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# BBA

**BACHELOR OF BUSINESS ADMINISTRATION**



**BBAR-402**

**Business & Industrial Laws**

# **Business & Industrial Laws**



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## **ROLE OF SELF INSTRUCTIONAL MATERIAL IN DISTANCE LEARNING**

The need to plan effective instruction is imperative for a successful distance teaching repertoire. This is due to the fact that the instructional designer, the tutor, the author (s) and the student are often separated by distance and may never meet in person. This is an increasingly common scenario in distance education instruction. As much as possible, teaching by distance should stimulate the student's intellectual involvement and contain all the necessary learning instructional activities that are capable of guiding the student through the course objectives. Therefore, the course / self-instructional material are completely equipped with everything that the syllabus prescribes.

To ensure effective instruction, a number of instructional design ideas are used and these help students to acquire knowledge, intellectual skills, motor skills and necessary attitudinal changes. In this respect, students' assessment and course evaluation are incorporated in the text.

The nature of instructional activities used in distance education self-instructional materials depends on the domain of learning that they reinforce in the text, that is, the cognitive, psychomotor and affective. These are further interpreted in the acquisition of knowledge, intellectual skills and motor skills. Students may be encouraged to gain, apply and communicate (orally or in writing) the knowledge acquired. Intellectual- skills objectives may be met by designing instructions that make use of students' prior knowledge and experiences in the discourse as the foundation on which newly acquired knowledge is built.

The provision of exercises in the form of assignments, projects and tutorial feedback is necessary. Instructional activities that teach motor skills need to be graphically demonstrated and the correct practices provided during tutorials. Instructional activities for inculcating change in attitude and behavior should create interest and demonstrate need and benefits gained by adopting the required change. Information on the adoption and procedures for practice of new attitudes may then be introduced.

Teaching and learning at a distance eliminates interactive communication cues, such as pauses, intonation and gestures, associated with the face-to-face method of teaching. This is particularly so with the exclusive use of print media. Instructional activities built into the instructional repertoire provide this missing interaction between the student and the teacher. Therefore, the use of instructional activities to affect better distance teaching is not optional, but mandatory.

Our team of successful writers and authors has tried to reduce this. Divide and to bring this Self Instructional Material as the best teaching and communication tool. Instructional activities are varied in order to assess the different facets of the domains of learning.

Distance education teaching repertoire involves extensive use of self-instructional materials, be they print or otherwise. These materials are designed to achieve certain pre-determined learning outcomes, namely goals and objectives that are contained in an instructional plan. Since the teaching process is affected over a distance, there is need to ensure that students actively participate in their learning by performing specific tasks that help them to understand the relevant concepts. Therefore, a set of exercises is built into the teaching repertoire in order to link what students and tutors do in the framework of the course outline. These could be in the form of students' assignments, a research project or a science practical exercise. Examples of instructional activities in distance education are too numerous to list. Instructional activities, when used in this context, help to motivate students, guide and measure student's performance (continuous assessment).



## **PREFACE**

We have put in lots of hard work to make this book as user-friendly as possible, but we have not sacrificed quality. Experts were involved in preparing the materials. However, concepts are explained in easy language for you. We have included many tables and examples for easy understanding.

We sincerely hope this book will help you in every way you expect.

All the best for your studies from our team!



# **Business and Industrial Laws**

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**BBAR-402**

## **Business & Industrial Laws**

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### **BLOCK-1 CONTRACT AND NEGOTIABLE ACT**

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#### **UNIT 1**

LAW OF CONTRACT

#### **UNIT 2**

SPECIAL CONTRACT

#### **UNIT 3**

THE NEGOTIABLE INSTRUMENT ACT

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## **BLOCK 1 : CONTRACT AND NEGOTIABLE ACT**

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### **Block Introduction**

The dynamics of doing business keeps changing with time and poses serious issues to all the stakeholders. In such a volatile environment, it is important that the parties to business or any sort of dealing be safeguarded against any mis-happening. For this it is important to have a thorough understanding of the technical points in doing business like agreements, liabilities, procedures etc.

Contract act and Negotiable Instruments are two basic foundations on which any sort of deal is based. Though oral agreements are being used in small situations yet written agreements help in binding the parties and taking legal actions in case of any default. In an era of globalisation, Contract and instruments act are helpful in keeping negotiations in loop.

Unit 1 provides detailed knowledge of the Indian contract act 1872. The unit will elaborate on the various aspects involved in entering into a contract with another party and will guide on the essential requirements, liabilities, rights and obligation in various situations of business dealings.

Unit 2 Covers discussion on special contracts like indemnity, guarantee Rights of surety and co-surety, as well as discharge of surety. You will learn the essentials of these special contracts, legal importance and requirements of special contracts etc.

Unit 3 covers detailed discussion on various types of instruments used in transactions like cheques, Drafts, bills etc. You will learn the procedure and methodology of using these instruments for business negotiations and transfer of property and money. The unit will help you understand the various aspects related with selecting the most appropriate instruments like obligations, eligibilities, liability etc.

## **Block Objectives**

**After reading this block you will be able to –**

- To provide useful information necessary for business agreements and negotiations.
- To understand the legal and technical aspects related with a contract and instruments.
- To Study the procedures, rules and regulations made by law.

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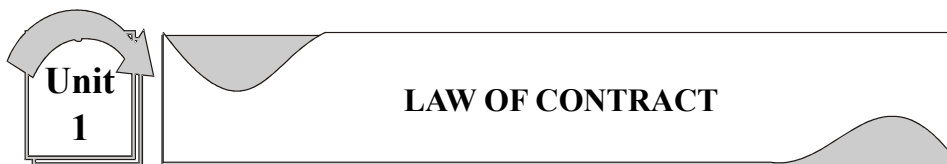
**Block Structure**

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Unit 1 : Law of Contract

Unit 2 : Special Contract

Unit 3 : The Negotiable Instrument Act



**: UNIT STRUCTURE :**

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- 1.1 Introduction**
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- 1.14 Activities**
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- 1.16 Further Readings**

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**1.0 Learning Objectives :**

**After reading this Unit, you will be able to :**

- Know the essentials of a valid contract.
- Understand the basic legal requirements and considerations to enter into a contract.
- Understand the meaning of Performance and Discharge of contract.

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**1.1 Introduction :**

A contract is one of the most common activity we deal into on an everyday basis such as buying garments from a shop, dealing in Shares and mutual funds, taking a loan etc. It is one facet that is common among corporate counsels, professionals, entrepreneurs and business executives Many times we don?t even know that we have entered into a contract with the other party which may create problems in future. This is so because every contract is accompanies with its own sets of right and liabilities on the part of the concerned parties. These contracts are either made orally on trust or in written form and bear legal implications when

entered according to the given terms and conditions. A contract that bears a legal seal is known as a special contract.

In India, the various principles, norms, requirements, procedures regarding contract are covered under the Indian Contract Act of 1872. It deals with enforcement of rights and liabilities of the contracting parties in India. The Indian contract act 1872 covers general principles of contract law spread over 75 sections.

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## **1.2 Law of Contract – Indian Contract Act 1872 :**

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The Law of contract 1872 is a commercial law that deals with agreements made between two parties knowingly or unknowingly. It consists of :

1. Principles set by law to take care of various types of agreements.
2. Includes special conditions like respect of Indemnity, Bailment, Guarantee and agency.

The Contract law covers not only business agreements but also deal made on a day to day basis. Like purchasing a movie ticker, buying Insurance policy, taking a holiday package etc. A contract takes place several times a day in different forms like :

- Buying clothes from a shop
- Taking admission in a coaching centre.
- Putting coin in a vending machine.

These contract are valid under law and in case of any problem in the fulfilment, the concerned person can take legal help.

### **❖ What does Contract Means ?**

Section 2(h) of the Indian Contract Act 1872 defines a contract as "any agreement enforceable by law". This means that any type of agreement that can be processes in the court is a contract. For this there is certain important point to be present. They are :

1. There should be some type of agreement.
2. This agreement should be enforceable by law. Thus,  
Contract = Agreement + Enforceability

To understand more clearly as to which agreement will be an agreement and which will not be, let us look at the below explanation.

### **❖ What is an Agreement ?**

Section 2(e) of the Act, defines an agreement as "every promise and every set of promises forming consideration for each other".

In the above definition the following terms are important to understand:

- **Promise** – As per sec 2(b) of the Indian Contract Act 1872, "any proposal when accepted becomes a promise"

- **Consideration** – This refers to the intent of accepting the proposal from one and fulfilling it by another. There should be consideration that means presence of something to be given and to be received. In any promise there are two parties, one who proposes (offer) to do something like provide services, sell a product etc and the other who agrees for the given proposal. When the person who has been offered for a service accepts the same the proposal becomes a promise.

The person who makes the promise is also known as Promisor and the one who accepts, is called as promisee.

### ❖ **Understanding Enforceability by Law ?**

When an agreement is capable of being referred to in the court of law, it is known as Enforceability. For example, A who promised to pay Rs 50 lakh to B for a house, paid only 30 lakh. In this case B can take the matter to court and ask for the balance payment.

Thus in a contract there should be an agreement which should be covered under the Law. Here it is important to know that all agreements might not be contract but all contracts are agreements. Similarly all legal obligations do not amount to a contract. There has to be an agreement. An agreement binds the two parties to fulfill their promises whatsoever.



Usually promises made in personal matters might not be enforceable as there is no legal obligation. For example, a mother promises to buy a dress to her daughter if she gets good marks. Here in spite of a promise, the agreement is not enforceable by law because there was no legal obligation. The mother or daughter may revoke their offer.

### ❖ **Important elements of a Contract :**

Sec 10 of the Indian Contract Act 1872 provides the following elements to make an agreement a contract –

- Free consent of both parties
- Parties competency to enter into contract
- The consideration should be lawful –
- Not declared void by law
- Objective should be within law.

A contract to be covered by law should have –

At least two or more than two parties who agree on the similar terms and conditions. This is referred as consensus ad idem. They should think on similar terms and points and there should be no difference of opinion. Here it is important that a single party cannot enter into a



contract with himself or herself. The parties should have an intention to enter into a legal relationship. An agreement of a purely social or domestic nature is not a contract. In commercial agreements, the law presumes that the parties intended those agreements to have legal consequences. However this presumption may be negative by express terms to the contrary. Like this, in case of domestic or social agreements the presumption is that the agreements do not give rise to legal consequences. However this presumption is rebuttable by showing that the intentions of the parties were to create legal obligations.

Moreover, in a contract the consent of both the parties should be free from biases and pressures. It should be of their own i.e., free and genuine. This means that to obtain the acceptance there should be no use of fraudulent activities like coercion, misrepresentation, mistake etc. Presence of such errors makes the contract invalid. Similarly the parties involved should have attained the age as prescribed by law. They should not be minor, lunatic, idiot or drunk person. Simultaneously, the object of the act should be approved under law as there are certain agreements that are not allowed under law and declared illegal or void.

Here it is also important to note that the contract should be of a certain nature. The various points should be made clear to avoid any confusion. For example– A asks a tailor to stitch a suit for him. In this case the contract is of stitching suit, but there is no description of the measurements, design, cloth etc. This case will not be enforceable under the law as the details are not ambiguous. Finally any contract that is not written cannot be referred in the court, thus not enforceable.

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### **1.3 Offer or Proposal :**

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An Offer is the initiation of any contract and therefore also known as a proposal. The person who gives an offer is called as an offeror or proposer and the one to whom it is made is called offeree or proposee. The offeror express his intention "to do" or "not to do" something for which he looks forward for an acceptance by the offeree. This means that an offer may be positively oriented or negatively or both.

AS per section 2(a) of the Indian contract act 1872, a person is said to have made the proposal when he signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that offer to such act or abstinence". The salient features of an offer therefore are:

1. The offer should be made by one person to another for example, Ravi promises to purchase the TV from Manohar on a payment of Rs. 10000.
2. The intention must be either to do or to abstain from doing. For example – Julie promised Inder not to file a case if Inder pay her the outstanding amount of Rs 5000.

3. The offer should intend to get offerer's acceptance on the given offer.

❖ **Methods of Making an Offer :**

Offers are made in the following ways in the basis of :

**[A] Communication :**

1. **Express Offer** – Under this, the offer is made clear by writing or by speaking out.
2. **Implied Offer** – In this case the offer is made by the conduct or the circumstances. The intentions are conveyed by signs or activities associated with it. For example, passengers travelling in a metro. There is no written agreement to take them to a specific destination, but out of the conduct it is certain what is being proposed.

**[B] Person/s to whom offer is made :**

1. **Specific Offer** – Offer made to a definite person or group of persons who accepts it in return.
2. **General Offers** – An offer that is made openly to common masses with some conditions. Whosoever fulfils these conditions can avail the benefit of the offer. For example, sales promotion, lucky draws etc.

