of how a business is performing over the long-term than the cash method. The main disadvantages are that it is more complex than the cash basis, and that income taxes may be owed on revenue before payment is actually received.

3. *Inventory Valuation Methods:* The method a small business chooses for inventory valuation can also lead to substantial tax savings. Inventory valuation is important because businesses are required to reduce the amount they deduct for inventory purchases over the course of a year by the amount remaining in inventory at the end of the year.
4. *Equipment Purchases:* It is often advantageous for small businesses to use this tax incentive to increase their deductions for business expenses, thus reducing their taxable income and their tax liability. Necessary equipment purchases up to the limit can be timed at year end and still be fully deductible for the year.
5. *Benefits Plans and Investments:* Tax planning also applies to various types of employee benefits that can provide a business with tax deductions, such as contributions to life insurance, health insurance, or retirement plans. As an added bonus, many such benefit programs are not considered taxable income for employees. Finally, tax planning applies to various types of investments that can shift tax liability to future periods, such as treasury bills, bank certificates, savings bonds, and deferred annuities. Companies can avoid paying taxes during the current period for income that is reinvested in such tax-deferred instruments.

Tax Planning for Different Business Forms

“The first step in tax planning—for small business owners and professionals, at least—is to select the right form of organisation for your enterprise,” is according to Albert B. Ellentuck in the Laventhol and Horwath Small Business Tax Planning Guide. “You’ll end up paying radically different amounts of income tax depending on the form you select. And your odds of being audited by the IRS will change, too.” There are also some areas of tax planning that are specific to certain business forms—i.e., sole proprietorships, partnerships, C corporations, and S corporations.

Many aspects of tax planning are specific to certain business forms. Some of these are discussed below:

- (i) ***Sole Proprietorships and Partnerships:*** Tax planning for sole proprietorships and partnerships is in many ways similar to tax planning for individuals. This is because the owners of businesses organised as sole proprietors and partnerships pay personal income tax rather than business income tax. These small business owners file an informational return for their business with the IRS (Internal Revenue Service), and then report any income taken from the business for personal use on their own personal tax return.

Since they do not receive an ordinary salary, the owners of sole proprietorships and partnerships are not required to withhold income taxes for themselves. It is important that the amount of tax paid in quarterly instalments equal either the total amount owed during the previous year or 90 percent of their total current tax liability. Otherwise, the IRS may charge interest and impose a

stiff penalty for underpayment of estimated taxes.

Since the IRS calculates the amount owed quarterly, a large lump-sum payment in the fourth quarter will not enable a taxpayer to escape penalties. On the other hand, a significant increase in withholding in the fourth quarter may help, because tax that is withheld by an employer is considered to be paid evenly throughout the year no matter when it was withheld. This leads to a possible tax planning strategy for a self-employed person who falls behind in his or her estimated tax payments. By having an employed spouse increase his or her withholding, the self-employed person can make up for the deficiency and avoid a penalty. The IRS has also been known to waive underpayment penalties for people in special circumstances.

Another possible tax planning strategy applies to partnerships that anticipate a loss. At the end of each tax year, partnerships file the informational Form 1065 (Partnership Statement of Income) with the IRS, and then report the amount of income. This income can be divided in any number of ways, depending on the nature of the partnership agreement. In this way, it is possible to pass all of a partnership's early losses to one partner in order to maximise his or her tax advantages.

- (i) **C Corporations:** Tax planning for C corporations is very different than that for sole proprietorships and partnerships. This is because profits earned by C corporations accrue to the corporation rather than to the individual owners, or shareholders. A corporation is a separate, taxable entity under the law, and different corporate tax rates apply based on the amount of net income received. Personal service corporations like medical and law practices, pay a flat rate of 35 percent. In addition to the basic corporate tax, corporations may be subject to several special taxes.

Corporations must prepare an annual corporate tax return on either a calendar-year basis (the tax year ends December 31, and taxes must be filed by March 15) or a fiscal-year basis (the tax year ends whenever the officers determine). Most Sub-chapter S corporations, as well as C corporations that derive most of their income from the personal services of shareholders, are required to use the calendar-year basis for tax purposes. Most other corporations can choose whichever basis provides them with the most tax benefits. Using a fiscal-year basis to stagger the corporate tax year and the personal one can provide several advantages.

Both the owners and employees of C corporations receive salaries for their work, and the corporation must withhold taxes on the wages paid. All such salaries are tax deductible for the corporations, as are fringe benefits supplied to employees. Many smaller corporations can arrange to pay out all corporate income in salaries and benefits, leaving no income subject to the corporate income tax. Of course, the individual shareholder/employees are required to pay personal income taxes. Still, corporations can use tax planning strategies to defer or accrue income between the corporation and individuals in order to pay taxes in the lowest possible tax bracket. The one major disadvantage to corporate taxation is that corporate income is subject to corporate taxes, and then income distributions to shareholders in the form of dividends are also taxable for the shareholders. This situation is known as "double taxation."

- (ii) **S Corporations:** Sub-chapter S corporations avoid the problem of double taxation by passing their earnings (or losses) through directly to shareholders, without having to pay dividends. Experts note that it is often preferable for tax planning purposes to begin a new business as an S corporation rather than a C corporation. Many businesses show a loss for a year or more when they first begin operations. At the same time, individual owners often cash out investments and sell assets in order to accumulate the funds needed to start the business. The owners would have to pay tax on this income unless the corporate losses were passed through to offset it.

Another tax planning strategy available to shareholder/employees of S corporations involves keeping FICA

(Federal Insurance Contributions Act) taxes low by setting modest salaries for themselves, below the Social Security base. S corporation shareholder/employees are only required to pay FICA taxes on the income that they receive as salaries, not on income that they receive as dividends or on earnings that are retained in the corporation. It is important to note, however, that unreasonably low salaries may be challenged by the IRS. The key objective in effective corporate tax planning is to identify the main factors in the organisation's structure that dictate the opportunities for tax efficiencies.

4.2 Income Tax

Introduction

An income tax is a tax levied on the financial income of persons, corporations, or other legal entities. Various income tax systems exist, with varying degrees of tax incidence. Income taxation can be progressive, proportional, or regressive. When the tax is levied on the income of companies, it is often called a corporate tax, corporate income tax, or profit tax. Individual income taxes often tax the total income of the individual (with some deductions permitted), while corporate income taxes often tax net income (the difference between gross receipts, expenses, and additional write-offs). Every country generates income from 'Income Tax' in the form of direct tax levied by government. Income tax plays a vital role in the economy of every country in the world. Income tax Act was enacted in the year 1961. So, before one can embark on a study of the law of income tax, it is absolutely vital to understand some of the expressions found under the Income tax Act, 1961. The purpose of this Unit is to enable the students to comprehend basic expressions. Therefore, all such basic terms are explained and suitable illustrations are provided to define their meaning and scope.

Concept of Income

A basic income is an income unconditionally granted to all on an individual basis, without means test or work requirement. It is a form of minimum income guarantee that differs from those that now exist in various countries in three important ways:

1. it is being paid to individuals rather than households;
2. it is paid irrespective of any income from other sources;
3. it is paid without requiring the performance of any work or the willingness to accept a job if offered.

There is no specific definition of income but for statutory purposes there are certain items which are listed under the head income. These items include those heads also which normally will not be termed as income but for taxation we consider them as income. The definition of income as per the Income tax Act, 1961, begins with the words "Income includes". Income is a periodical monetary return with some sort of regularity. It may be recurring in nature. It may be broadly defined as the true increase in the amount of wealth which comes to a person during fixed period of time.

The definition of the term "income" in sec. 2 (24) is inclusive and not exhaustive. The term "income" not only indicates those things which are included in sec. 2(24), but also includes such thing which the term signifies according to its general and natural meaning.

Therefore, it is an inclusive definition and not an exhaustive one. Such a definition does not confine the scope of income but leaves room for more inclusions within the ambit of the term. Certain important principles relating to income are enumerated below:

1. Income, in general, means a periodic monetary return which accrues or is expected to accrue regularly from definite sources. However, under the Income tax Act, 1961, even certain

incomes which do not arise regularly are treated as income for tax purposes e.g. Winnings from lotteries, crossword puzzles.

2. Income normally refers to revenue receipts. Capital receipts are generally not included within the scope of income. However, the Income tax Act, 1961 has specifically included certain capital receipts within the definition of income e.g. capital gains i.e. gains on sale of a capital asset like land.
3. Income means net receipts and not gross receipts. Net receipts are arrived at after deducting the expenditure incurred in connection with earning such receipts. The expenditure which can be deducted while computing income under each head is prescribed under the Income tax Act, 1961.
4. Income is taxable either on due basis or receipt basis. For computing income under the heads “Profits and gains of business or profession” and “Income from other sources”, the method of accounting regularly employed by the assessee should be considered, which can be either cash system or mercantile system.