❖ **What Makes an Offer Legal ?**

It is to be understood that all offers made are not legal and therefore cannot be enforced by law. What are the factors that points towards the legality of a contract? Any offer should possess the following elements –

1. Interested in creating a Legal relationship–
  2. Certain and Unambiguous Terms
  3. Should be different from just a declaration of intent.
  4. Should be different from Invitation to offer
  5. Communication
  6. Should not include Non-compliance equal to acceptance term.
  7. Standard form Contract or special provisions to be well informed in advance.
- **Cross Offers** – When two persons make similar offer without each other's knowledge, it is called a cross offer. For example, Mukesh sent a mail to Rakesh to sell his Television for Rs. 15000. On the same day, Mr. Rakesh sent a mail to Mukesh to purchase his TV for Rs. 15000. Since both the offers are distinct and without the knowledge of Mukesh thus it will not be valid. Moreover there is no acceptance of Kishor's offer and therefore none of the offers are accepted to make a contract. To make a valid contract any one of the offer need to be accepted.

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## **1.4 Acceptance of Offer :**

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The acceptance of an offer is said to be done when the offeree to whom the offer is made gives his assent on its intentions, terms and conditions etc. He accepts to be bound by the conditions of the offer. Therefore, as per sec 2(b) of the Indian Contract Act 1872, "a proposal is said to be accepted when the person to whom the proposal is made signifies his assent thereto", thereby making the proposal a promise. The acceptance by the offeree may be expressed or implied.

### **❖ Method of Accepting an Offer :**

An offer can be accepted in either of the following two ways :

- 1. Express Acceptance** – when the offeree agree to the conditions of the proposal given by the offeror either verbally or in written form. It can also be accepted out of performance of the required terms.
- 2. Implied Acceptance** – This denotes accepting the surrounding circumstances or the concerned activities, like occupying a seat in a taxi. Here there is no written or verbal procedure for acceptance.



### **❖ Authority to Accept an Offer :**

An offer can be accepted only by that person to whom it was made. For example, if X proposes to teach martial arts to Y for a fee of Rs. 1000 per month, only Y can accept this offer. Neither his family nor his friend or anyone else can substitute Y, and if such an arrangement has to be made it has to be with proper consent of Y. This is in case of a Specific Offer.

In case of a general offer, where proposal is open to all, anyone who fulfils the terms and conditions or performs the requirements and has knowledge of its content is said to have accepted the offer.

### **❖ Essentials of a Valid Contract :**

To make an acceptance valid and legal following conditions need to be fulfilled:

- 1. Unqualified and Absolute** – As per sec 7(1) of the Indian Contract Act, "In order to convert a proposal into promise, the acceptance must be absolute and unqualified". This means that the proposal

should be accepted as being made without any conditions, reservation or changes. This is because if any change is made to the original offer, it would make a counter offer, thereby ending the previous one. For example – X promises to buy car from y if Y agrees to do the necessary maintenance" If Y accepts X offer, it will be called valid acceptance but If B propose that He will do the necessary maintenance but X has to bear half of its cost, then this will be considered a new offer and end the first offer, made by A to B.

2. **Mode of Acceptance** – The offer should be accepted in a manner as prescribed. For example if an offeree is asked to accept an offer in a particular way i.e., in writing or furnishing some details etc, the offeree has to fulfil the said conditions. If he doesn't do it, the offeror can refuse such acceptance with timely and proper intimation to the offeree.
3. **Communication** – That the offer is being accepted should be well communicated either by declaration or by some indication. It is to be noted that a mental acceptance that is not conveyed is invalid.
4. **To Whom and by Whom** – The acceptance of any offer should be communicated to the same person who made the offer and not to any other person. Similar acceptance should be made by the same person to whom it was made. If Julie made an offer to Richa to buy dresses from her boutique at discounted price then the acceptance should be made by Julie top Richa only. No third person should be communicated as it will make the acceptance invalid.
5. **Timely Acceptance** – The offer should be accepted within the specified time or within a reasonable time. If the offer is accepted after the lapse of the offer, it will not be considered legal.

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### 1.5 Contractual Capacity :

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Contract is a legal obligation to be fulfilled by the concerned parties. Aspect In order to enter into a contract the concerned person should fulfil the prescribed norms. This means that not anyone can enter into a contract. Cases in which a person is restrained from entering into a contract are :

- If he is a lunatic
- If he is an idiot
- If he is a minor
- If the person is drunk or drug addict.
- If his status is such that restrict him from making a contract.

Therefore, as per the Indian Contract Act 1872, " Every person is competent to contract who is of majority age according to the law to which he is subject, and who is of sound mind and is not disqualified by any law to which he is subject". This definition highlight on three main points i.e., soundness, disqualification and age"

❖ **Can a Minor Enter into a Contract ?**

Since a contract holds legal implications it is important to have knowledge about who can make a contract and who cannot. A person who is a minor i.e., has not attained the maturity age usually 18 years, is allowed to enter into a contract but he is not bound by the contract. Rather, he can bind the other party into a contract. There are different positions of an agreement in case of minor that are discussed hereunder:

- **Fraudulent Representation of Age** – If a minor deceives on his age to enter into a contract then as per special relief act 1963, he is liable to pay penalty to the other party or restore the property or money involved in the contract.
- **Ratification After Attaining Maturity** – It is not possible for a minor to ratify an agreement after attaining maturity age so as to make himself bound by the same.
- **Can Act as an Agent** – A minor can bind his principal by his act without incurring any personal liability.
- **Partnering with a Minor** – A minor cannot enter into a partnership contract as per the Indian partnership act 1932 but he can be inducted for the benefits of partnership with the consent of all the partners.
- **A Promise Not Promissory** – A minor can be a mortgagee, payee or endorsee but he is not bound on a promissory note or mortgage. He can recover the price in case of sale of goods but is not bound by it.
- **Void ab Initio** – an agreement with a minor is void ab initio that means it is not valid and holds no existence.
- **No Estoppels** – A minor enjoys benefit of infancy even if he has entered into a contract by fraud way. He is not liable to refund the amount in spite of misrepresentation of age.
- **Minor Partnering with a Major**– If a minor enter into a contract with someone by partnering with a major then this type of contract is void. However the major is responsible to bear the damages in case of any suit
- **Supply of Necessities Contract.**
- **If a Guardian of Minor Makes a Contract** – Other persons and their capacities
- **Person of Unsound Mind** – As per the Indian Contract Act, "a person is said to be of sound mind for making a contract if at the time when he makes it, he is, capable to understand the terms of the contract and can form his judgement to its effect on his interests". Hence a person will be called of unsound mind if he unable to perform both the given conditions. Lunatic, drunk and an idiot are usually considered persons with unsound mind.

If a person is unsound sometimes and not always then he can make a contract when he is of sound mind but the Burden of proof has to be provided by the person who affirms or certifies on his soundness or who enters in the contract with him. The liability of such contract with an occasionally sound person will be borne by the person himself when is of sound mind. If a person of unsound mind enters into a contract then it will be considered void and will not be considered under law. Similarly a drunken person cannot enter into a contract while he is under its effect. An idiot however, cannot enter into a contract under any circumstances. Such contract is void and there is no liability.

- Disqualified Person – There are some special category of persons who are not allowed to enter into contract by various laws. These persons include:
- Alien Enemy – A citizen of a foreign country is called as alien. He can be alien enemy if his country is at war with Republic of India. He cannot enter into any contract as well cannot be sued in Indian court, only if central government issues a license for the trial. In case a contract was made before war and is against the public policy or may benefit the enemy, then such contract stands dissolved. But in case the contract is not against public policy and does not benefit the enemy then these are suspended during war and can be revived afterwards.

If his country is at peace with India, then he is termed as Alien Friend.

- Foreign Sovereigns and Nationals – Such persons of a foreign country can enter into contracts that can be enforced in Indian courts but unless they submit themselves to Indian jurisdiction, they cannot be sued. To activate any type of proceeding against them central government has to give a sanction.
- Convicts – A person who has been awarded with sentence is termed as a convict for that period and cannot enter in a contract during that time. However, once relieved or sentence is expired he can make contracts and can sue.
- Insolvent – He is a person whose Debts exceed his assets and his property is vested by the court through an appointed receiver or assignee. Therefore he cannot, enter into a contract on his property and cannot sue or be sued.

### ❖ **Free Consent :**

One of the prerequisites for a contract to be valid and legal, is acceptance of offer by the free consent of the offeree. This relates to the a mindful acceptance of the other party to accept the offer as it is, including its conditions as stated at the time of making it.

According to sec 13 of the contract act, "two or more persons are said to consent when they agree upon the same thing in the same sense." Here the important point is agreement of both the parties on the same point, that is also called consensus- ed- idem as per the English law. In case this consensus is not made while reaching an agreement, it will regard as void-ab-initio that refers to not being enforceable by any of the concerned party.

Example – Salman has two houses A and B in the same locality and wants to sell the B one. Ravi who is not aware that Salman has two houses, offer to buy house A. Salman thinking that the deal is for B accepts the offer. Thus the offer will be declared void as both the parties do not have similar thinking on the offer and therefore consent does not match.

❖ **What is Free Consent :**

Free Consent as per sec 14, is "when it is not caused by

- a. Coercion or
- b. Undue influence
- c. Fraud
- d. Misrepresentation
- e. Mistake

Hence when a contract is made without free consent of the offeree, he can declare it as void.

Let us now understand the elements of free consent one by one.

❖ **Coercion :**

As per sec 15 of the Act, Coercion basically consists of the following two features:

- i. Committing or threatening to commit any act forbidden by the Indian penal code or
- ii. The unlawful detaining or threatening to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.

The act of coercion might be targeted to any person and not only to the promissory only.

Committing Suicide– under the Indian penal code a suicide or a threat to commit suicide is not punishable but it amounts to coercions and therefore any such threat is voidable. On the other hand an attempt to commit suicide is punishable under the code.

In case an agreement is made by the act of coercion, as per sec 19 (a), the party who was affected can have the contracts set aside if they want so. Otherwise the contract will be valid. AT the same time, as per sec 72, the party who has repay or return any property taken by coercion,

In case of coercion the burden of proof to provide details of coercion lies on the aggrieved party that wishes to avoid the contract.

❖ **Undue Influence :**

As per sec 16(1) undue influence is enacted when "the relations subsisting between the parties are such that one is in a position to dominate the will of the other and the dominant part uses that position to obtain an unfair advantage over the other.

Presumption of Undue influence as regards persons in particular relationships

Sec 16 of the act specifies the rules for presumptions as regards person in particular relations who are deemed to be in a position to dominate the will of the other. These situations are

1. In case of real or apparent authority over other as in case of master and servant, Income tax officer and assessee.
2. A fiduciary relationship with another.
3. A contractual relationship with a person who is for time being mentally incapacitated due to illness, stress or age. This includes relations like, a doctor and patient, a guru and his disciple, a trustee and beneficiary, parent and child.

However, the following relations are not considered in presumption of undue influence :

- Husband and wife
- Landlord and tenant
- Creditor and debtor.

The burden of proof in the case of undue influence lies on both the party as follows :

The dominant part should prove in case of an unconscionable transaction that it was not made with undue influence, and

The weaker part should prove that the undue influence was actually used by the other party for getting unfair advantage or that the transaction was unconscionable.

Undue Influence in case of Pardanashin women –

A pardanashin women is one who is completely secluded from the outside the world except her family. Any contract with pardanashin women as per the court is open to undue influence and therefore any party making a contract with her has to bear the burden of proof that contract was well explained and was really understood by the women.

❖ **Fraud :**

Sec 17 of the Indian Contract act states "Fraud means and includes any of the following acts committed by a party to a contract with intent to deceive the other party thereto or to induce him to enter into a contract –



- a. The suggestion as to a fact of that which is not true by one who does not believe it to be true
- b. Active concealment of a fact by one having knowledge or belief of the fact
- c. Promise made without any intention of performing it
- d. Any other act fitted to device
- e. Any such act or omission as the law specifically declares to be fraudulent"

Important Features to understand in case of fraud :

1. There must be representation or assertion and it must be false. The asserting party must specify that there is something false in their knowledge. A silence to this regard for entering into a contract cannot be considered as fraud.
2. The claim that a representation or assertion is false should be prove true. A mere opinion, puffery or elaborate description cannot be considered as fraud.
3. The statement must be made knowingly or without belief in its truth or recklessly carelessly.
4. The representation statement or assertion must have been made with the intention of inducing the other party to act upon it. For fraud to exist the intention of misstating the facts must be to cause the other party to enter into an agreement.
5. The representation must in fact deceive. It has been said that a deceit which does not deceive cannot be stated as fraud.
6. The party subjected to fraud must have suffered some loss. It is a common rule of law that there is no fraud without damages. In case there is no damage, it cannot claim action for deceit.

❖ **Misrepresentation :**

This refers to wrong portrayal or non-disclosure of information without any intention of deceit. In this case, the error is not deliberate rather done unknowingly.

Section 18 of the act defines Misrepresentation as –

- a. "Positive assertion in a manner not warranted by the information of the person making it, of that which is not true though he believes it to be true.
- b. Any breach of duty which without an intent to deceive gains an advantage to the person committing it or any one claiming under him b y misleading another to his prejudice or to the prejudice of claiming under him.
- c. Causing however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement".

The case of misrepresentation can be classified into the following three categories :

- I. The positive assertion in a manner not warranted by the information of the person making it, of that which is not true though he believes it to be true.
- II. Any breach of duty which without an intent to deceive gives an advantage to the person committing it by misleading another to his prejudice or to the prejudice of anyone claiming under him
- III. Causing however innocently a party to an agreement to make as to the substance of a thing which is the subject of the agreement

In case of fraud or misrepresentation, the aggrieved party can option for any of the below remedies :

- a. Avoid the contract
- b. Ask to perform the contract in the same position as it would be in absence of fraud.
- c. And especially in case of fraud the aggrieved party has the right to sue for damages.

❖ **Mistake :**

As per Sec 20 of the Indian Contract act, "a mistake is said to have occurred where the parties intending to do one thing, by error, do something else. Mistake is an erroneous belief concerning something".

Broadly Mistake is of two types :

1. Mistake by Law
2. Mistake by Fact

**1. Mistake By Law :** Mistake by law can be in context of (i) mistake of Indian law or (ii) mistake of foreign law.

In case of mistake of Indian law, since everyone knows the law of their own country, the contract cannot be considered void. However, in case a mistake has occurred in foreign law then the contract is void. This is so because it is not possible that both parties are well aware of the foreign laws. In this case a mistake is considered as an error of fact.

**2. Mistake by Fact :** In this case a mistake can either be Bilateral or unilateral. In case for bilateral mistake, both the parties are at fault of making an error which is related to some essential facts and not of law. Therefore, an agreement made under such circumstances as per sec 20 is considered as void. In the later case of Unilateral mistake, any one party makes an error. As per sec 22, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to the matter of fact".

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## **1.6 Consideration :**

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One of the essential elements of a valid contract is that it must be supported by consideration. In simple terms consideration is what promise demands the price for his promise. The term consideration is used in the sense of quid pro quo arrangement that means in return of something. This something or consideration may include, money, benefits, right, interest or profit, forbearance, detriment loss or responsibility given or suffered or undertaken by the other party. It can also be a promise of one party in return for consideration for the promise of other party. It can be an arrangement to compensate for some damage, loss or inconvenience by making a promise.

According to section 2(d), Consideration is defines as, "when at the desire of the promisor the promise or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing, something such act or abstinence or promise is called a consideration for the promise".

### **❖ Rules Regarding Consideration :**

1. Consideration at the wish of promisor : The consideration should move at the desire of the promisor and no third party shall be involved in making the consideration with promise.
2. Either the promise or any other person should move the consideration. The other person should not be a stranger to the contract in order to avail the benefit of maintaining a suit.
3. The amount of consideration need not be adequate : It is the responsibility of the promisor to check the amount of consideration for a valid contract. If there is any problem in recovering the amount the court will not intervene. However in case of coercion or undue influence this will be a piece of evidence.
4. Real and competent consideration : An ambiguous consideration will not make a valid contract. It should be real and carry some value in the eyes of law.
5. Illegal consideration leads to a void contract.
6. Past, Present or Future Consideration : A consideration which moves simultaneously with the promise is called present consideration. "Cash Sales" provides an excellent example of the present consideration. Where the consideration is to move at a future date it is called future or executor consideration. It takes the form of a promise to be performed in the future.

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## **1.7 Lawful Object :**

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For an agreement to be eligible in the court of law it is important that its consideration and object should be lawful. If it is not so, the agreement is void According to sec 23 of the Indian contract Act 1872, following are the cases in which an agreement becomes unlawful.

1. Prohibited by Law – If the act under consideration or object is prohibited under law i.e., punishable by special legislation or by Criminal law of the country, it will be treated as void. For example, Tanu gives a loan to a minor through his guardian for his marriage. In this case tanu will not be able to recover the money as the contract is void. This is because the very objective (marriage of a minor) of the contract is illegal or prohibited under law.
2. When provision of law stands defeated due to the nature of consideration or object, the agreement becomes voids. For example, A borrowed Rs. 200000 from B and agreed that A can retrieve the amount from him even if the limitation period has expired. Such an agreement is void as it defeats the law under limitation act.
3. In case the intention of an agreement is to defraud someone, then it's a void agreement.
4. In the object or consideration intends to Injury to property or person, it will be a void agreement. For example, Vijay promised to Give Ajay sum of Rs 20000, if Ajay writes a defamation script for an unknown Susheel on a social site. Since there is an injury intended for Susheel that is prohibited under law, this agreement is void.
5. When the object of an agreement is not within the social or public policy and is immoral, it will lead to a void agreement.

What is public policy is a matter of debate as there are no fixed criteria to ascertain an act being within policy due to its changing nature. However there are certain agreements that are held to be opposed to public policy like,

- Agreements of trading with enemy,
- Agreements for support in hiding prosecution
- Champerty and maintenance agreement for example—A agrees to pay B Rs. 10% for recovering money from C. In champerty there is an agreement between two parties in which one party will help other in recovering some amount or property and in return share the proceeds.
- Sales or transfer of government titles or offices. An agreement that promises to provide a public title or office to another party, like promising to give a government job is void and illegal.
- Any agreement that restrains personal liberty or parental rights is void. For example, restricting a parent from practising his right on children as consideration of an agreement or restricting a person from taking practicing his legitimate rights like disposing his property , going abroad etc
- Monopoly agreements
- Other agreements that restrain, marriage, trade, legal proceeding etc.

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## **1.8 Discharge of Contract :**

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The Discharge of a contract refers to the termination of the relationship of two parties bound by a contract. It happens usually when the object is fulfilled or the obligations and rights come to an end. The discharge and its related provisions are covered under sec 73 to Sec 75 of the Indian contract act.

A contract is discharged due to the following :

- a. By Performance
  - b. By Tender
  - c. Through mutual consent
  - d. Subsequent impossibility
  - e. Operation of law
  - f. Breach
- a. Discharge by Performance – In this case a contract is terminated when both the parties have completed the promises made to each other as per terms and conditions.
  - b. Discharge by Tender is when a promisor tenders performance of his promise, but the other party refuses to accept, the promisor stands discharged of his obligations.
  - c. Discharge through mutual consent– as the phrase explains in this case the concerned parties agree to either alter or substitute the actual contract. This type of discharge is done in any of the following ways :
    - a. Novation – When a new contract is substituted for the old one, the old one gets discharged. Some points to remember are that
      - i. The new contract may have same or new parties.
      - ii. The consent of the parties is essential
      - iii. The substituted contract should be enforceable by lawIn novation, the old contract stands discharged but its consideration continues with the new one. However it is necessary that the new contract should be made before the old one expires.
    - b. Rescission – With reference to sec 62, this refers to cancellation of all or some parts of terms of the contract thereby terminating the obligation of the parties. It can be done by one or all the parties to the contract.
    - c. Alteration – When both the parties mutually agree to change the terms of the contract, it is called alteration as per Sec 62 of the act.
    - d. Remission – Sec 63 states that "every promise may dispense with or remit, wholly or in part, the performance, of the promise made to him, or may extend the time for such performance or may extend

instead of it any satisfaction which he thinks fit". Thus remission is adjusting with a lesser fulfilment of the original promise made.

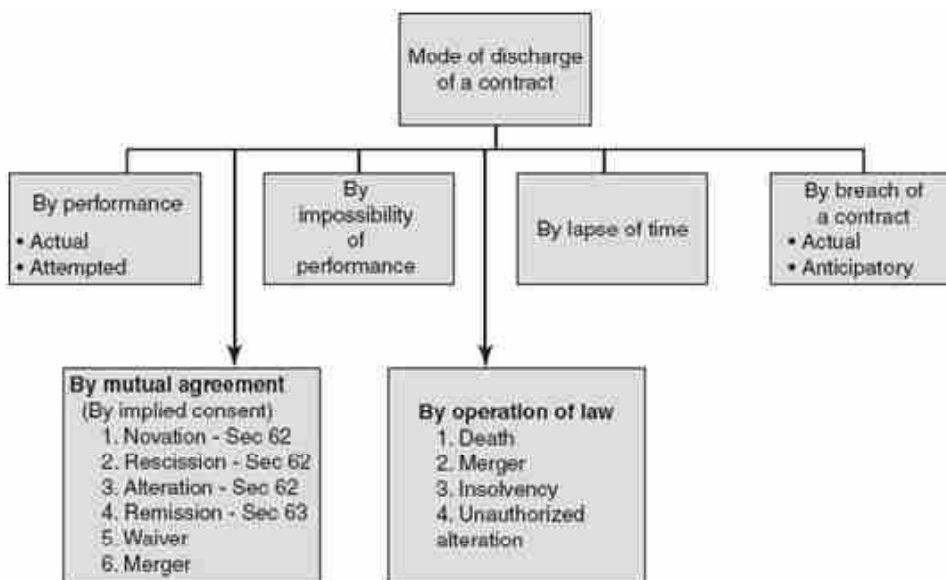
- e. Waiver – Under this, a person is released from an obligation made under the contract, or giving up a certain right as per agreement.
- f. Merger – A contract is said to have been discharged by way of merger when an inferior right possessed by a person coincides with a superior right of the same person.

❖ **Discharge of Contract Due To Impossibility of Performance :**

A contract may get discharge due to two types of impossibility :

- a. Nature of impossibility is inherent in the contract.
- b. Impossibility due to changes in situations or circumstances that is important for the contract.

For example Ajay promises to pay Vijay Rs. 100000 if Vijay rides a horse to the sun. This contract is Void ab initio as it is impossible to perform by Vijay.



Doctrine of Frustration by English Law – When it is possible to perform a certain contract at the time of its inception but later situations change and performance become impossible it is called subsequent impossibility or intervening impossibility as per sec 56

There are mainly five circumstances when it becomes impossible to perform a contract :

- 1. When subject matter has been destroyed – When the consideration in an offer or the main subject of the contract gets destroyed naturally or out of an accident, the contract gets discharged. The promisor is not liable for discharge in such case.
- 2. In case of death or disablement of any party to the contract – In case a contract need to be performed personally by the promisor and he dies or becomes disable physically so that the performance is not possible the contract becomes void thereby exonerating the

promisor of his duties. For example, A agrees to perform in a dance program hosted by B for sum of Rs. 100000, but loses his leg in an accident just before the event. The agreement become void due to impossibility of performance at the given time.

3. Subsequent declaration of illegality – When a contract is prohibited due to subsequent orders of legislation, the concerned parties is absolved from their liability to perform.
4. In case war is declared – In case there is declaration of war between two countries, any contract entered into by two parties of such nations will be declared as void during the war. The parties will be exonerated from its performance.
5. Non Occurrence of a specific act or state of things in a contract. When a particular necessary clause of contract does not exist anymore, the contract becomes void.

❖ **Discharge Due to Operation of Law :**

There are mainly four ways in which a contract is discharged by operation of law:

1. Alteration of contract – When terms of contract are altered by one part without the consent of other party the innocent party is discharged of any obligations or responsibility arising from contract
2. Bankruptcy – When a party is declared insolvent by court after allocating his resources to creditors, the party get discharged of any contracts that had taken place previously.
3. Limitation to file suit – Also called statutes of limitation this provides for limiting the time frame for filing a suit. One this time is over, there can be no suit filed. There are different time frames set in case of different types of contracts including oral, written, breach of contract, recovery etc
4. By Impossibility of performance like death – In case of death, fire, incapacitation, destruction of subject matter etc a contract stands discharged.

❖ **Discharge by Breach of Contract :**

When one party fails to perform its promise without proper legal intimation it is called a breach of contract. It can take place in two ways :

1. Anticipatory Breach – When a party makes a clear statement before the actual date that it will not be able to perform their part of contract, it is called Breach of contract. Since one party repudiates it before time of performance it is also known as Breach by repudiation. In this case the aggrieved party can sue for the damages caused by breach of contract. It is refusal to perform an agreed action and does not include a disagreement due to terms of contract. Anticipatory breach of contract happens only when the party to loss or aggrieved part accepts the repudiation by refusing part. If A

refuses to fulfil the contract terms made with B, Then B has to accept this denial. If B does not accept the repudiation or rescind of contract, it will not be called a breach.

2. Actual Breach – When a party/person fails to perform as per contract on the given time it is called actual breach of contract. This may be due to –
  - a. Failure to perform – If a person is unable to perform a part of agreement within the stipulated time or at the due time of performance for example, XYZ is a musical band who agreed to perform for B at an event in Delhi. But on the event date they called B and refused to perform. This is failure to perform
  - b. Making it impossible for the other party to perform – In this case the promise creates such situations that promisor is unable to perform the agreed work. For example, A hires a contractor XYZ for whitewashing of house. But on the day of whitewashing, A locks the door and goes out for some work, thereby restricting XYZ from entering the house to work. This is making work impossible.

In case of contracts having many small parts that can be regarded as separate contracts, and any one of these parts were not performed by the promisor, then promise can sue for damages even if the contract is not complete.

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### **1.9 Remedies for Breach of Contract :**

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We know breach of contract means failure to fulfil the promise done to another party in contract. Due to this failure, there is one party that is at loss. This aggrieved party therefore lookout for options to come out of this situation. The aggrieved therefore try to :

- Talk with the breaching party for reconsideration
- Taking help from consumer associations
- Finding an alternative resolution to dispute by mediation of an agency
- Sue the party for damages

The Indian Contract Act 1872 provides for remedies for promise in case of breach of contract. These remedies are :

- a. Rescission of contract as per sec 39 – This refers to rescission of contract by the aggrieved party due to non fulfilment of the promise by promisor. Since the agreed work was left incomplete, the aggrieved party can claim compensation for the damages.
- b. Damages for the loss occurred due to breach – Sec 75 of the Act provides for payment of compensation to promisee for damages occurred due to non– fulfilment of contract. This section also provides base rules for payment of damages. These are :



- (a) Damages for losses that occurred due to non-fulfilment of contract. Anything outside the purview of the agreement cannot be claimed as damages
- (b) If the promisor knew that a breach of contract will cost the promisee damages outside purview of contract, then in this case promisor has to pay such damages also. Knowingly causing damages to promisee calls for penalty and relief for promisee.
- (c) The aggrieved party should try to minimise the damages as far as possible. If there is any damage due to negligence from promisee himself then he cannot claim them.