Income earned in a previous year is chargeable to tax in the assessment year. Previous year is the financial year, ending on 31st March, in which income has accrued/received.

Assessment year is the financial year (ending on 31st March) following the previous year. The income of the previous year is assessed during the assessment year following the previous year. For instance, income of previous year 2012-13 is assessed during the year 2013-14. Therefore, 2013-14 is the assessment year for assessment of income of the previous year 2012-13.

Features of “Income”

The following features of income can help a person to understand the concept of income:

1. **Definite Source:** Income has been compared with a fruit or a crop from the field. Fruit comes from a tree and crop from fields. Thus, the source of income is definite in both the cases. The existence of a source for income is somewhat essential to bring a receipt under the charge of tax.
2. **Income must come from outside:** No one can earn income from himself. There can be no income from transaction between head office and branch office. Contributions made by members for the mutual benefit and found surplus cannot be termed as income of such group.
3. **Tainted Income:** Income earned legally or illegally remains income and it will be taxed according to the provisions of the Act. Assessment of illegal income of a person does not grant him immunity from the applicability of the provisions of other act.
4. **Temporary or Permanent:** Whether the income is permanent or temporary, it is immaterial from the tax point of view.

Voluntary Receipt: The receipts which do not arise from the exercise of a profession or business or do not amount to remuneration and are made for reasons purely of personal nature are not included in the scope of total income.

Tax Treatment of “Income”

For the purposes of treatment of income for tax purposes it can be divided into three categories:

1. **Taxable Income:** These incomes form part of total income and are fully taxable. These are salaries, rent, business profits, professional gains, capital gain, interest dividend and so on.
2. **Exempted Income:** These incomes do not form part of total income either fully or partially. Hence, no tax is payable on such incomes.

3. **Rebateable (Tax Free Incomes):** These incomes form part of total income and are fully taxable. Tax is calculated on total income out of which a Rebate of Tax at average rate is allowed.

Importance of Income Tax

The importance of income tax is enumerated as below:

1. Income tax is the prime source of fund to the government.
2. It helps in removing inequalities of income levels among people.
3. It helps in eradication of poverty, as the government spends the amount collected through Income tax, for welfare of poor people.

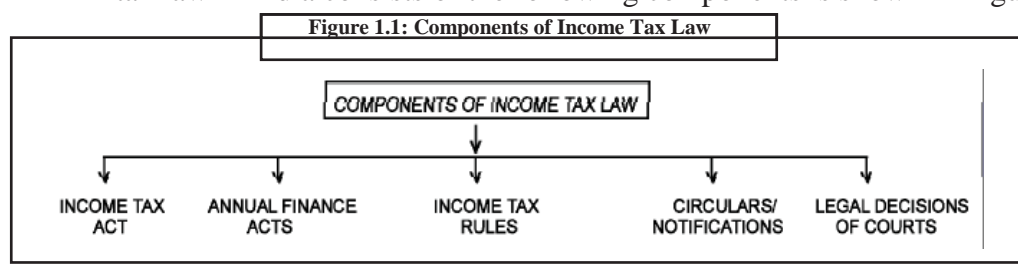
Principles of Income Tax

The “tax net” refers to the types of payment that are taxed, which included personal earnings (wages), capital gains, and business income. The rates for different types of income may vary and some may not be taxed at all. Capital gains may be taxed when realised (e.g. when shares are sold) or when incurred (e.g. when shares appreciate in value). Business income may only be taxed if it is significant or based on the manner in which it is paid. Some types of income, such as interest on bank savings, may be considered as personal earnings (similar to wages) or as a realised property gain (similar to selling shares). In some tax systems, personal earnings may be strictly defined where labour, skill, or investment is required (e.g. wages); in others, they may be defined broadly to include windfalls (e.g. gambling wins).

Tax rates may be progressive, regressive, or flat. A progressive tax taxes differentially based on how much has been earned. A tax system may use different taxation methods for different types of income. However, the idea of a progressive income tax has garnered support from economists and political scientists of many different ideologies, from Adam Smith in the Wealth of Nations to Karl Marx in the Communist Manifesto. Personal income tax is often collected on a pay-as-you-earn basis, with small corrections made soon after the end of the tax year. These corrections take one of two forms: payments to the government, for taxpayers who have not paid enough during the tax year; and tax refunds from the government for those who have overpaid. Income tax systems will often have deductions available that lessen the total tax liability by reducing total taxable income. They may allow losses from one type of income to be counted against another. For example, a loss on the stock market may be deducted against taxes paid on wages. Other tax systems may isolate the loss, such that business losses can only be deducted against business tax by carrying forward the loss to later tax years.

Overview of Income Tax Law in India

Income tax is a tax levied on the total income of the previous year of every person. A person includes an individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), a firm, a company etc. Income tax is the most significant direct tax. The income tax law in India consists of the following components is shown in Figure 1.1:



The various instruments of law containing the law relating to income tax are explained below:

1. **Income tax Act:** The levy of income tax in India is governed by the Income tax Act, 1961. This Act came into force on 1st April, 1962. The Act contains 298 sections and XIV schedules. These undergo change every year with additions and deletions brought about by the Finance Act passed by Parliament. In pursuance of the power given by the Income tax Act, 1961 rules have been framed to facilitate proper administration of the Income tax Act.
2. **Finance Act:** Every year, the Finance Minister of the Government of India presents the Budget to the Parliament. Part A of the budget speech contains the proposed policies of the Government in fiscal areas. Part B of the budget speech contains the detailed tax proposals. In order to implement the above proposals, the Finance Bill is introduced in the Parliament. Once the Finance Bill is approved by the Parliament and gets the assent of the President, it becomes the Finance Act.

Income tax Rules: The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT). The CBDT is empowered to make rules for carrying out the purposes of the Act. For the proper administration of the Income tax Act, the CBDT frames rules from time to time. These rules are collectively called Income tax Rules, 1962. It is important to keep in mind that along with the Income tax Act, 1961, these rules should also be studied.

1. **Circulars and Notifications:** Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of the provisions. These circulars are issued for the guidance of the officers and/or assesseees. The department is bound by the circulars. While such circulars are not binding the assesseees they can take advantage of beneficial circulars.
2. **Case Laws:** The study of case laws is an important and unavoidable part of the study of income tax law. It is not possible for Parliament to conceive and provide for all possible issues that may arise in the implementation of any Act. Hence the judiciary will hear the disputes between the assesseees and the department and give decisions on various issues. The Supreme Court is the Apex Court of the country and the law laid down by the Supreme Court is the law of the land. The decisions given by various High Courts will apply in the respective states in which such High Courts have jurisdiction.

Basic Concepts of Income Tax

Section 2 of the Act gives definitions of the various terms and expressions used therein. In order to understand the provisions of the Act, one must have a thorough knowledge of the meanings of certain key terms like 'person', 'assessee', 'income', etc. To understand the meanings of these terms we have to first check whether they are defined in the Act itself. If a particular definition is given in the Act itself, we have to be guided by that definition. If a particular definition is not given in the Act, reference can be made to the General Clauses Act or dictionaries. Students should note this point carefully because certain terms like "dividend", "transfer", etc. have been given a wider meaning in the Income tax Act, 1961 than they are commonly understood.

Some of the important terms defined under section 2 are given below:

(1) **Assessee [Section 2(7)]:** ‘Assessee’ means a person by whom any tax or any other sources of money is payable under this act, and includes:

- (a) every person in respect of whom any proceedings under this act have been taken for the assessment.
 - (i) of his income or of the income of any other person in respect of which he is assessable; or
 - (ii) of the loss sustained by him or by such other person; or
 - (iii) of the amount of refund due to him or to such other person;
- (b) every person who is deemed to be an assessee under any provision of this Act.
- (c) every person who is deemed to be an assessee in default under any provisions of this act.

Person [Section 2(31)]: The definition of ‘assessee’ leads us to the definition of ‘person’ as the former is closely connected with the latter. The term ‘person’ is important from another point of view also viz.; the charge of income tax is on every ‘person’.

The definition is inclusive i.e. a person includes,

- ❖ an individual,
- ❖ a Hindu Undivided Family (HUF),
- ❖ a company,
- ❖ a firm,
- ❖ an AOP or a BOI, whether incorporated or not,
- ❖ a local authority, and
- ❖ every artificial juridical person e.g., an idol or deity.

We may briefly consider some of the above seven categories of assessee each of which constitute a separate unit of assessment.