Apart from The Indian contract act 1872, relief from damages of breach of contract is also provided by another act, the special relief act 1963.

❖ **Types of Damages :**

Damages caused by breach of contract are usually of four types:

- 1. Ordinary – The natural damages that arise due to breach of contract are called ordinary damages. These are measured by finding the difference between the market price and contract price on the day of breach. Any type of indirect cost is not included in it.
- 2. Special – These are the damages that are caused due to breach of contract but are not related to contract directly. However, the promisor knew about such situations at the time of contract and his performance is related to it. Though such damages are not a part of contract but because these are known to both parties, the promisee is eligible to claim them
- 3. Vindictive or punitive – When the defendant is charged with damages as punishment or disciplinary action, they are called vindictive damages. Such damage is awarded to punish the promisor for breaking the promise. Cases in which promisor has knowingly caused harm to the aggrieved party he should pay for the unethical behaviour.
- 4. Nominal damages – These are charge when the breach cost is technical in nature and not much amount is at stake. A token amount as charge for causing hindrance is awarded to defendant.

**Check Your Progress :**

- 1. Is the promisee \_\_\_\_\_ liable to pay damages that he knew before hand, will occur in case of on the promisee out of contract purview ?
  - a. Yes
  - b. No
- 2. The \_\_\_\_\_ party should try to minimise the damages as far as possible.
  - a. Aggrieved
  - b. Defaulter
  - c. None of these
  - d. Both a & b.

3. The damages that are caused due to breach of contract but are not related to contract directly are called –
  - a. Ordinary      b. Punitive      c. Special      d. Nominal
4. The consideration may not move at the desire of promisor. This statement is –
  - a. True              b. False              c. Can't say      d. Partially true
5. Which of the following person's are not allowed to enter into a valid contract ?
  - a. Alien enemy                              b. Convict
  - c. Both of the above                      d. None of the above

### 1.10 Let Us Sum Up :

In this unit we have learnt that Indian Contract Act defines contract as an agreement which is enforceable by law. It determines the circumstances in which promises made by the parties to contract shall be legally binding. Indian Contract Act teaches us that the proposal when accepted becomes a promise. Indian Contract Act frames and validates the contracts or agreements between various parties. Contract Act is one of the central laws that regulate and oversee all the business wherever there is a case of a deal or an agreement. As discussed before all essential elements must be simultaneously present to make a valid contract. If essential elements are missing then it shall result into a void contract. The unit also covers the ways in which there can be termination of relationship between the parties i.e. Discharge of contract. The non fulfillment of promise by one or more parties will result into breach of contract. The aggrieved party can sue to claim damages.

### 1.11 Answers for Check Your Progress :

- |      |      |      |      |      |
|------|------|------|------|------|
| 1. a | 2. a | 3. c | 4. b | 5. c |
|------|------|------|------|------|

### 1.12 Glossary :

1. **Contract** – An agreement that is enforceable by Law.
2. **Ratification** – It is an act of approval in case of a minor who wants to be a part of agreement after attaining majority
3. **Consensus–ed–idem** – It is one of the important element of contract and refers to mutual agreement by both parties on same terms.
4. **Punitive Damages** – It refers to any kind of penalty on the party for breach or non fulfillment of promise.
5. **Performance of Contract** – Refers to carrying out of obligation
6. **Minor** – A person who is yet to attain 18th year of age.

### 1.13 Assignment :

1. Explain the methods by which the relationship between two parties to contract comes to an end.

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**1.14 Activities :**

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1. Discuss the points of difference between coercion and undue influence.
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**1.15 Case Study :**

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On the order of the collector of a town Durga Prasad built some shops on his own expense in a market. The shopkeepers who occupied these shops promised to pay to Durga Prasad commission on their sales. Durga Prasad sued the shopkeepers when he did not receive the commission. Will Durga Prasad be successful in recovering the commission ? Why ?

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**1.16 Further Readings :**

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1. N. D. Kapoor, Elements of Mercantile Law
2. P. C. Tulsian, Business Laws

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**: UNIT STRUCTURE :**

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- 2.0 Learning Objectives**
  - 2.1 Introduction**
  - 2.2 Contract of Indemnity**
  - 2.3 Elements of Indemnity Contract**
  - 2.4 Contract of Guarantee**
  - 2.5 Essentials of Contract of Guarantee**
  - 2.6 Kinds of Guarantee**
  - 2.7 Rights of Surety**
  - 2.8 Discharge of Surety**
  - 2.9 Let Us Sum Up**
  - 2.10 Answer for Check Your Progress**
  - 2.11 Glossary**
  - 2.12 Assignment**
  - 2.13 Activities**
  - 2.14 Case Study**
  - 2.15 Further Readings**
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**2.0 Learning Objectives :**

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**After reading this Unit, you will be able to :**

- Study the requirements and obligations for ending a contract.
  - Analyze the pros and cons in case of contravention or breach of the contract.
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**2.1 Introduction :**

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In business studies this law (The Indian Contract Act) is of utmost significance as it helps the various stakeholders in understanding the underlying rights and obligations. It helps them in identifying their eligibilities, the rules while entering into any kind of business relationships. This Unit covers important details on dealing with various situations like, breach, discharge, Legality and coverage of various actions taken by both promise and promisor as well as that of any third party.

The Indian Contract act is not complete without reference to code of laws. The Preamble of the act, in this context read as follow, "Whereas it is expedient to define and amend certain parts of the law relating to contracts, it is hereby enacted as follows".

Therefore this is not an answer to all classes of contracts, rather deal with special cases of contracts only.

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## **2.2 Contract of Indemnity :**

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A contract of Indemnity is made to protect a party from the damages that may accrue due to promisor or any other persons conduct. It is a kind of security shield provided by a person to the promisee from future damages. As per sec 124, "A contract by which one party promises to save the other from the loss caused to him by the conduct of the promisor himself or by any other person is called a contract of Indemnity".

It is a special contract and class among all contingent contracts. It is important to understand that the person, who promises to protect the promisee from loss, is known as Indemnifier and the person/party who is being protected by Indemnifier is called Indemnity holder or Indemnified.

### **❖ Express or Implied Contract :**

The Indemnity contract can be made in either of the two ways :

1. Express – When the promise is made in written or oral form, thereby expressing the intention to save a person from any damages that might occur, it is called Express Indemnity contract.
2. Implied – This type of contract is not expressed rather conclude from the conduct of the Indemnifier and indemnified persons.

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## **2.3 Elements of Indemnity Contract :**

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Apart from the general features of contract act, following are essential elements of the Indemnity contract :

1. Occurrence of some loss – There should be presence of some loss that may occur in near future.
2. Promise to make good the loss – The promisor must have promised to protect the person from any future loss. Any loss incurred in past is not included.
3. The reason **for loss** – The contract should carry a specification regarding the cause of loss including natural and accidental reasons that occur due to promisor or any other person.

In the contract of Indemnity, the indemnified person can exercise certain rights to recover the loss as per sec 125. The damages include the actual loss that he bore which has to be made good by indemnifier as well as the cost that indemnified incurred to file a suit and any charges involved in its proceedings. In case any compromise has been reached, the indemnified can also claim charges incurred on that compromise.

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## **2.4 Contract of Guarantee :**

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In the contract of guarantee there are three parties in which one party promises to pay to another party for the loss incurred by a third party. Thus it is a promise for a third party but payable to the party that incurred loss.

The contract of guarantee is covered under sec 126 and consists of three main parties namely:

1. Principal Debtor – As per sec 126, "the person in respect of whose default the guarantee is given is called the principal debtor. He is the person who needs to be protected.
2. Creditor – As per sec 126, "The person to whom the guarantee is given is called the creditor". He is the person who is paid the guarantee in case of default.
3. Surety – As per sec 126, the person who gives the guarantee is called surety". He is the person who promises to protect creditor interest and safeguard debtor against any loss.

For example : Ram and his friend Rahim enter a shop to purchase garments. Ram tells Mr. Ajay, the owner, to supply anything Rahim wishes to buy and if he is unable to pay the price, he will pay for him. In this case, Ram is the Surety, Rahim is the principal debtor and Mr. Ajay is the creditor.

A contract of guarantee does not imply a contract of Good Faith (Uberrimae Fidei). This means that the creditor or debtor is not under any obligation to disclose or share all facts before making the contract.

### Difference between indemnity and Guarantee

	indemnity	Guarantee
1	Two parties a) indemnifier b) indemnity holder	Three parties a) surety b) principle debtor c) creditor
2	For reimbursement of loss	For security of the creditor
3	Liability of indemnifier is primary and arises when the contingent event occurs	The liability of surety is secondary and arises when the principal debtor default
4	The indemnifier after performing his part of the promise has no right against the third party. He can sue the third party only if there is an assignment in his favour	The surety steps into the shoes of the creditor on discharge of his liability, and may sue the principal debtor

#### **2.5 Essentials of Contract of Guarantee :**

The contract of Guarantee consists of the following essential elements :

1. Three In One Agreement – It is tripartite agreement as three are three different promises, made between Surety, creditor and principal debtor
2. Consent of the three Parties – To make the Contract of guarantee valid, it is important that all the three parties should agree to the clauses.

3. Liability to be Enforceable – In the guarantee contract presence of a liability is a must that should be performed. Also, this liability should be enforceable by law.
4. Guarantee out of Misrepresentation – As per sec 142, if the creditor obtains a guarantee by misrepresenting facts, then it is invalid  
Guarantee through Concealment of Facts – As per sec 142, if the creditor obtains a guarantee by hiding certain facts or remaining silent then such guarantee is invalid.

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### **2.6 Kinds of Guarantee :**

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1. Retrospective – When the debt is of current nature, i.e., existing debt, it is called Retrospective.
2. Prospective – in case the debt will accrue in future it is called prospective guarantee.
3. Specific and Continuing Guarantee – When the guarantee is liable for single debt and end once it is discharged as promised. Whereas as per sec 129, "a guarantee which extends to a series of transaction is called a continuing guarantee". In this case the liability of surety ends when the contract of guarantee is revoked.

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### **2.7 Rights of Surety :**

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The rights of a surety are discussed in context of Principal debtor, co sureties and creditors :

1. Right against Principal Debtor as provided under section 140 to 145 of the Indian contract act are of two types :
  - a. Subrogation refers to the right of surety to avail all rights that creditor has against principal debtor. This happens once the surety has fulfilled his promise and paid all the debts or discharged the concerned performance. This includes any kind of security enjoyed by creditor from debtor.
  - b. Recovery for Indemnification– The surety has all the right to charge the amount he has extended to creditor in terms of loans, fees, interest etc including special damages towards fulfilment of promise.
2. Right against Creditors  
This includes :
  1. Entitled for Securities– Securities refers to any sort of rights with creditors in regard to debtors property. As per the sec 141, the surety, after paying the debt to the creditor becomes eligible for any kind of securities, made against the principal debtor by the creditor. This is applicable even if the securities were set without knowledge of surety. Therefore, the surety has the right to claim the securities or the payment in lieu of, if they were lost by creditors.
  2. Right for deduction or set off – Set-off refers to adjustment or counter claim by surety for any loan due to creditor. This means

that if principal debtor had any claim standing on creditor, and somehow, creditor sues the surety for the loan that he paid to debtor, surety has the right to use debtors claim over creditors for his discharge.

For example : Ajay promises a guarantee to pay a loan of Rs 20000 to Sudhir, on behalf of Vijay. Vijay too had a claim of Rs 10000 on Sudhir for a past deal. But Vijay fails to repay the loan amount of 20000, to sudhir. Sudhir sues Ajay for the amount. In this case, Ajay has the right to set off his loan with Rs. 10000, that Vijay owed to Sudhir.

### 3. Right against Co-sureties

Co-sureties are persons who extend debt for the same person.

For example : A and B promise to pay Rs 1000 each towards payment of debt of X.

1. Right to Contribution – As per sec 146, the co-sureties are required to pay the outstanding debt of the principal debtor in equal amount. The co-sureties may or may not know each other, or have entered into contract jointly or separately, this right to equal contribution in each case. Also, if the co-sureties are bound by contract to pay different amounts, they are still liable to pay equally to the extent of their contracted amount.
2. Share in Benefits of Securities – The co-sureties in any case are required to share the securities equally received by principal debtor. Sometimes, any one of the surety receives the securities from debtor or creditors, in this case he is bound to share it with other sureties as well.

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## 2.8 Discharge of Surety :

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The different ways in which a surety is discharged of his liability are :

1. By Revocation of the contract – The contract of guarantee is revoked due to
  - (i) Death of surety – As per sec (131) All future transaction stands terminated with the death of the surety.,
  - (ii) by Novation – as per sec 162, if the contract of guarantee is renewed with new parties or the same ones, the surety gets discharged of the old liability. The new contract holds the parties liable for the discharge of the old as well as new considerations.
  - (iii) By Notice – as per sec 130, the surety can, by giving notice to creditors on future transactions, revoke the contract.
2. By Creditor's conduct– The surety will be discharge of his liability in case,



- (i) Terms & conditions gets varied – as per sec 133, if the creditor and debtor changes the terms of contract, without intimating the surety, the surety will get discharged of his liabilities, only in case the changes are material to the debt or liability,
  - (ii) If the principal debtor is released of his liability – in case the creditor discharges the debtor of his liability, the surety's liability also gets discharges. The release of debtor however should be either by making a fresh contract between creditor and debtor or due to an act of omission
  - (iii) Settlement or composition with principal debtor – As per sec 135," A contract between the creditor and the principal debtor, by which the creditor makes a composition, with, or promise to give time to, or not to sue the principal debtor, discharges the surety, unless the surety gives his assent". This means that if creditor, without informing surety, extends the time for debtor, or makes a mutual settlement with debtor or promises the debtor not to sue him, the surety gets discharged of his liabilities.
  - (iv) Damaging surety's right – As per sec 139, if creditor does any act that is inconsistent with surety's right thereby impairing his due right, the surety gets discharged.
  - (v) Loss of security – as per sec 141, if the creditor loses any security of principal debtor, the surety who has a right on it, gets discharged.
3. Invalidation of contract – A contract between surety and creditor becomes invalid when,
- (i) Guarantee by Misrepresentation – As per sec 142, if the guarantee had been made by misrepresenting some facts that are material to the transaction, the surety gets discharged,
  - (ii) By keeping silent – As per sec 143, if the creditor obtains any guarantee by keeping silent on material points , the guarantee gets invalid,
  - (iii) Co-surety's failure to join – as per sec 144, if the guarantee has been given in combination of two or more sureties, then failure or absence of any one of the sureties to perform the consideration will make the other sureties discharge of their promise.
  - (iv) Absence of consideration – An absence of consideration between creditor and the principal debtor makes the surety discharged of his liability.

**Check Your Progress :**

1. The person who receives the guarantee is called :
  - a. Principal Debtor
  - b. Creditor
  - c. Surety
  - d. None of these

2. In which of the following ways can a contract become invalid ?
  - a. By failure of courtesy to join
  - b. By keeping silent
  - c. By guarantee of misrepresentation
  - d. All of these
3. If one of the co-sureties receive the securities from debtors or creditors then he should :
  - a. Keep it to himself
  - b. Give it to other co-sureties
  - c. Share it with other co-sureties
  - d. Both b & c
4. \_\_\_\_\_ refers to adjustment or counter claim by surety for any loan due to creditor.
  - a. Settlement    b. Set-off    c. Discharge    d. None of these
5. When the debt is of current nature, i.e., existing debt, it is called ?
  - a. Prospective guarantee    b. Retrospective guarantee
  - c. Specific guarantee    d. Continuing guarantee

## 2.9 Let Us Sum Up :

This unit explains us the very important branch of mercantile law i.e. special contract. In this unit we have learnt about the contract of indemnity and guarantee. It is a special contract but all essentials of a valid contract are applicable to it. The unit also explains the various conditions like contract with more than one party their rights and obligations called as the contract of guarantee in which one party promises to pay the second party on behalf of third party. Further, the unit elaborates on difference between the contracts on Indemnity and Guarantee on the basis of eligibility, rights and liabilities of concerned parties.

## 2.10 Answer for Check Your Progress :

1. c                      2. d                      3. c                      4. b                      5. b

## 2.11 Glossary :

1. **Revocation** – The official cancellation of decree, decision or a promise.
2. **Co-surety** – Two or more sureties liable for the same obligation.
3. **Reimbursement** – the sum paid to cover money that has been spent or lost.
4. **Indemnification** – to pay or promise to pay an amount of money against hurt, loss or damage.

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**2.12 Assignment :**

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1. Elaborate on the advantages of the Indian Contract act to professionals and Entrepreneurs. Businessmen,
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**2.13 Activities :**

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1. Study the work of the Finance and Marketing department of any small or medium sized company. List down various provisions of the contract act that are useful in their day to day operations.
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**2.14 Case Study :**

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A guarantees to c, to the extent of Rs. 2000, payment for rice to be supplied by C to B. C supplies to B rice for an amount which is less than Rs. 2000 but obtains from a the payment of the sum of Rs. 2000 in respect of the rice supplied. Can A recover from B more than the rice actually supplied?

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**2.15 Further Readings :**

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1. N. D. Kapoor, Elements of Mercantile Law
2. P. C. Tulsian, Business Laws



## THE NEGOTIABLE INSTRUMENT ACT

### **: UNIT STRUCTURE :**

#### **3.0 Learning Objectives**

#### **3.1 Introduction**

#### **3.2 What is Meant by a Negotiable Instrument ?**

#### **3.3 Features of Negotiable Instruments**

#### **3.4 Promissory Notes**

#### **3.5 Bills of Exchange**

#### **3.6 Difference Between A Promissory Note and A Bill of Exchange Cheques**

#### **3.7 Distinction Between a Cheque and a Bill of Exchange**

#### **3.8 Holder, Holder in Due Course**

#### **3.9 Parties to Negotiable Instrument**

#### **3.10 Negotiation of Negotiable Instruments**

##### **3.10.1 Modes of Negotiation**

##### **3.10.2 The Significance of Delivery of Negotiable Instrument**

#### **3.11 Endorsement**

##### **3.11.1 Types of Endorsements**

#### **3.12 Dishonor of Negotiable Instruments**

#### **3.13 Discharge of the Instrument and Parties**

#### **3.14 Discharge of the Negotiable Instrument**

#### **3.15 Let Us Sum Up**

#### **3.16 Answer for Check Your Progress**

#### **3.17 Glossary**

#### **3.18 Assignment**

#### **3.19 Activities**

#### **3.20 Case Study**

#### **3.21 Further Readings**

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#### **3.0 Learning Objectives :**

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**After reading this unit, you will be able to :**

- Know the meaning of negotiable instruments.
- Differentiate between Bills of exchange, promissory notes and cheque.

- Understand the procedures of creating these instruments and its technical requirements.
- Learn how to cross a cheque.

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### **3.1 Introduction :**

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Negotiable instrument are key to any sort of trade nationally as well as Internationally Here Instrument refers to a document that physically expresses a title of money. It is a written document by which a right is created in favour of another party. Negotiations mean transferring an instrument from one to another.

The dealing of these instruments and its legal aspect are covered under the Negotiable Instruments Act 1881. The act was last amended by banking, Public Financial institutions and Negotiable Instruments Laws (Amendment) Act in 1988. The most commonly used instruments are cheques, drafts, promissory notes etc.

On 1st March 1872, The Negotiable instrument act was brought into force in India. The act is applicable in whole of India, except the state of Jammu and Kashmir. The act is a modification of the English Instruments Act and deals with mainly three types of Instruments namely

1. Promissory Notes
2. Bills of Exchange and
3. Cheques

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### **3.2 What is Meant by a Negotiable Instrument ? :**

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It is a document in writing that extends a right in favour of some person that is capable of being transferred by delivery.

As per sec 13, a negotiable instrument means, "a promissory note, bills of exchange or cheque payable either to order or to bearer". Since this definition is not comprehensive in nature, there is one more definition by Willis that highlights on its features more clearly.

According to Willis, "the negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide, and for value notwithstanding, any defect of title, in the person from whom he took it".

Another definition by Thomas defines, "A negotiable instrument is one which is by a legally recognised customer of trade of law, transferable by delivery or by endorsement, and delivery in such circumstances, that (a) a holder of it for time being may sue on it in his own name, and (b) the property in it passes free from equities, to a bonafide transferee of value, not withstanding any defect in the title of the transferor".

The main features that are highlighted in the above definitions are :

- a. The ownership right of negotiable instrument is transferrable just by delivery if it is payable to bearer and

- b. The person taking the ownership in good faith as well as in return of some consideration gets the title even if the transferor title itself is defective.

List of Negotiable instruments :

- Cheque,
- Bills of exchange
- Promissory note
- Dividend warrant
- Bank draft or note
- Hundi
- Share Warrant
- Treasury bill
- Exchequer Bill
- Bearer Debenture

List of instruments that are Not Negotiable Instruments

- Share certificates
- Money order
- Postal orders
- Deposit receipt

There are certain instruments are considered as SEMI-Negotiable

- Dock Warrant
- Carrier receipt
- Letters of credit
- Bill of lading
- Railway receipt

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### **3.3 Features of Negotiable Instruments :**

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Following are the main characteristics of negotiable instruments :

1. The instrument must be payable to order or to bearer –
2. The document is always in writing.
3. Anyone who holds the document is considered as its holder in due course and can sue in his own name.
4. It makes assignment of a debt easy and convenient
5. It is just like transferring, money from one to another person
6. There is always a consideration included while drawing, accepting, making, transferring or negotiating it.

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### **3.4 Promissory Notes – Sec 4 :**

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As per sec 4 of the Negotiable Instrument Act,

"a promissory note is an instrument in writing (not being a bank note or currency note) containing an unconditional undertaking, signed by a maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument".

#### **Essential Features of Promissory Notes :**

On the basis of above definition, following are the essential characteristics of promissory note :

- It should be writing only. Oral message will not make a promissory note
- The promise to payment should be expressed and not implied.
- The promise to pay should not have any condition attached like payment a future date etc.
- The promise should be definite for example; I will pay B Rs. 1000 on C's death. Since death is certain to happen it is valid.
- The note should be duly signed by the maker. Without signature, even if the note is in make's handwriting, will be invalid
- The note should carry a certain sum to be paid , that is value need to be mentioned like the rate of interest(eg, 5%, 10 %) etc Phrases like "payment at market rate, bank rate" are not allowed
- The details of the parties involved, i.e., the maker and the payee should be clearly mentioned like address, telephone number, E-mail etc
- The promise to pay should only be in monetary terms. Nothing material should be included like. Promises to Pay B Rs 10000 and a house. This is an invalid note.
- Payment in installments is allowed
- The note should be paid only on demand or after a specific time period. A promissory note can be paid within 3 years from the date of its making after it is barred from payment.
- Not to be paid to make or bearer even on demand.
- Unlike cheque a promissory cannot be crossed.
- As required under the Indian Stamp Act 1889, a promissory note should be either engrossed on stamp paper or duly stamped by an adhesive stamp.

FORMAT OF A PROMISSORY NOTE	
Hari Das	113, Janak Puri, Ambala Cantt
₹ 1,00,000	1 <sup>st</sup> April, 2011
Stamp	
<i>Five months after date I promise to pay Sh. Vinay Pujari or order a sum of rupees one lakhs only for value received.</i>	
	(Signed)
To	Hari Das
Shri Vinay Pujari	
236, Mall Road	
New Delhi.	

### 3.5 Bills of Exchange – Sec 5 :

As per sec 5 of the Negotiable instruments Act 1872,

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

Therefore, a bill of exchange is an unconditional order to a debtor by a creditor to pay a certain sum of money to a person as specified in it.

#### Essential Characteristics of bill of exchange :

- Must be in a written form.
- It should consist of an order to pay. A request to order by using words like oblige, pleases etc are not valid and will not constitute a bill of exchange.
- Unconditional and definite order. Any condition to an order will not make it a bill of exchange.
- Three parties in a bill of exchange viz., Drawer, payee and drawee. However in this instrument there can be one person acting as two parties like drawer and a payee. In case he draws a bill in his own favour.

SPECIMEN OF A BILL OF EXCHANGE	
₹ 50000	New delhi
Stamp	6th August, 2011
Three months	after date pay to me or my order, the sum of
₹ Fifty thousand only	for Value received
Accepted,	
(Signed)	
(Mukesh Chand.)	(Signed)
To	
MUKESH CHAND	SANT KANWAR
D-24, Sector-15	151, Sector-9 Rohini Delhi-85
Rohini Delhi-89	



- Duly signed by drawer
- Should contain an order to pay only in monetary terms.
- In a bill of exchange it is not essential to put number, place or date.
- As per the Indian stamp act bill of exchange has to be duly stamped. This however does not include "on demand bill".

### **3.6 Difference Between A Promissory Note And A Bill of Exchange Cheques – Sec 6 :**

#### **Bill of Exchange vs Promissory Note**

<b>Basis</b>	<b>Bills of Exchange</b>	<b>Promissory Note</b>
Drawn By	Creditors	Debtors
Contains	Order to pay	Promise to pay
Acceptance	Required	Not Required
Bearer	Payable to bearer	Not payable to bearer
Payee	Drawer & payee may be same	Drawer & payee cannot be same
Number of parties	Can be three	Only two
Notice on dishonour	Required	Not Required

One of the most common modes of transaction from bank accounts is through Cheques. It is an instrument that orders the bank to pay the specified sum, on demand to the bearer or to the person named therein. According to Section 6 of Negotiable Instruments act 1872, a cheque is defined as

"a cheque is an unconditional order in writing draw by a customer on his bank, requesting the specifying bank to pay on demand a certain sum of money to a person named in the cheque, or to the bearer, or to the order of a stated person".

Keeping in termswith the latest development in the IT sector, an amendment has been made to this definition that has substituted new Section – 6. According to this amendment,

"a cheque is a bill of exchange drawn on specified banker and not expressed to be payable otherwise then on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form".