- (i) **Individual:** The term ‘individual’ means only a natural person, i.e., a human being. It includes both males and females. It also includes a minor or a person of unsound mind. But the assessment in such a case may be made under section 161(1) on the guardian or manager of the minor or lunatic. In the case of deceased person, assessment would be made on the legal representative.
- (ii) **HUF:** Under the Income tax Act, a Hindu Undivided Family (HUF) is treated as a separate entity for the purpose of assessment. It is included in the definition of the term “person” under section 2(31). The levy of income tax is on “every person”. Therefore, income tax is payable by a HUF. “Hindu undivided family” has not been defined under the Income tax Act. The expression is however defined under the Hindu Law as a family, which consists of all males lineally descended from a common ancestor and includes their wives and unmarried daughters. The relation of a HUF does not arise from a contract but arises from status.

A Hindu is born into a HUF. A male member continues to remain a member of the family until there is a partition of the family. After the partition, he ceases to be a member of one family. However, he

becomes a member of another smaller family. A female member ceases to be a member of the HUF in which she was born, when she gets married. Thereafter, she becomes a member of the HUF of her husband. Some members of the HUF are called coparceners. They are related to each other and to the head of the family. HUF may contain many members, but members within four degrees including the head of the family (kartha) are called coparceners. A Hindu coparcenary includes those persons who acquire by birth an interest in the joint coparcenary property. Only the coparceners have a right to partition. A Jain undivided family would also be assessed as a HUF, as Jains are also governed by the laws as Hindus.

(iii) *Company [Section 2(17)]*: For all purposes of the Act the term ‘Company’, has a much wider connotation than that under the Companies Act. Under the Act, the expression ‘Company’ means:

- (a) any Indian company as defined in section 2(26); or
- (b) any body corporate incorporated by or under the laws of a country outside India, i.e., any foreign company; or
- (c) any institution, association or body which is assessable or was assessed as a company for any assessment year under the Indian Income tax Act, 1922 or for any assessment year commencing on or before 1.4.1970 under the present Act; or any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by a general or special order of the CBDT to be a company for such assessment years as may be specified in the CBDT’s order.



Did u know? There are two types of companies:

- (1) *Domestic Company [Section 2(22A)]*: means an Indian company or any other company which, in respect of its income liable to income tax, has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, payable out of such income.
- (2) *Foreign Company [Section 2(23A)]*: Foreign company means a company which is not a domestic company.

Firm: The terms ‘firm’, ‘partner’ and ‘partnership’ have the same meanings as assigned to them in the Indian Partnership Act. In addition, the definitions also include the terms as they have been defined in the Limited Liability Partnership (LLP) Act, 2008. However, for income tax purposes a minor admitted to the benefits of an existing partnership would also be treated as partner. This is specified under section 2(23) of the Act. A partnership is the relation between persons who have agreed to share the profits of business carried on by all or any of them acting for all. The persons who have entered into partnership with one another are called individually ‘partners’ and collectively a ‘firm’.

(v) *Association of Persons (AOP)*: When persons combine together for promotion of joint enterprise they are assessable as an AOP when they do not in law constitute a partnership. In order to constitute an association, persons must join in a common purpose, common action and their object must be to produce income; it is not enough that the persons receive the income jointly. Co-heirs, co-legatees or co-donees joining together for a common purpose or action would be

chargeable as an AOP.

Body of Individuals (BOI): It denotes the status of persons like executors or trustees who merely receive the income jointly and who may be assessable in like manner and to the same extent as the beneficiaries individually. Thus co-executors or co-trustees are assessable as a BOI as their title and interest are indivisible.

Income tax shall not be payable by an assessee in respect of the receipt of share of income by him from BOI and on which the tax has already been paid by such BOI.

Local Authority: The term means a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund.

- (iv) **Artificial Persons:** This category could cover every artificial juridical person not falling under other heads. An idol or deity would be assessable in the status of an artificial juridical person.
- (3) **Income [Section 2(24)]:** Section 2(24) of the Act gives a statutory definition of income. This definition is inclusive and not exhaustive. Thus, it gives scope to include more items in the definition of income as circumstances may warrant. At present, the following items of receipts are included in income:
- ❖ Profits and gains.
 - ❖ Dividends.
 - ❖ Voluntary contributions received by a trust/institution created wholly or partly for charitable or religious purposes or by an association or institution referred to in section 10(21) or section

Research association approved under section 35(1)(ii)	10(21)
Universities and other educational institutions	10(23C)(iiiad) and (vi)
Hospitals and other medical institutions	10(23C) (iii ae) and (via)
Notified funds or institutions established for charitable purposes	10(23C)(iv)
Notified trusts or institutions established wholly for public religious purposes or wholly for public religious and charitable purposes	10(23C)(v)
Electoral trust	13B

(23C)(iii ad)/(iii ae)/(iv)/(v)/(vi)/(via) or an electoral trust –

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- ❖ The value of any perquisite or profit in lieu of salary taxable under section 17.
- ❖ Any special allowance or benefit other than the perquisite included above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit.

Any allowance granted to the assessee to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.

- ❖ The value of any benefit or perquisite whether convertible into money or not, obtained from a

company either by a director or by a person who has a substantial interest in the company or by a relative of the director or such person and any sum paid by any such company in respect of any obligation which, but for such payment would have been payable by the director or other person aforesaid.

- ❖ The value of any benefit or perquisite, whether convertible into money or not, which is obtained by any representative assessee mentioned under section 160(1)(iii) and (iv), or by any beneficiary or any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay.
- ❖ Deemed profits chargeable to tax under section 41 or section 59.
- ❖ Profits and gains of business or profession chargeable to tax under section 28.
- ❖ Any capital gains chargeable under section 45.
- ❖ The profits and gains of any insurance business carried on by Mutual Insurance Company or by a co-operative society, computed in accordance with Section 44 or any surplus taken to be such profits and gains by virtue of the provisions contained in the First Schedule to the Act.
- ❖ The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members.
- ❖ Any winnings from lotteries, cross-word puzzles, races including horse races, card games and other games of any sort or from gambling, or betting of any form or nature whatsoever. For this purpose,
 - ◆ “Lottery” includes winnings, from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
 - ◆ “Card game and other game of any sort” includes any game show, an entertainment programme on television or electronic mode; in which people compete to win prizes or any other similar game.
- ❖ Any sum received by the assessee from his employees as contributions to any Provident Fund (PF) or superannuation fund or Employees State Insurance Fund (ESI) or any other fund for the welfare of such employees.
- ❖ Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy will constitute income.
- ❖ Any sum referred to clause (va) of Section 28. Thus, any sum, whether received or receivable in cash or kind, under an agreement for not carrying out any activity in relation to any business; or not sharing any know-how, patent, copy right, trade- mark, licence, franchise, or any other business or commercial right of a similar nature, or information or technique likely to assist in the manufacture or processing of goods or provision of services, shall be chargeable to income tax under the head “profits and gains of business or profession”.
- ❖ Any sum of money or value of property referred to in section 56(2)(vii) or section 56(2)(viia).
 - ❖ Any consideration received for issue of shares as exceeds the fair market value of shares referred to in section 56(2)(viib).

(4) **Dividend [Section 2(22)]:** The term 'dividend' as used in the Act has a wider scope and meaning than under the general law. According to section 2(22) of the Act, the following receipts are deemed to be dividend:

- (a) *Distribution of accumulated profits, entailing the release of company's assets:* Any distribution of accumulated profits, whether capitalised or not, by a company to its shareholders is dividend if it entails the release of all or any part of its assets. For example, if accumulated profits are distributed in cash it is dividend in the hands of the shareholders. Where accumulated profits are distributed in kind, for example by delivery of shares etc. entailing the release of company's assets, the market value of such shares on the date of such distribution is deemed dividend in the hands of the shareholder [section 2(22)(a)].
 - ❖ *Distribution of debentures, deposit certificates and bonus shares to preference shareholders:* Any distribution to its shareholders by a company of debenture stock or deposit certificate in any form, whether with or without interest, and any distribution of bonus shares to preference shareholders to the extent to which the company possesses accumulated profits, whether capitalised or not, will be deemed as dividend. The market value of such bonus shares is taxable in the hands of the preference shareholder. In the case of debentures, debenture stock etc., their value is to be taken at the market rate and if there is no market rate they should be valued according to accepted principles of valuation [section 2(22)(b)].
 - ❖ *Distribution on liquidation:* Any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not, is deemed to be dividend income [section 2(22)(c)].
 - ❖ Accumulated profits include all profits of the company up to the date of liquidation whether capitalised or not. But where liquidation is consequent to the compulsory acquisition of an undertaking by the Government or by any corporation owned or controlled by the Government, the accumulated profits do not include any profits of the company prior to the 3 successive previous years immediately preceding the previous year in which such acquisition took place subject to certain exceptions.
 - (d) *Distribution on reduction of capital:* Any distribution to its shareholders by a company on the reduction of its capital to the extent to which the company possessed accumulated profits, whether capitalised or not, shall be deemed to be dividend [section 2(22)(d)].
 - (e) *Advance or loan by a closely held company to its shareholder:* Any payment by a company in which the public are not substantially interested of any sum by way of advance or loan to any shareholder who is the beneficial owner of 10% or more of the equity capital of the company will be deemed to be dividend to the extent of the accumulated profits. If the loan is not covered by the accumulated profits, it is not deemed to be dividend [section 2(22)(e)].
- (5) **India [Section 2(25A)]:** The term 'India' means:
- (i) the territory of India as per article 1 of the Constitution,
 - (ii) its territorial waters, seabed and subsoil underlying such waters,
 - (iii) continental shelf,
 - (iv) exclusive economic zone, or
 - (v) any other specified maritime zone and the air space above its territory and territorial waters.

Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and the Maritime Zones Act, 1976.

- (6) **Assessment Year:** The term has been defined under section 2(9). This means a period of 12 months commencing on 1st April every year. The year in which tax is paid is called the assessment year while the year in respect of the income of which the tax is levied is called the previous year. Income of previous year of an assessee is taxed during the next following assessment year at the rates prescribed by the relevant Finance Act.
- (7) **Previous Year [Section 3]:** It means the financial year immediately preceding the assessment year. The income earned during the previous year is taxed in the assessment year.

Business or profession newly set up during the financial year: In such a case, the previous year shall be the period beginning on the date of setting up of the business or profession and ending with 31st March of the said financial year.

- (8) If a source of income comes into existence in the said financial year, then the previous year will commence from the date on which the source of income newly comes into existence and will end with 31st March of the financial year.
- (9) **Gross Total Income:** 'Gross Total Income' may be defined as the aggregate of income computed in accordance with the provisions of this act before making any deduction under Chapter-VI A of Income Tax Act, 1961.
- (10) **Total Income:** Any assessee has to pay income tax on different types of income derived on the basis of residential status. As per section 45 of Income Tax Act, 1961 'Total Income' means, income shown in Section 5 of Income Tax Act, 1961:
- (a) Salary Income,
 - (b) Income from House property,
 - (c) Income from Business and Profession,
 - (d) Capital gains, and
 - (e) Income from other sources.

These five are also called as 'Heads of Income'. The income is determined under different sections. But some of the incomes which are exempted are not included in Total Income.

4.3 Goods and Services Tax

WHAT IS GST?

- Goods and services tax means a tax on supply of goods or services, or both, except taxes on supply of alcoholic liquor for human consumption (Article 366 (12A) of Constitution of India).
- GST is a value added tax levy on sale or service or both.
- GST is a destination based consumption tax.
- GST offers comprehensive and continuous chain of tax credit.
- GST where burden borne by final consumer.
- GST eliminate cascading effect of tax.
- GST brings uniform tax structure all over India.

ADVANTAGES OF GST

- (a) One Nation One Tax.
- (b) Removal of bundled indirect taxes such as VAT, CST, Service tax,

CAD, SAD, and Excise. (c) Removal of cascading effect of taxes i.e.

removes tax on tax.

(d) Increased ease of doing business;

(e) Lower cost of production, increases demand will lead to increase supply. Hence, this will ultimately lead to rise in the production of goods. Resultantly boost to make in India initiative.

(f) It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth;

NEED FOR GST IN INDIA

The following deficiencies in the existing Indirect Tax Laws cause need to bring GST in India as a cure for ills of existing Indirect Tax regime.

GST is a Cure for ills of existing Indirect Tax:

The given statement is true. Cascading effect of tax is one of the vital cause-to-cause ill of existing Indirect Tax. It means, a tax that is levied on a good at each stage of the production process up to the point of being sold to the final consumer. It is also known as tax on tax.

One of the fundamental features of GST is the seamless flow of input credit across the chain (from the manufacture of goods till it is consumed) and across the country.

Let us understand it in the following cases:

(1) Non-integration of VAT and Service Tax causes double taxation:

In the present regime, restaurant services provider is liable to pay VAT on sale of food and service tax on supply of services. There is no set-off. It means VAT is not allowed as input tax credit against service tax and vice versa.

Example 1:	
Service Tax and VAT on Restaurant Bill:	
Particulars	Amount (₹)
Total Food Bill	1,000
Service charges @ 10%	100
Total	1,100
VAT @ 14.5% on ₹ 1,100	159.50
Total Bill (before Service Tax)	1,259.50
Service Tax @ 14% on ₹ 440 (i.e., 1,100 × 40%)	61.60
Add: Swachh Bharat Cess 0.5% on ₹ 440	2.20
Add: Krishi Kalyan Cess 0.5% on ₹ 440	2.20
Total Bill payable by customer	1,325.50
Rounded off	1,326.00

Example 2:

Invoice of a manufacturer cum seller:

<i>Particulars</i>	<i>Value in ()</i>
Value of Goods	1,00,000
Add: Excise duty 12.5%	12,500
Taxable Turnover	1,12,500
Add: VAT 14.5%	16,313
Invoice Price	1,28,813

Example 3:

Mr. C of Calicut being a dealer purchased goods from Mr. H of Hyderabad by paying central sales tax of ` 2,000. Since, CST is not allowed as Input Tax Credit against VAT payable on local sales, VAT is calculated inclusive of CST causing cascading of tax.

The existing Indirect Tax frame work in India suffer from various duties and taxes at Central as well as at State level:

Central Indirect taxes	State Indirect Taxes
Central Excise duty	State Value Added Tax
Excise duty levied under Medicinal and Toilet preparations (Excise duty) Act, 1955	Entertainment tax
Service Tax	Central Sales Tax
CVD on import	Entry tax
Spl. CVD on import	Purchase tax
Central surcharge	Luxury tax
Central Cesses	Betting and Gambling tax
	State surcharges
	State Cesses

In the GST regime, all the above taxes have been subsumed in the ambit of GST.

ONE NATION - ONE TAX

GST will extend to whole of India including the State of Jammu and Kashmir.

On 7th July, 2017, the Jammu and Kashmir Goods and Services Tax Bill, 2017 was passed by the State Legislature, empowering the State to levy State GST on intra-state supplies with effect from 8th July, 2017.

Concomitantly, the President of India has promulgated two ordinances, namely, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 extending the domain of Central GST Act and the Integrated GST Act to the State of Jammu and Kashmir, with effect from 8th July, 2017.

With this, the State of Jammu and Kashmir has become part of the GST regime, making GST truly a "one nation, one tax" regime.

DUAL GST MODEL

India adopted a dual GST where tax imposed concurrently by the Central and States.

Dual GST model

SGST	<ul style="list-style-type: none"> • State GST • Collected by the State Government
CGST	<ul style="list-style-type: none"> • Central GST • Collected by the Central Government
IGST	<ul style="list-style-type: none"> • Integrated GST • Collected by the Central Government on inter-state supply of Goods and Services

Central Goods and Services Tax Act, 2017 (CGST):

CGST levied and collected by Central Government. It is a revenue source to the Central Government of India, on intra-state supplies of taxable goods or services or both.

State Goods and Services Tax Act, 2017 (SGST):

SGST levied and collected by State Governments/Union Territories with State Legislatures (namely Delhi and Pondicherry) on intra-state supplies of taxable goods or services or both. It is a revenue source of the respective State Government.

Union Territory Goods and Services Tax (UTGST):

UTGST levied and collected by Union Territories without State Legislatures, on intra-state supplies of taxable goods or services or both.

Note: India is a Union of States. The territory of India comprises of the territories of the States and the Union Territories. Currently, there are 29 States and 7 Union Territories; of which, two (Delhi and Pondicherry) are having Legislature.

GST – in Union Territories without Legislature:

Supplies within such Union territory, Central GST will apply to whole of India and hence, it would be applicable to all Union Territories, with or without Legislature.

To replicate the law similar to State GST to Union Territories without Legislature, the Parliament has the powers under Article 246(4) to make such laws. Alternatively, the President of India may use his general powers to formulate such laws.