Based on the above definitions the following are important features of a cheque –

1. Must be drawn on a particular banker specifying his name and address.
2. Should be payable to a certain person or entity. A cheque bears specific details as regards to the person who shall draw it or of a company, entity or institution. The rate of interest if any should also be clearly specified. Any ambiguous information makes the cheque invalid.

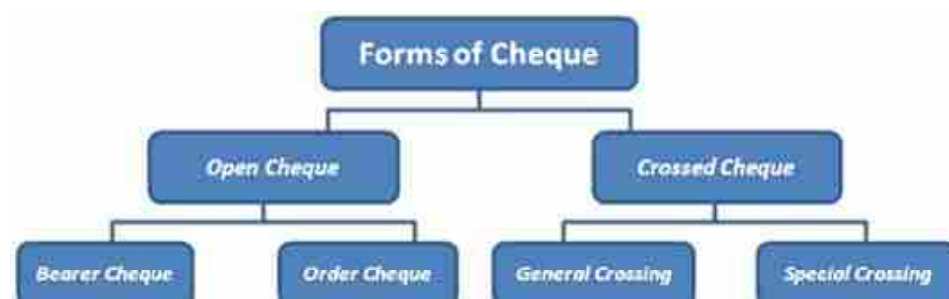
3. The cheque should clearly mention the amount to be paid, both in words and in numbers. There should be no blank space between the figure and words and there should be no overwriting.
4. There should be an unconditional order to pay, but it is not essential to use the word "pay". Using the term "pay" directs the bank to make payment.
5. The order in the cheque should be paid on demand by the drawer.
6. Date is an important part of a cheque... and includes a post date also. This means a cheque can be drawn at a future date.

❖ **Parties in Case of Cheques :**

A cheque involves three parties :

1. Drawer – The person who issues or draws the cheques.
2. Banker – The bank whose name is borne on which the cheque is drawn.
3. Payee – The party in whose favour the cheque is made, the actual beneficiary.

Cheques are mainly of two types, Open cheques and crossed cheques. Open cheques can be paid across the many bank counters. Whereas a crossed cheque is one that can be collected by the banker only. Crossing implies that it cannot be collected by anyone who carries it but only the one whose name is mentioned on it. Two parallel lines usually at one corner of the cheques are drawn to signify it as crossed.



**3.7 Distinction Between a Cheque and a Bill of Exchange :**

Although in the above definition, a cheque is mentioned as a bill of exchange, yet there are some basic differences between the two. These are given as under :

Points	Cheque	Bill of Exchange
1. Drawee	A cheque is always <b>drawn on a banker.</b>	A bill can be <b>drawn on any person including a banker.</b>
2. Acceptance	A cheque <b>does not require acceptance</b> of the drawee.	A bill <b>must be accepted</b> by the drawee.
3. Payment	A cheque is always <b>payable on demand.</b>	A bill may be <b>payable on demand or after the expiry of a fixed period.</b>

4. Stamp	A cheque <b>does not require any stamp.</b>	A bill must be <b>properly stamped.</b>
5. Crossing	A cheque <b>can be crossed.</b>	A bill <b>can not be crossed.</b>

### **3.8 Holder, Holder in Due Course :**

Sec 8 of the Negotiable Instruments act defines a holder as "a person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such a loss or destruction". This means any person possessing the instrument through forgery or theft is not regarded as the holder of the instrument. On the other hand, a holder in due course as per section 9 is "a person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer or the payee or endorse thereof, if payable to order, before the amount mentioned in it becomes payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title".

Thus following points can be inferred from the definition of holder in due course :

- The instrument that Holder possesses should have some value.
- The instrument must be with the holder before its maturity time.
- The instrument should be not bear any defect and be complete in required information.
- Holder should have taken the instrument in good faith.

#### **❖ Privileges of a Holder In Due Course :**

Following are the benefits given to a holder in due course :

1. Benefit against an inchoate instrument. As per sec 20 of the Negotiable instruments act, a holder in course gets a privilege against an inchoate instrument. Inchoate refers to incomplete information. This means that if a person signs an inchoate instrument that has a stamp over it but incomplete cannot assert as against a holder in due course with the authority given to him.
2. Liability of prior parties – As per sec 3, until the instrument is duly satisfied all the parties? viz., drawer, maker, and the acceptor stands liable to the holder in due course.
3. Fictitious Parties like Drawer and Payee: as per sec 42, "the acceptor of a bill cannot against a holder in due course say that the other party to the bill were fictitious if the holder in due course can show that the signature of the supposed drawer and that of the first endorser are in the same handwriting.

4. As per sec 43, raising a plea against a holder in due course or any successive holder is not allowed in case an instrument is transferred, drawn or made or accepted in absence of any consideration and it gets in the hands of the holder in due course.
5. Estoppel against capacity of payee's Denial – As per sec, 121, any maker and acceptor of a note and bill is not permitted to refute the capacity of a payee who is in a suit by the holder in due course.
6. Use of unlawful means to obtain the instrument – As per sec 58, "the person liable to pay an instrument, cannot, as against holder in due course, say that the instrument had been lost or obtained from him by means of an offence or fraud or for an unlawful consideration".

Difference between Holder and Holder In Due Course

Aspects	Holder	Holder in Due Course
1. Time to obtain:	Instrument may be obtained at any time.	Instrument may be obtained before the date of maturity.
2. Consideration:	The holder may become the possessor or payee of the instrument even without the consideration.	The HDC is one who obtains possession for consideration.
3. Maturity:	The holder may become the possessor before or after the maturity.	HDC must become the possessor or payee before the amount thereon becomes payable.
4. Knowledge of defects:	The holder may have the knowledge of the defects in the title of the person from whom he derived his title.	He must have become the holder of the instrument in good faith and after exercising due care and caution.
5. To be a holder	Each holder is not a Holder in Due Course.	Each Holder in Due Course is also a Holder.

### 3.9 Parties to Negotiable Instrument :

#### ❖ In case of Promissory Notes :

There are mainly two parties at the origin of note. These are :

1. One who makes promise to pay called as Maker
2. One who will be paid by the maker, called payee.

#### ❖ In Case of Drafts :

1. The drawer who draws or makes the draft. The one who will pay.
2. The medium or the party who receives an order by drawer to make payments called drawee.
3. One who receives payment called Payee.

#### Check Your Progress – 1 :

1. implies that it cannot be collected by anyone who carries it but only the one whose name is mentioned on it.
  - a. Signing
  - b. Crossing
  - c. Putting stamp
  - d. Circling

2. Which of the following are semi negotiable instruments :
  - a. Money Orders
  - b. Letters of credit
  - c. Postal orders
  - d. Only a
3. A payee is the person who issues or draws the cheque.
  - a. True
  - b. False
4. In which of the following the term "pay" is used ?
  - a. Promissory Note
  - b. Hundi
  - c. Cheque
  - d. None of these.
5. Using terms like oblige, or pleases is invalid in case of :
  - a. Bills of Exchange
  - b. Cheque
  - c. Hindi
  - d. Bill of Laden

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### **3.10 Negotiation of Negotiable Instruments :**

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Negotiation is the process of transferring the negotiable instrument from one party to another, wherein the receiver is constituted as the holder from the time it is delivered.

#### **As per sec 14.**

"When a promissory, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated".

Thus, the holder becomes entitled to sue, become entitled or receive the due payments. Whereas a bearer instrument is transferred by mere delivery, a payable to order instrument gets transferred by delivery as well as endorsement.

There is one more term called assignment that is usually mistaken with negotiation. In case of assignment, "a person transfers his right to receive the payment of a debt". For example a person can transfer the right to a bank for receipt of payment for an insurance policy. He has assigned the bank to receive the insurance claim. In both the cases, i.e., in case of negotiation as well in assignment there is a transfer of right for debt payment but in case of negotiation the transfer is superior as the transferee gets the good title also irrespective of any defect in title.

#### **3.10.1 Modes of Negotiation :**

There are two broad ways for Negotiations :

1. Negotiation by Delivery only – A payable to bearer instrument is payable by mere delivery. As per sec 47, there is no need of any signature by transferor for delivery. The only point associated with signing an instrument that it makes transferor liable. Following are some important point to note :

- a. The transferee as per sec 8 is the holder of the instrument.
  - b. But in case the instrument has been obtained by theft or by accident, the finder will not become a holder of the instrument. However, if the thief gives it or negotiates with another party that third party will become the holder, there is no obligation on the transferor except that of immediate transferee
  - c. "Subject to provisions of s 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable thereof".
  - d. Payable to bearer in case of negotiable instrument is when, it made as payable to or when it is originally made a payable to order but last endorsement on it is blank.
2. Negotiation by Endorsement and Delivery– when an instrument is made such as it can be payable only to order, it can be negotiated only by endorsement and delivery. The process is therefore two fold, one is of endorsement done by duly signing the transfer order and secondly delivery to transferee.

### **3.10.2 The Significance of Delivery of Negotiable Instrument :**

While negotiating instrument, its delivery holds special significance. In this respect following points are important to remember :

- A negotiable instrument is delivered in three forms,
  - (i) actual, in which the transferor physically hand over the instrument to transferee,
  - (ii) conditional as the name implies delivery with an attached condition or
  - (iii) constructive, when there is no change in possession.
- Voluntary delivery that has an intention to transfer the ownership.
- To make a negotiation complete in case of payable to order it is mandatory to make the instrument both indorsed as well as delivered.
- As per sec 46, "delivery is important for making, acceptance or endorsement of the instrument.

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### **3.11 Endorsement :**

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Endorsing an instrument refers to giving consent for making payment by its rightful holder. It is a method used to negotiate an instrument. According to sec 15,

"when the maker or holder of an instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to endorse the same and is called the endorser".

The endorsement can be made...either at the back of the instrument or at its face or on a separate sheet or paper and the separate slip is called as "Along". The two parties involved in the process are endorser,

one who indorses or signs the instrument and the other, endorsee, on whom the endorsement is made.

Important Points To Consider In Endorsement Are :

- The signs should be made only in Ink. In case of an uneducated or illiterate endorser the left hand thumb impression (duly attested) should be made. The name or impression should match with the one done on the face of instrument. Signing does not include any stamp, or pencil etc.
- The complete amount should be endorsed.
- In case there are joint endorsers, unless there is one representative for all, each of them should sign the instrument.

### **3.11.1 Types of Endorsements :**

The Endorsement are of seven types. These are :

1. **Special Or Full Endorsements** – This refers to presence of names of both Endorser as well Endorsee. The instrument should be signed in full name of endorser and carry the endorsee's name alongside. As per sec 49,  
"the holder of a negotiable instrument already endorsed in blank, may without signing his own name by writing above the endorsers signature a few words that become a direction to pay to any other person as endorsee convert a blank endorsement into full endorsement".
2. **Partial indorsement** – Indorsement for a part of amount is also called partial indorsement. But it is not valid.
3. **Facultative Indorsment** – In this an indorser knowingly waives his right to receive any notice from indorses like that of dishonour etc is called facultative indorsement.
4. **Sans Recourse or Without Recourse Indorsement** – In this case the indorser excludes his liability in case of dishonour by using the word "sans recourse" or "without recourse" on the negotiable instrument.
5. **Conditional indorsement** – According to sec 52, "where an endorser makes his liability on the instrument conditional on the happening of a particular instrument it is called conditional indorsement".
6. **Blank Endorsement** – As per sec 160, where the indorser without mentioning the details of indorsee signs the instrument it is called blank indorsement. This is done when the indorser wants to make "payable to order?".
7. **Restrictive Indorsement** – When the indorser restricts the indorsee from further negotiating the instrument it is called as restrictive as per sec 50. The indorsee in such case enjoys all other rights like payment receipt, sue the parties except negotiating in future.

**Check Your Progress – 2 :**

1. In case of \_\_\_\_\_ a person transfers his right to receive the payment of a debt.  
a. Negotiations   b. Assignment   c. Transfer   d. Indemnity
2. In case the indorser is uneducated, which of the following will be applicable –  
a. Get signed by a legal counsel  
b. Get it stamped  
c. Put his right hand thumb impression  
d. Put his left hand thumb impressions
3. In which of the following types of delivery, there is no change in possession ?  
a. Actual   b. Constructive   c. Conditional   d. None of these

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**3.12 Dishonor of Negotiable Instruments :**

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Dishonour is mainly by (i) Non Acceptance or, (ii) Non Payment.

As per sec 92, "A negotiable instrument is said to be dishonoured by non payment when the maker, acceptor or drawee as the case may be makes default in payment upon being duly required to pay the same"

Non acceptance however is applicable only in case of bills of exchange. Sec 91, states about the provisions regarding dishonour of BOE in following cases :

- Where one or more drawees refuse to allow acceptance on being asked to do that.
- In case the bill remains unaccepted due to an excuse made for acceptance.
- In case a qualified acceptance is given by drawee
- In case of incompetency of drawee to contract, acceptance will not be possible

Dishonour of Negotiable instruments by either of ways allows the holder or holder in due course to sue the concerned parties for payment. For this he has to issue a notice of dishonour to the party or parties. In this regard there are certain rules to be followed for notice of dishonour :

- Notice of dishonour is a kind of warning and a formal communication issued by the holder to the liable parties.
- Authority to give notice: The notice is given by the holder of the instrument, or his legal agent, or any party that is liable. It can also be issued by the receiving party to its co parties who are equally liable. In case any concerned party doesn't get communicated, it cannot be sued as per sec 95.