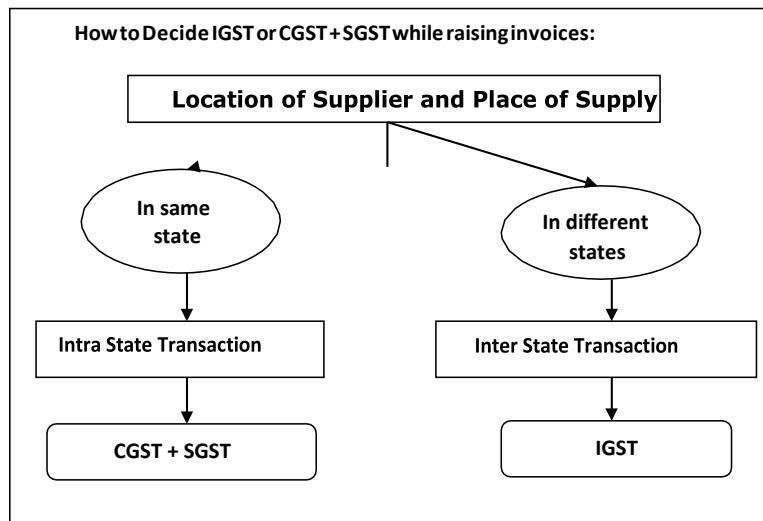
Hence, law same as similar to State GST can be formulated for Union Territory without Legislature, by the Parliament. The following are Union Territories without Legislature:

1. Chandigarh
2. Lakshadweep
3. Daman and Diu
4. Dadra and Nagar Haveli
5. Andaman and Nicobar Islands

Integrated Goods and Services Tax Act, 2017 (IGST):

IGST is a mechanism to monitor the inter-state trade of goods and services and ensure that the SGST component accrues to the Consumer State. It would maintain the integrity of ITC chain in inter-state supplies. The IGST rate would broadly be equal to CGST rate plus SGST rate. IGST would be levied and collected by the Central Government on all inter-State transactions of taxable goods or services.

The revenue of inter-state sales will not accrue to the exporting state and the exporting state will be required to transfer to the Centre the credit of SGST/UTGST used in payment of IGST.

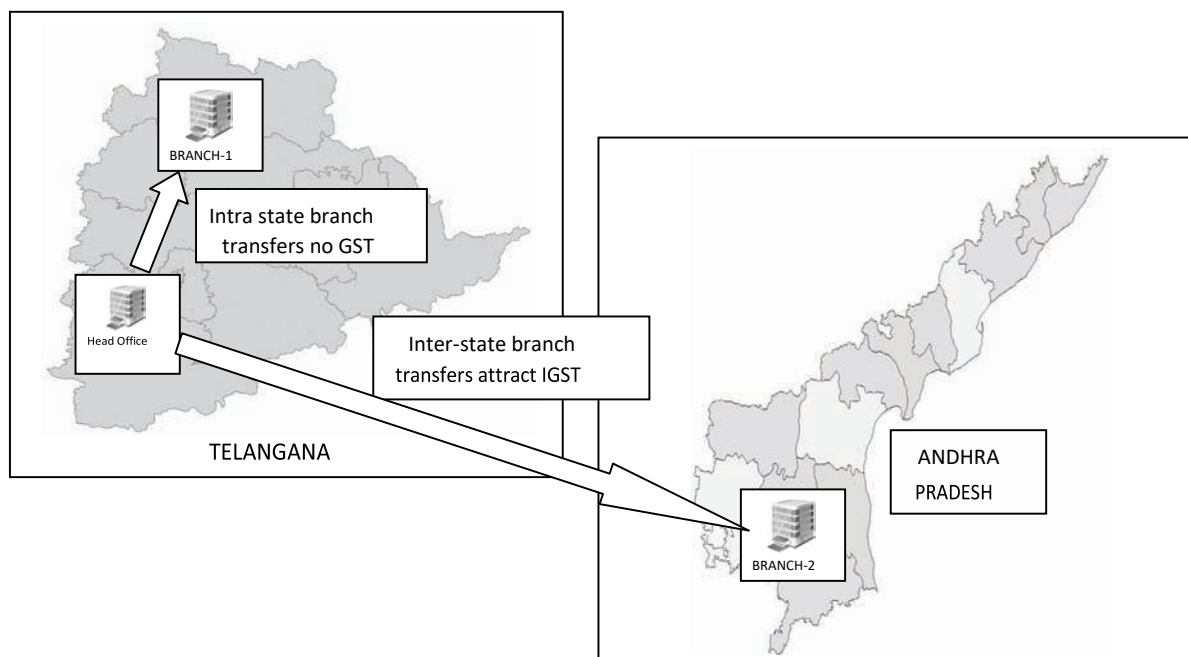


INTER-STATE VS INTRA-STATE STOCK TRANSFERS

Intra-state stock transfer is taxable only when entity has more than one registration in one state. For example, Factory located in Tamil Nadu and warehouse is also located in the same state (i.e. Tamil Nadu) however, registered separately under GST, transfers between them treated as supply. Hence, CGST plus SGST will be levied. Inter-State stock transfer is taxable. It means IGST will be levied.

Example 4:

Ganesh Trading has head office in Telangana and two branches (i.e. Branch office -I in Telangana and Branch office -II in Andhra Pradesh). Stock transfers between Head office and Branch office within the same state where no separate registrations, GST is not levied. Whereas stock transfers between Head office and Branch office at inter state level, IGST will be levied.



Conclusion:

From the above it is evident that revenue of inter-State sale will not accrue to the exporting State and the exporting State will be required to transfer to the Centre the credit of SGST/UTGST used in payment of IGST.

The Centre will transfer to the importing State the credit of IGST used in payment of SGST/UTGST.

The inter-state adjustment will be made by central clearing agency, hence assesses will not be concerned with such adjustment at all.

Intra-state supply of goods or services or both:

Example 5:

Mr. C of Chennai supplied goods/ services for ₹ 20,000 to Mr. M of Madurai. SGST and CGST rate on supply of goods and services is 9% each. IGST rate is 18%. Find the following:

(a) Total price charged by Mr. C.

Answer:

Particulars	Value in (₹)
Supply of goods/ services	20,000
Add: CGST 9%	1,800
Add: SGST 9%	1,800
(a) Total price charged by Mr. C from Mr. M for local supply of goods or services.	23,600
(b) Mr. C is liable to pay GST.	

Note:

- (1) *Location of supplier and place of supply both within the same State of Tamil Nadu. Therefore, CGST & SGST applicable.*
- (2) *The CGST & SGST charged on Mr. M for supply of goods/services will be remitted by Mr. C to the appropriate account of the Central and State Government respectively.*

Example 6:

Mr. M of Madurai supplied goods/ services for ` 24,000 to Mr. S of Salem. Mr. M purchased goods/ services for ` 23,600 (inclusive of CGST 9% and SGST 9%) from Mr. C of Chennai. Find the following: (a) Total price charged by Mr. M for supply of goods/ services and

Answer:

<i>Particulars</i>		<i>Value in ()</i>
<i>Value charged for supply of goods/ services</i>		<i>24,000</i>
<i>Add: CGST 9%</i>		<i>2,160</i>
<i>Add: SGST 9%</i>		<i>2,160</i>
<i>₹ Total price charged by Mr. M from Mr. S for local supply of goods/services.</i>		<i>28,320</i>
<i>₹ Mr. M is liable to pay GST.</i>		
<i>Particulars</i>	<i>CGST ()</i>	<i>SGST ()</i>
<i>Output tax</i>	<i>2,160</i>	<i>2,160</i>
<i>Less: Input Tax Credit (ITC)</i>	<i>(1,800)</i>	<i>(1,800)</i>
<i>(c) Net tax liability of Mr. M</i>	<i>360</i>	<i>360</i>

Note:

- (1) By giving input tax credit, Government is not looser of revenue.

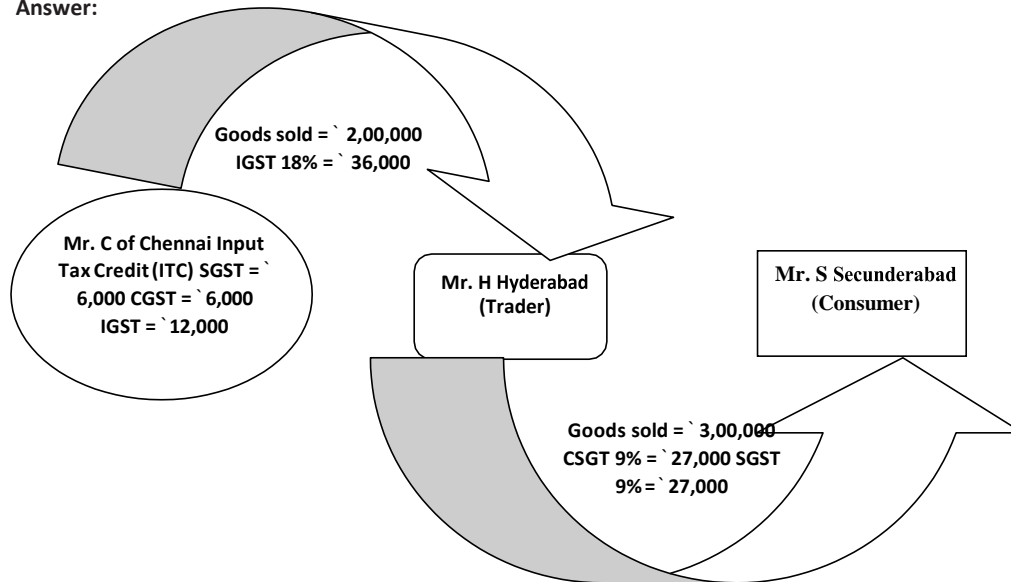
<i>Particulars</i>	<i>Revenue to Central Government ()</i>	<i>Revenue to State Government ()</i>
<i>Supply of goods/ services by Mr. C to Mr. M</i>	<i>1,800</i>	<i>1,800</i>
<i>Add: supply of goods/ services by Mr. M to Mr. S</i>	<i>360</i>	<i>360</i>
<i>Total</i>	<i>2,160</i>	<i>2,160</i>

Inter-State supply of goods or services or both:

Example 7:

Mr. C of Chennai purchased goods at intra state as well as at inter state level by paying SGST ` 6,000, CGST ` 6,000 and IGST ` 12,000. Subsequently Mr. C sold these goods to Mr. H of Hyderabad (Trader) for ` 2,00,000 (IGST applicable @18%). Thereafter Mr. H of Hyderabad sold these goods to Mr. S of Secunderabad (Consumer) for ` 3,00,000 (CGST & SGST @18%). Find the Net GST liability of Mr. C and Mr. H. Also find net revenue to the State and Central Government.

Answer:



Particulars of Mr. C of Chennai	Value in (`)	ITC ALLOWED
Output tax IGST	36,000	
Less: Input Tax Credit (ITC)		
IGST	(12,000)	1st IGST
CGST	(6,000)	2nd CGST
SGST	(6,000)	3rd SGST
Net tax paid to Central Government by Mr. C	12,000	

Introduction

Since, dealer has used SGST of Tamil Nadu to the extent of ` 6,000/- in payment of IGST, Tamil Nadu State (i.e. exporting State) has to transfer ` 6,000/- to the credit of the Centre.

IGST of ` 36,000/- is availed as credit by Telangana buyer (i.e. Mr. H of Hyderabad).

Particulars of Mr. H of Hyderabad	CGST (`)	SGST (`)	ITC ALLOWED
Output tax	27,000	27,000	
Less: Input Tax Credit (ITC)			

IGST	(27,000)	(9,000)	1st IGST
2nd CGST			
3rd SGST			
Net tax paid to State Government by Mr. H	Nil	18,000	

Since, dealer has used IGST of ` 9,000/- to pay the SGST of Telangana State, the Centre has to transfer ` 9,000/- to the Telanaga State (i.e importing State).

Revenue to the Centre

= ` 36,000 – 9,000 = ` 27,000 (i.e.
9%)

Revenue to the State

= ` 18,000 + 9,000 = ` 27,000 (i.e.
9%)

Total Revenue to the Government = 18% (One Nation-One Tax)

Example 8:

Mr. A registered person under GST located in Tamil Nadu, sold goods worth ` 10,000 after manufacture to Mr. C of Chennai. Subsequently, Mr. C sold these goods to Mr. H of Hyderabad for ` 17,500. Mr. H being a trader finally sold these goods to customer Mr. S of Secunderabad for ` 30,000.

Applicable rates of CGST= 9%, SGST=9% and IGST=18%.

Find the net tax liability of each supplier of goods and revenue to the government.

Answer:

Since, Mr. A supplied goods to Mr. C in Tamil Nadu itself, it is an intra-state sale and both CGST @ 9% and SGST @ 9% will apply.

Mr. C of Chennai supplied goods to Mr. H of Hyderabad. Since, it is an interstate sale, IGST@18% will apply.

Mr. H of Hyderabad (Telangana) supplied goods to Mr. S of Secunderabad (Telangana). Once again it is an intra- state sale and both CGST @ 9% and SGST @ 9% will apply.

Statement showing Net tax liability of Mr. A and revenue to Government:

Particulars	Value in (₹)	CGST in (₹)	SGST in (₹)	IGST in (₹)	Remarks
Mr. A to Mr. C	10,000	900	900	Nil	Value addition ` 10,000
Less: ITC	Nil	Nil	Nil	Nil	
Net liability of Mr. A		900	900	Nil	
		Revenue to Centre ` 900	Revenue to Tamil Nadu ` 900		

Statement showing net tax liability of Mr. C and revenue to the Government

Particulars	Value in (₹)	CGST in (₹)	SGST in (₹)	IGST in (₹)	Remarks
Mr. C to Mr. H	17,500	Nil	Nil	3,150	
Less: ITC		(900)	(900)	(1,800)	1st CGST
					[2nd SGST]
Net liability of Mr. C		Nil	Nil	1,350	Value added ₹ 7,500 x 18%
<p>Since, Mr. C a dealer has used SGST of Tamil Nadu to the extent of ₹ 900/- in payment of IGST, Tamil Nadu State (i.e. exporting State) has to transfer ₹ 900/- to the credit of the Centre.</p> <p>Tamil Nadu (exporting state) revenue = ₹ 0 (i.e. 900 -900)</p> <p>Total revenue to the Centre = ₹ 3,150</p> <p>(i.e. ₹ 1,350 + 900 received from Tamilnadu + 900 CGST already collected from Mr. A in 1st intra-state supply)</p>					

Statement showing net tax liability of Mr. H and revenue to the Government

Particulars	Value in (₹)	CGST in (₹)	SGST in (₹)	IGST in (₹)	Remarks
Mr. H to Mr. S	30,000	2,700	2,700	Nil	
Less: ITC		(2,700)	(450)	(3,150)	IGST credit 1st adjust against IGST, next CGST and next SGST
Net liability of Mr. H		Nil	2,250	Nil	

Since, Mr. H a dealer has used IGST of ₹ 450/- to pay the SGST of Telangana State, the Centre has to transfer ₹ 450/- to the Telanaga State (i.e importing State).

Net revenue to the Telanaga State

= ₹ 2,700 (i.e. 2,250 + 450) Net

Revenue to the Centre

= ₹ 2,700 (i.e. 3,125 – 450) Total

revenue to the Government = ₹

5,400 (i.e. 30,000 x 18%) This is c

alled as one nation one tax.

Example 9:

Mr. C of Tamil Nadu supplied goods/services for ₹ 20,000 to Mr. M of Maharashtra. SGST and CGST rate on supply of goods and services is 9% each. IGST rate is 18%. Find the following:

(a) Total price charged by Mr. C.

(b) Who is liable to pay GST?

Answer:

Particulars	Value in ()
Supply of goods/ services	20,000
Add: IGST 18%	3,600
(a) Total price charged by Mr. C from Mr. M for inter-state supply of goods or services.	23,600
(b) Mr. C is liable to pay GST.	

Note:

- (1) Location of supplier and place of supply are in different States. Therefore, IGST is applicable.
- (2) The IGST charged on Mr. M for supply of goods/services will be remitted by Mr. C to the account of the Central Government.

Example 10:

Mr. M of Maharashtra supplied goods/ services for ` 35,000 to Mr. P of Pune. Mr. M purchased goods/ services for

` 23,600 (inclusive of IGST 18%) from Mr. C of Tamil Nadu. SGST and CGST rate on supply of goods and services is 9% each.

Find the following:

(a) Total price charged by Mr. M for supply of goods/ services and

(b) Who is liable to pay

GST? (c) Net liability of

GST.

Answer:

Particulars	Value in ()
Value charged for supply of goods/ services	35,000
Add: CGST 9%	3,150
Add: SGST 9%	3,150
(a) Total price charged by Mr. M from Mr. P for local supply of goods/services.	41,300
(b) Mr. M is liable to pay GST.	

Particulars	CGST ()	SGST ()	
Output tax	3,150	3,150	IGST credit 1st adjust against CGST and next SGST.
Less: Input Tax Credit (ITC)	(3,150)	(450)	
IGST			
(c) Net tax liability of Mr. M	Nil	2,700	

Note:

- (1) By giving input tax credit Government is not looser of revenue.