- Whom to notify ? The notice should be given to every party held liable by the holder, In case of death of party the notice should be given to legal representative or to assignee in case of insolvency. However, as per sec 93, "no notice need to be given to the maker of the note or acceptor of a bill or drawee of a cheque that in each case is the principal debtor and has himself dishonoured the instrument ?
- Time and mode of notice – A reasonable time considering the distance of parties, nature of instrument, excluding holidays is calculated to give notice. A notice of =dishonour can be given both orally as well as in writing. In case of writing it h=should be sent by post with proper address and time. Such notice sent by post remains valid in case of any misplacement.
- No need of a notice in following cases as per sec 98,
  - ⇒ In case of cheque, when the payment is countermanded by the drawer himself
  - ⇒ When the liable party is not to be found
  - ⇒ In case of non–negotiability of instrument, like promissory note.
  - ⇒ In case there is a settlement with the liable party where it promises to pay the amount unconditionally
  - ⇒ When the party to notice dispense it.
  - ⇒ In case the drawee and drawer are same.

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### **3.13 Discharge of the Instrument and Parties :**

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Discharge of negotiable instruments means end of any liability with regards to the instrument itself or on the parties involved. Thus discharge relieves certain parties of obligations. Both the cases are discussed separately as under:

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### **3.14 Discharge of the Negotiable Instrument :**

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When a negotiable instrument becomes non– negotiable any further is called discharged instrument. This means that any transaction over it has been completed and none of the involved parties have any further liability to be performed. At the same time, if any party gets discharged of its liability, the instrument also gets discharged. An instrument is said to be discharged in the below cases:

- As per sec 78, "when the party primarily liable on the instrument i.e., the maker of the note, or acceptor of the bill or the drawee bank, makes the payment in due course to the holder at or after maturity".
- A bill is said to be discharged when during negotiation, it comes in acceptor's hand as a holder, after or at the time of maturity.

- Of the holder releases all the party to the instrument of its liability except Incas of any reserved right of holder
- An instrument can be discharged by ending the contract.
- Discharge in case of material alteration or insolvency of the debtor.
- Discharge Of One Or More Parties
- A negotiable instrument remains negotiable until any one of its parties stands liable for it. This means that parties gets discharged of its liability when the instrument becomes non negotiable.

A discharge of one or more parties and not all is possible in following situations :

1. In case of cancellation – As per sec 82(a), if the holder deliberately discharges one party who should not be the primary party to agreement, then that party and al its subsequent parties? stands discharged of their liabilities. A discharge is invalid if it takes place by mistake or in absence of holder’s authority
2. Through Release – It is different from cancellation as in case of release, as per sec 82(b) a separate cancellation agreement is signed.
3. Payment by liable parties – As per sec 78 and 82(c) when the parties pay the due amount at or before maturity to the holder or the holder in due course, they gets discharged.
4. Allowing 48 hours – As per sec 83, "If the holder of a bil of exchange allows the drawee more than 48 hours, excluding holidays for consideration to be accepted, all previous parties not accepting this allowance gets discharged.
5. Qualified acceptance – In case the bill holder agrees to make some changes on the bill, all parties that does not give their acceptance stands discharged from liability.
6. Notice of dishonour – Unless in special situations, if a notice of dishonour is not sent by the holder to any party other than one directly liable, it gets discharged.
7. In case of delay in providing cheques – In case the holder does not present the cheque for payment to drawer within the time span, and the bank on which it is drawn fails, the drawer gets discharged up to his actual loss that he suffered.
8. Material changes – as per se 87, in case some material alteration are made to the instruments contents effecting the legal position as well as the right and liabilities of parties, they gets discharged of their liabilities.
9. Negotiation Back – "when a bill of exchange comes back to the acceptor himself during the process of negotiation making him its holder, it is termed as "negotiation back".

**Check Your Progress – 3 :**

1. Dishonors due to non acceptance is applicable only in case of –
  - a. Promissory Bills
  - b. Bills of exchange
  - c. Cheque
  - d. All of these.
2. Can an instrument be discharged by ending the contract ?
  - a. Yes
  - b. No

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**3.15 Let Us Sum Up :**

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In this unit, you have learnt about the ownership conditions of different negotiable instruments like bills of exchange, cheques, Hundis etc. A promissory note is a written instrument that contains an unconditional undertaking that is signed by the maker to pay a particular amount to only or to the order of a certain person or the bearer. A bill of exchange may be dishonoured by either non acceptance or due to nonpayment whereas a promissory note can be dishonoured only by non payments.

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**3.16 Answer for Check Your Progress :**

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**Check Your Progress – 1 :**

1. b            2. b            3. b            4. c            5. a

**Check Your Progress – 2 :**

1. b            2. d            3. b

**Check Your Progress – 3 :**

1. b            2. a

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**3.17 Glossary :**

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1. **Promissory Note** – A financial and legal instrument carrying promise by one party to pay another party specific sum at a fixed time.
2. **Discharge** – When the due promise has been completed by the concerned party, the instrument is said to be discharged.
3. **Holder in Due Course** – A person who possess the instrument in good faith.
4. **Crossing of Cheque** – When the instrument carries two parallel lines drawn on the face or back, it indicates the instruction in which it has to be deposited.
5. **Dishonor of Negotiable Instrument** – When the party who has to make payments is unable to do so within the stipulated time.

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**3.18 Assignment :**

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1. 'A' draws a cheque for Rs 10000 but he has accredit balance of 5000 only. No notice of dishonor is given to 'A'. Can he avoid liability on the cheque?

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**3.19 Activities :**

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1. List down various types of instruments that are recognized by the Instruments act 1881.

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**3.20 Case Study :**

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Draw one specimen each of a duly filled –

- a. Bill of exchange
- b. Cheque
- c. Draft

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**3.21 Further Readings :**

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1. The Legal Environment of Business: Text and Cases: Ethical, Regulatory : Authors : Frank B. Cross, Roger LeRoy Miller
2. Mercantile Law by Avataar singh

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**BLOCK SUMMARY**

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This block highlighted three important aspects of mercantile law – Contract Act, Special contract and the Negotiable Instruments Act. Mercantile law i.e. Business law plays a vital role in regulating business practices in a country. It includes rights and liberties, resolving disputes and establishing standards for business concerns and their dealings with government agencies and individuals.

Unit – 1 covers the most important branch of mercantile law i.e. Law of contract. It determines the circumstances under which promises made by contracting parties shall be legally binding on them. It explains various essential elements for creating a valid contract and the methods by which it can be performed. It shows the ways in which contract can be discharged. It also specifies the remedies that are available against the person who fails to perform the contract entered into by him, in a court of law.

Unit – 2 covers Special contract i.e. the contract of Indemnity and Guarantee. We studied in that unit that a contract of Indemnity is made to protect a party from the damages that may accrue due to promisor or by the conduct of any other persons. It is a kind of security shield provided by a person to the promisee from future damages. We have learnt under the unit that how surety is liable to principal debtor, creditor and co-sureties and how he is relieved from his liability.

Unit – 3 covers The Negotiable instrument act. It teaches us the method in which the basic instruments like promissory note, bills of exchange and cheque are drawn. The same unit also shows the methods how the instrument is negotiated and indorsed. It also teaches us how the instruments are dishonored and discharged.

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## **BLOCK ASSIGNMENT**

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### **Short Questions :**

1. Explain various types of offer
2. Who is capable to enter into a valid contract ?
3. State the difference between fraud and misrepresentation.
4. State two difference between indemnity and guarantee
5. Define promissory note
6. Explain restrictive indorsement.

### **Long Question :**

1. Explain various agreements opposed to public policy with one example each.
2. Discuss in detail the methods by which contract can be discharged.
3. Discuss the types of damages that can be claimed by aggrieved party in case of breach of contract.
4. Explain the surety's liability towards principal debtor.
5. Explain the difference between promissory note and bills of exchange.
6. Explain the types of indorsement.
7. Discuss in detail the privileges available to holder in due course under the Negotiable Instrument Act.

**Business &  
Industrial Laws**

❖ **Enrolment No. :**

1. How many hours did you need for studying the units ?

Unit No.	1	2	3
No. of Hrs.			

2. Please give your reactions to the following items based on your reading of the block :

Items	Excellent	Very Good	Good	Poor	Give specific example if any
Presentation Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Language and Style	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Illustration used (Diagram, tables etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Conceptual Clarity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Check your progress Quest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Feed back to CYP Question	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

3. Any other Comments

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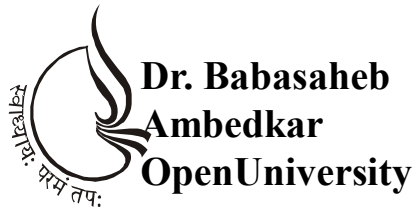
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**BBAR-402**

## **Business & Industrial Laws**

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### **BLOCK-2 INDIAN PARTNERSHIP ACT, 1932 AND CONSUMER PROTECTION ACT, 2019**

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#### **UNIT 1**

INDIAN PARTNERSHIP ACT, 1932 : NATURE, DEFINITION AND ESTABLISHMENT

#### **UNIT 2**

INDIAN PARTNERSHIP ACT – PARTNERS

#### **UNIT 3**

THE CONSUMER PROTECTION ACT, 2019

#### **UNIT 4**

COMPETITION ACT, 2002



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## **BLOCK 2 : INDIAN PARTNERSHIP ACT, 1932 AND CONSUMER PROTECTION ACT, 2019**

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### **Block Introduction**

There are three major forms of business organization – Sole proprietorship, partnership and company. The inherent disadvantage of the sole proprietorship in financing and managing an expanding business paved the way for partnership as a viable option. Partnership serves as an answer to the needs of greater capital investment, varied skills and sharing of risks. The persons who own the partnership business are individually called 'partners' and collectively they are called as 'firm' or 'partnership firm'. A business is a combination of a lot of functions like planning, production, finance, marketing, HR etc. The success of a business depends to a great deal on how efficiently these functions are performed. It is very rare, almost impossible for a single human being to manage and excel in all the functions at the same time, which in turn, hampers the success as well as the growth of a business. This is the primary reason why partnerships are important.

Unit 1 will explain how initially Partnership was the part of Indian Contract act, 1872, its definition, nature, essential requirements and characteristics. It also explains the difference between partnership and other entities.

Unit 2 explains partners' rights and duties towards the partnership firm and the effects on their rights on duties due to reconstitution and dissolution of partnership firm.

Unit 3 explains us that the Digital Age has ushered in a new era of commerce and digital branding, as well as a new set of customer expectations. Digitization has provided easy access, a large variety of choice, convenient payment mechanisms, improved services and shopping as per convenience. However, along the growth path it also brought in challenges related to consumer protection. The Consumer Protection Act was enacted in the year 1986. It is considered an important milestone in the legal history of India. With globalization, we observe that there is a plethora of goods and services. It is important for a Consumer to have important support in purchasing the right goods and services and have their grievances redressed whenever they arise in some occasions.

Unit 4 explains us that The Competition Act, 2002 seeks to provide the legal framework and tools to ensure competition policies are met and to prevent anti-competition practices and provide for the penalization of such acts. The Act protects the free and fair competition which protects the freedom of trade, which in turn protects the interest of the consumer. The Act seeks to prevent monopolies and also to prevent unnecessary intervention by the government.

## **Block Objectives**

**After reading this block you will be able to –**

- Learn the definition of partnership
- Understand the essentials and characteristics of partnership
- Learn how partnership is a viable option to overcome inherent disadvantages of sole proprietorship.
- Recognize the nature of business of partnership
- Judge the points of difference between partnership and various entities.
- Evaluate rights and duties of partners
- Understand the process of reconstitution of firm and dissolution of firm and its effect on rights and duties of partners.
- Learn the definition of consumer
- Learn the importance of Competition Act.

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**Block Structure**

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Unit 1 : Indian Partnership Act, 1932 : Nature, Definition and Establishment

Unit 2 : Indian Partnership Act – Partners

Unit 3 : The Consumer Protection Act, 2019

Unit 4 : Competition Act, 2002



## INDIAN PARTNERSHIP ACT, 1932 : NATURE, DEFINITION AND ESTABLISHMENT

### : UNIT STRUCTURE :

- 1.0 Learning Objectives**
- 1.1 Introduction**
- 1.2 Applicability of the Act**
  - 1.2.1 Definition**
  - 1.2.2 Nature of Partnership Firm**
  - 1.2.3 Essential Requirements of Partnership**
  - 1.2.4 Characteristics**
- 1.3 Partnership Versus Other Entities**
  - 1.3.1 Partnership and Joint Hindu Family (HUF)**
  - 1.3.2 Partnership and Co–Ownership**
  - 1.3.3 Partnership and Company**
- 1.4 Let Us Sum Up**
- 1.5 Answers for Check Your Progress**
- 1.6 Glossary**
- 1.7 Assignment**
- 1.8 Activities**
- 1.9 Case Study**
- 1.10 Further Readings**

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### **1.0 Learning Objectives :**

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**After reading this unit, you will be able to :**

- Elaborate the importance of the Partnership Act
- Learn the definition of partnership
- Understand the essentials and characteristics of partnership
- Learn how partnership is a viable option to overcome inherent disadvantages of sole proprietorship.
- Recognize the nature of business of partnership
- Judge the points of difference between partnership and various entities.