<i>Particulars</i>	<i>Revenue to Central Government (₹)</i>	<i>Revenue to Tamil Nadu State Government (₹) (Exporting State)</i>	<i>Revenue to Maharashtra State Government (₹) (Importing State)</i>
<i>Supply of goods/ services by Mr. C to Mr. M</i>	<i>3,600</i>	<i>-</i>	<i>-</i>
<i>Add: supply of goods/services by Mr. M to Mr. P</i>	<i>Nil</i>	<i>-</i>	<i>2,700</i>
<i>Add: Transfer by Centre to Maharashtra State</i>	<i>(450)</i>	<i>-</i>	<i>450</i>
<i>Total</i>	<i>3,150</i>	<i>-</i>	<i>3,150</i>

GOODS AND SERVICES TAX NETWORK (GSTN)

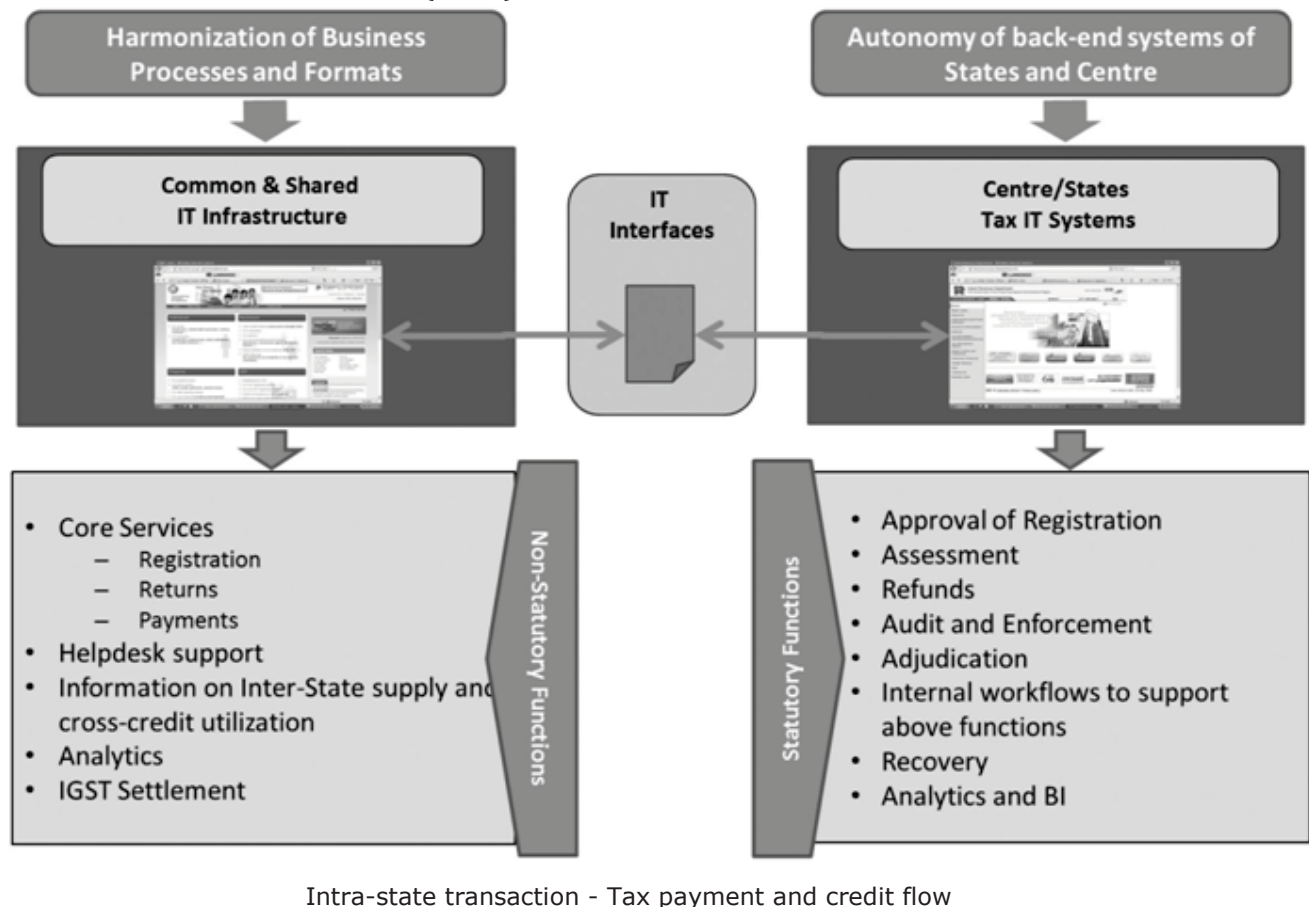
Goods and Services Tax Network (GSTN) is a [Section 8 of the Companies Act, 2013, (i.e. not for profit companies)], non-Government, private limited company.

Technology backbone for GST in India. GST being a destination based tax, the inter-state trade of goods and services (IGST) would need a robust settlement mechanism amongst the

States and the Centre. This is possible only when there is a strong IT Infrastructure and Service backbone which enables capture, processing and exchange of information amongst the stakeholders (including tax payers, States and Central Governments, Accounting Offices, Banks and RBI).

As a result Goods and Services Tax Network (GSTN) has been set up.

Goods and Services Tax Network (GSTN):



Functions of the GSTN (i.e. Role assigned to GSTN):

Creation of common and shared IT infrastructure for functions facing taxpayers has been assigned to GSTN and these are:

- filing of registration application,
- filing of return,
- creation of challan for tax payment,
- settlement of IGST payment (like a clearing house),
- generation of business intelligence and analytics etc.

All statutory functions to be performed by tax officials under GST like approval of registration, assessment, audit, appeal, enforcement etc. will remain with the respective tax departments.

GST COUNCIL

As per Article 279A of the Constitution of India, the President of India is empowered to constitute Goods and Services Tax Council. The President of India constituted the GST

Council on 15th September, 2016.

The GST Council shall consist of Union Finance Minister as a Chairperson, Union Minister of State in charge of Finance as a member, the State Finance Minister or State Revenue Minister or any other Minister nominated by each State as a member of the Council. The GST Council shall select one of them as Vice Chairperson of Council.

Guiding principle of the GST Council:

The mechanism of GST Council would ensure harmonization on different aspects of GST between the Centre and the States as well as among States. It has been provided in the Constitution (101st Amendment) Act, 2016 that the GST Council, in its discharge of various functions, shall be guided by the need for a harmonized structure of GST and for the development of a harmonized national market for goods and services.

Functions of the GST Council:

GST Council is to make recommendations to the Central Government and the State Governments on

- tax rates,
- exemptions,
- threshold limits,
- dispute resolution,
- GST legislations including rules and notifications etc.

INPUT TAX CREDIT

INTRODUCTION

The basic concept of Input Tax Credit (ITC) is to avoid the cascading effect of duty. Cascading effect of duty (i.e. duty on duty) happens where tax is levied at every stage of supply.

The following examples will help us understand this.

If the duty is based on the manufacture of a product, the tax burden keeps increasing as raw material and final product passes from one stage to another.

Cascading effect

Assessee	A (₹)	B (₹)	
Purchases	100	224	
Value added	100	76	$200 \times 12\% = 24$
Assessable Value	200	300	
Add Excise Duty @ 12%	24	36	$24 \times 12\% = 2.88$
Sale prices	224	366	$76 \times 12\% = 9.12$

Duty paid on duty

GST eliminates cascading effect of tax

No Cascading effect

Assessee	A (₹)	B (₹)	
Purchases	100	200.00	(₹ 224 – ₹ 24)
Value added	100	76.00	
Assessable Value	200	276.00	Output tax 33.12
Add GST @ 12%	24	33.12	
			Input tax (24.00)
Sale prices	224	309.12	net payable 9.12 [i.e., $76 \times 12\% = 9.12$]

Uninterrupted and seamless chain of input tax credit (hereinafter referred to as, “ITC”) is one of the key features of Goods and Services Tax. As the tax charged by the Central or the State Governments would be part of the same tax regime, the credit of tax paid at every stage would be available as set-off for payment of tax at every subsequent stage.

UNIT – V

CONSUMER PROTECTION ACT & INTRODUCTION OF CYBER LAWS

Topics in Unit – V

- ⦿ Consumer Protection Act
- ⦿ Consumer rights
- ⦿ Procedures for Consumer grievances redressal,
- ⦿ Types of consumer Redressal Mechanism and Forums
- ⦿ Competition Act 2002
- ⦿ Cybercrimes
- ⦿ IT Act 2000 and 2002
- ⦿ Cyber Laws
- ⦿ Introduction of IPR
- ⦿ Copy rights, Trade marks, Patent Act.

5.1 Consumer Protection Act

We buy a variety of goods and services in our day-to-day life. Whatever we buy we pay for it and derive satisfaction from its consumption and use. But sometimes we do not feel satisfied with the product we buy. This may be on account of poor quality of the product, overcharging by the shopkeeper, lower quantity of contents, misleading advertisement, and so on. Should we allow these practices to continue? Obviously not; then is there any remedy for such malpractices? The answer lies in the concept and practice of consumer protection, the rights and responsibilities of consumers, legal provisions and mechanism for settlement of consumer grievances. In this lesson, let us know details about all these points.

MEANING OF CONSUMER

You have learnt that a consumer is a person who consumes or uses any goods or services. Goods may be consumables like wheat flour, salt, sugar, fruit etc. or durable items like television, refrigerator, toaster, mixer, bicycle etc. Services refer to items like electricity, cooking gas, telephone, transportation, film show etc. Normally, it is the consumption or use of goods and services that makes the person to be called as 'consumer'. But in the eyes of law, both the person who buys any goods or hires any service for consideration (price) and the one who uses such goods and services with the approval of the buyer are termed as consumers. For example, when your father buys apple for you and you consume them, your father as well as yourself are treated as consumers. The same thing applies to hiring a taxi to go to your school. In other words, even the buyer of goods and services whether he uses them himself or purchases them for consumption or use by some other person(s) is treated as consumer in the eyes of law. However, a person who buys goods for resale (like wholesaler, retailer, etc.) or for any commercial purpose is not treated as consumer.

Under the Consumer Protection Act 1986, the word **Consumer** has been defined separately for the purpose of goods and services.

- (a) *For the purpose of goods, a consumer means (i) one who buys any goods for consideration; and (ii) any user of such goods other than the person who actually buys it, provided such use is made with the approval of the buyer.*

(The expression 'consumer' does not include a person who obtains such goods for resale or for any commercial purpose.)

- (b) *For the purpose of services, a consumer means (i) one who hires any service or services for consideration; and (ii) any beneficiary of such service(s) provided the service is availed with the approval of such person.*

CONCEPT OF CONSUMER PROTECTION

Consumer protection means safeguarding the interest and rights of consumers. In other words, it refers to the measures adopted for the protection of consumers from unscrupulous and unethical malpractices by the business and to provide them speedy redressal of their grievances. The most common business malpractices leading to consumer exploitation are given below.

- (a) Sale of adulterated goods i.e., adding something inferior to the product being sold.
- (b) Sale of spurious goods i.e., selling something of little value instead of the real product.
- (c) Sale of sub-standard goods i.e., sale of goods which do not confirm to prescribed quality standards.
- (d) Sale of duplicate goods.
- (e) Use of false weights and measures leading to underweight.
- (f) Hoarding and black-marketing leading to scarcity and rise in price.
- (g) Charging more than the Maximum Retail Price (MRP) fixed for the product.
- (h) Supply of defective goods.
- (i) Misleading advertisements i.e., advertisements falsely claiming a product or service to be of superior quality, grade or standard.
- (j) Supply of inferior services i.e., quality of service lower than the quality agreed upon.

The above instances show the exploitation of consumers in the context of goods and services. In a democratic nation like India, should we allow this to happen? So the measures adopted by the government or non-government organisations (NGOs) for safeguarding the interests of the consumers constitute consumer protection.

Examples of Consumer Exploitation in India

- *The after sales service provider of the television set charged Rs 200 as service charge though he repaired the set within the warranty period.*
- *The tickets issued to different passengers on the same day for the same journey showed the same seat number.*
- *Penalty of Rs. 50 was charged by SBI after issuing the cheque book to the customer showing that the balance available in the account was less than the minimum required balance for issue of cheque book.*
- *The supply of cooking gas cylinder to the consumers is found to be underweight.*

NEED FOR CONSUMER PROTECTION

Need for Consumer Protection

- Social Responsibility
- Increasing Awareness
- Consumer Satisfaction
- Principle of Social Justice
- Principle of Trusteeship
- Survival and Growth of Business

The necessity of adopting measures to protect the interest of consumers arises mainly due to the helpless position of the consumers. There is no denying fact that the consumers have the basic right to be protected from the loss or injury caused on account of defective goods and deficiency of services. But they hardly use their rights due to lack of awareness, ignorance or lethargic attitude. However in view of the prevailing malpractices and their vulnerability there to, it is necessary to provide them physical safety, protection of economic interests, access to information, satisfactory product standard, and statutory measures for redressal of their grievances. The other main arguments in favour of consumer protection are as follows:

(a) Social Responsibility

The business must be guided by certain social and ethical norms. It is the moral responsibility of the business to serve the interest of consumers. Keeping in line with this principle, it is the duty of producers and traders to provide right quality and quantity of goods at fair prices to the consumers.

(b) Increasing Awareness

The consumers are becoming more mature and conscious of their rights against the malpractices by the business. There are many consumer organisations and associations who are making efforts to build consumer awareness, taking up their cases at various levels and helping them to enforce their rights.

(a) Consumer Satisfaction

Father of the Nation Mahatma Gandhi had once given a call to manufactures and traders to “*treat your consumers as god*”. Consumers’ satisfaction is the key to success of business. Hence, the businessmen should take every step to serve the interests of consumers by providing them quality goods and services at reasonable price.

(b) Principle of Social Justice

Exploitation of consumers is against the directive principles of state policy as laid down in the Constitution of India. Keeping in line with this principle, it is expected from the manufacturers, traders and service providers to refrain from malpractices and take care of consumers’ interest.

(c) Principle of Trusteeship

According to Gandhian philosophy, manufactures and producers are not the real owners of the business. Resources are supplied by the society. They are merely the trustees of the resources and, therefore, they should use such resources effectively for the benefit of the society, which includes the consumers.

(d) Survival and Growth of Business

The business has to serve consumer interests for their own survival and growth. On account of globalisation and increased competition, any business organisation which indulges in malpractices or fails to provide improved services to their ultimate consumer shall find it difficult to continue. Hence, they must in their own long run interest, become consumer oriented.

RIGHTS OF CONSUMERS

Rights of Consumers

- Right to Safety
- Right to be Informed
- Right to Choose
- Right to be Heard
- Right to Seek Redressal
- Right to Consumer Education

John F. Kennedy, the former USA President, in his message to consumer had given six rights to consumers. These rights are (i) right to safety, (ii) right to be informed, (iii) right to choose, (iv) right to be heard, (v) right to redress and (vi) right to represent. These rights had paved the way for organised consumer movement in the USA and later it spread all over the world. In India, the Consumer Protection Act, 1986 has also provided for the same rights to consumers. Let us have a brief idea about these rights of consumers.

(a) Right to Safety

It is the right of the consumers to be protected against goods and services which are hazardous to health or life. For example, defective vehicles could lead to serious accidents. The same is true of electrical appliances with sub-standard material. Only recently, there were mass protests and boycott of soft drinks due to presence of hazardous pesticides beyond permissible limits. Thus, right to safety is an important right available to the consumer which ensures that the manufacturers shall not produce and sell sub-standard and dangerous products.

(b) Right to be Informed

The right to be informed is an important component of consumer protection. The consumer must be provided with adequate and accurate information about quality, quantity, purity, standard and the price of the goods and services. Now-a-days the manufacturers provide detailed information about the contents of the product, its quantity, date of manufacturing, date of expiry, maximum retail price, precautions to be taken, etc. on the label and package of the product. Such information helps the consumers in their buying decision and use of the product.

(c) Right to Choose

The right to choose provides that the consumer must be assured, whenever possible, access to a variety of goods and services at competitive prices. If the market has enough varieties of products at highly competitive prices, the buyers have an opportunity of wide selection. However, in case of monopolies like railways, postal service and electricity supply etc. it implies a right to be assured of satisfactory quality of service at a fair price.

(d) Right to be Heard

The rights to safety, information and choice will be frivolous without the right to be heard. This right has three interpretations. Broadly speaking, this right means that consumers have a right to be consulted by

Government and public bodies when decisions and policies are made affecting consumer interests. Also, consumers have a right to be heard by manufactures, dealers and advertisers about their opinion on production, marketing decisions and any grievances of the consumers. Now-a-days, most of the top manufacturers and firms have set up consumer service cells to attend to consumers' complaints and take appropriate steps for their redressal. Thirdly, consumers have the right to be heard in legal proceedings in law courts dealing with consumer complaints.

(e) Right to Seek Redressal

The consumers have been given the right of redressal of their grievances relating to the performance, grade, quality etc. of the goods and services. If required, the product must be repaired / replaced by the seller/ manufacturer. The Consumer Protection Act has duly provides for a fair settlement of genuine grievances of the consumers. It has also set up a proper mechanism for their redressal at district, state and national levels.

(f) Right to Consumer Education

It means the right to receive knowledge and skill to become informed consumer. In this direction the consumer associations, educational institutions and the policy makers can play an important part. They are expected to impart information and knowledge about (i) the relevant laws which are aimed at preventing unfair trade practices, (ii) the ways and means which dishonest traders and producers may adopt to deceive the consumers, (iii) insistence on a bill or receipt at the time of purchase, and (iv) the procedure to be followed by consumers while making complaints. Effective consumer education leads to an increased level of consumer awareness and help them to enforce their rights more effectively, and protect themselves against fraudulent, deceitful and grossly misleading advertisement, labeling, etc.