---

### **1.1 Introduction :**

---

There are three major forms of business organization – Sole proprietorship, partnership and company. The inherent disadvantage of the sole proprietorship in financing and managing an expanding business

paved the way for partnership as a viable option. Partnership serves as an answer to the needs of greater capital investment, varied skills and sharing of risks. The persons who own the partnership business are individually called 'partners' and collectively they are called as 'firm' or 'partnership firm'. A business is a combination of a lot of functions like planning, production, finance, marketing, HR etc. The success of a business depends to a great deal on how efficiently these functions are performed. It is very rare, almost impossible for a single human being to manage and excel in all the functions at the same time, which in turn, hampers the success as well as the growth of a business. This is the primary reason why partnerships are important.

The law of partnership is contained in the Indian Partnership Act, 1932, which came into force on 1st October, 1932. Partnership results from a contract so initially it was embodied in Chapter XI of Indian Contract Act, 1872. So for those matters on which Partnership Act is silent, one can refer to general provisions of Indian Contract Act, 1872. The Indian Partnership Act is to a greater extent is based on the English Law on the subject as contained in the Partnership Act, 1890. Majority of the law is same but certain alterations are made considering the conditions prevailing in India. It is not comprehensive legislation. It is aimed at defining and amending the law of partnership.

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## **1.2 Applicability of the Act :**

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### **1.2.1 Definition :**

According to Section 4 of Indian Partnership Act, 'Partnership is the relation between persons who have agreed to share the profits of the business carried on by all or any of them acting for all. The persons who have entered into partnership with one another are individually called 'partners' and collectively 'a firm'.

### **1.2.2 Nature of Partnership Firm :**

Partnership is a business organization where two or more persons agreed to join together to carry out the business for the purpose of earning the profits. The concept of partnership is an extension of sole proprietorship. It is better than sole proprietorship because in sole proprietorship the business is carried out by the individual with limited capital and limited skill. Due to the limited resources of a single individual carrying a sole proprietorship, a larger business requiring more resources and investment than available to the sole proprietor cannot be thought of such business. On the other hand in partnership, a number of partners join together with their capital to form an agreement and carry out a business jointly.

### **1.2.3 Essential Requirements of Partnership :**

To validate a partnership following requirements must be fulfilled :

- (a) There must exist an agreement between persons who want to be partners.

- (b) The purpose of creating partnership should be carrying on some business.
- (c) The motive is to earn the profit and share between the partners.
- (d) The agreement must be to carry out the business jointly or by any of them acting on the behalf of all.

#### **1.2.4 Characteristics :**

If we analyze the definition of partnership, the following essential characteristics can be pointed out –

##### **1. Association of Two or More Persons :**

There must be at least two competent persons to form a partnership. The term 'person' here means an individual. The law prohibits minors from being partners. But minors can be admitted to the benefits of the partnership firm. It does not include a firm, as it is not a separate legal entity. Two partnership firms cannot enter into partnership, though all the partners of two firms may form a partnership out of their separate firms provided their number does not exceed the statutory limit. A company is a person within the meaning of section 4. A company is a distinct entity from its members, so it is authorized to enter into partnership.

The Act is actually silent on the maximum number of partners. But this has been covered under Companies Act 2013. So number of partners in a firm carrying on banking business should not exceed ten and in any other business twenty. If the number of partners exceeds this limit, the partnership becomes an illegal association under Section 464 of Companies Act, 2013. It ceases to be a partnership, if the number gets reduced to one by any reason.

##### **2. Agreement :**

The Indian Partnership Act has the source in Indian Contract Act, 1872. So one can say that partnership arises out of contract and not from status. Agreement between the partners is the basis or foundation of this contract. The said agreement may be express or implied. Express agreement means it may be entered between parties through spoken or written words, whereas implied agreement may be inferred from the course of dealing or the conduct of parties. The agreement may be for fixed period i.e. for a particular adventure, or it may give option to the partners to withdraw from the partnership at any time.

Partnership arises out of contract. It does not arise by operation of law (as in the case of co-ownership). It does not arise from status (as in the case of Joint Hindu Family). It does not arise out of inheritance also.

Partnership deed mainly consists of following details :

- Name and address of its firm and business
- Name and address of its partner

- Capital contributed by each partner
- Profit and loss sharing ratio
- Rate of interest on capital, loan, drawings etc
- Rights, duties and obligation of partners
- Settlement of accounts on the dissolution of the firm
- Salaries, commission payable to partners
- Rules to be followed in case of admission, retirement and death of a partner
- Mode of settlement on disputes among partner.
- Any other affecting the rights of the partners

### **3. Business :**

The partnership must be created for the purpose of carrying the business and partners must participate in running the business. The business to be carried on must be legal. The term 'business' include every trade, occupation and profession. The term business also gives us the idea of a running business involving numerous transactions. Co-ownership of property does not amount to partnership. A person may become a partner with another in a particular adventure.

### **4. Sharing of Profits :**

Sharing of profits is one of the essential elements of partnership. The object of partnership must be to make profit. Profit means net profit i.e. the excess of what is obtained over the cost of obtaining it. The profit sharing ratio or the manner in which the profits will be distributed is not important. The profits must be distributed among partners in an agreed ratio. If any person claims to be a partner and is deprived of his right to share profits of the business, then he is no considered as partner as his carrying on the business is not for profit. Bu the reverse situation may not be true. It means that it may so happen that a person is sharing profits of partnership, but still he is not a partner.

The sharing of profits also involves sharing of the losses. It is because loss means negative profit. As among the partners it may be agreed that one or more of the partners shall not be liable for losses. If nothing is mentioned then losses will be split among partners in profit sharing ratio.

For e.g. A and B are operating the same ware house. So they agreed to divide the rent among themselves. This is not partnership since there is no profit sharing between the two.

### **5. Mutual Agency :**

It is an important characteristic and truest test of partnership. The definition states that the business must be carried out by the partners, or any partner/s acting for all of them. A partner can be an agent. It means he can bind other partners by his acts. A partner can also be a

principal. It means he is bound by the acts of other partners. The question whether a person is or is not a partner depends on the case whether he has the authority to act for those who are admittedly partners and whether those admitted partners have the authority to act for him.

**Check Your Progress – 1 :**

1. To start a partnership business, what is minimum number of partners required ?  
a. 2                      b. 4                      c. 10                      d. 20
2. What type of agreement is required to form a partnership business ?  
a. Written agreement                      b. Oral agreement  
c. Written or oral                      d. None of the above
3. Is partner an agent of firm and other partners ?  
a. Yes                      b. No                      c. Partially yes                      d. Can't say
4. Partnership arises out of  
a. Operation of law                      b. Status  
c. Inheritance                      d. contract

---

**1.3 Partnership Versus Other Entities :**

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**1.3.1 Partnership and Joint Hindu Family (HUF) :**

The partnership is a relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Hence, to become a partner in a partnership firm, the partner should be a natural person or recognized as person by the law (Company – by virtue of Companies Act 1956). A business in Hindu law is a heritable asset. If an ancestral business descends on the members of a Joint Hindu Family (also called HUF), or if they start a common business out of joint funds at any time after the death of the ancestors, such a business is called Joint family business. Since, HUF is not a "person", but only group of persons belonging to the same family and carrying on the family business, HUF cannot be a partner in a partnership firm. (Sec. 5 para 2) The following are the points of difference between the two :

1. **Regulating Law :** A partnership is governed by the provisions of Partnership Act, 1932. A joint Hindu family business is governed by the principles of Hindu law.
2. **Mode of Creation :** Partnership is a result of an agreement. A Joint Hindu Family arises from status. It is not a result of an agreement.
3. **Names of Persons :** The persons who form partnerships are called 'Partners'. The persons who are the members of the HUF are called 'Coparceners'.



4. **Interest in the Business :** Partners do not acquire interest in partnership business by birth. The male members acquire interest in Joint Family business by birth.
5. **Introduction or Admission of New Member :** No person can be introduced as a partner without the consent of all the members. A member of Hindu joint family acquires an interest in the firm business by birth, marriage, adoption etc. No consent of other members necessary. Other members cannot deprive his right.
6. **Female Members :** A female can become full-fledged partner in partnership. A female does not become member of HUF by birth.
7. **Minor Members :** A minor can be admitted to the benefits of partnership with the consent of other partners. A minor in HUF becomes member by birth.
8. **Death of Member :** Death of a partner ordinarily leads to the dissolution of the partnership. Death of a member in the HUF does not give rise to the dissolution of the family business.
9. **Management :** All the partners are equally entitled to take part in the partnership business. The right of management of the Joint family business generally vests in Karta, the governing male members of the family.
10. **Registration :** It is not compulsory to register partnership firm. But indirectly law has made registration compulsory. A joint family business does not require any registration.
11. **Maximum Members :** The maximum number of partners in case of banking business cannot exceed ten and in any other case twenty. In joint family business, there is no limit to maximum number of members.
12. **Liability :** In partnership every partner is jointly and severally liable for debts and liabilities of the firm. Liability of every partner is unlimited. The liability of the members is limited to the extent of his interest in the assets of Hindu Joint Family.

### **1.3.2 Partnership and Co-Ownership :**

Partnership and co-ownership are two different things. The ownership of a property by more than one person is called co-ownership. If two brothers purchase a property collectively, it will be a case of co-ownership. The property will be disposed off with the consent of all the co-owners. Any income arising out of co-ownership is shared by all the co-owners.

The property is not purchased with the object of earning profits. If a building is purchased to let it for rent, then it will be a case of partnership and not of co-ownership. In the co-ownership, there is only a joint ownership without any business motive. In partnership, joint ownership and business are combined. In partnership, the partners are necessarily co-owners of the property of the firm, but in co-ownership the co-owners are not necessarily partners.

The following are the points of difference between the two :

1. **Act** : Partnership is governed by Partnership Act, 1932. There is no such Act governing co-ownership.
2. **Mode of Creation** : Partnership is created due to contractual relationship among partners. Co-ownership may be by the operation of law. Co-ownership may arise out of status.
3. **Business** : Business is necessary for existence of partnership. Co-ownership can exist without it.
4. **Nature of Interest** : A partner cannot transfer his share to a stranger without the consent of other partners. A co-owner can transfer his share and the transferee becomes the co-owner, a substitute of co-owner.
5. **Maximum Number of Members** : The maximum number of partners in case of banking business cannot exceed ten and in any other case, twenty. In co-ownership there is no limit on maximum number of members.
6. **Authority** : A partner is the agent of other partners. Partners have implied authority to bind the firm. A co-owner is not the agent of the other owners. Every co-owner is responsible for his own deeds.
7. **Object** : The object of partnership is to enter into some business and earn profits. Co-ownership is not meant for business purposes.
8. **Lien for Expenses** : A partner can have lien on partnership property for the expenses incurred by him on such property on the behalf of firm. A co-owner cannot claim the expenses by the way of lien on property.

### **1.3.3 Partnership and Company :**

The partnership is a relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Company means a company incorporated under the Companies Act. In other words, a company is a legal entity which is formed by different individuals to generate profits through their commercial activities.

Following are the points of difference between them.

1. **Names** : The members of partnership firm are called partners, individually and jointly known as firm. The members of company are called shareholders.
2. **Act** : Partnership is governed by Partnership Act, 1932. Whereas company is regulated by the Companies Act, 2013.
3. **Creation** : Partnership is created by association of two or more persons, who have agreed to share profits of the business, whereas company is created by law, i.e. registration.

4. **Minimum Number of Members :** To form partnership minimum two partners are required. To start a private company, minimum number of members required are two and in case of public company, seven.
5. **Maximum Number of Members :** The maximum partners in banking business can be 10 and in any other case it can be 20. The maximum number of members in private company (other than one person company) is 200 and in public company it can be unlimited.
6. **Legal Status :** A partnership firm is not a person in eyes of law. A company is a legal entity distinct from its members.
7. **Property and Rights :** The property and rights of partnership are vested in its members, so when there is change in partnership, the assets are transferred to the new partners. In company, the property and rights are vested in it so there is no need to transfer them when there is change in membership.
8. **Liability of Members :** In partnership, partners are jointly and severally liable to the creditors of the firm. A creditor, through court's order can proceed against and attach the private property of any of the partner of the firm. But the creditors of company belong to company and not to share holders. So shareholders are not directly liable to creditors.
9. **Management :** Every partner in partnership can take part in the management of firm, unless partnership agreement provides otherwise. The affairs of the company are managed by its directors. The members have no right to take part in management.
10. **Decree :** Decree against firm can be executed against partners, whereas decree against company cannot be executed against its shareholders.
11. **Authority of Members :** Each partner is the agent of the firm in ordinary course of business. Whereas a shareholder is not the agent of company and has no power to bind the company by his acts.
12. **Transfer of Interest :** A partner cannot transfer the share without the consent of partners. He may assign the share in partnership, provided the agreement does not provide otherwise. The assignee of share can get the benefits of the firm, only if other partners agree. The shares of the company are freely transferable, provided the Articles of the company otherwise provide. When shares are transferred, the transferee becomes the member.
13. **Powers :** The partnership firm can do anything which the partners agree to do, whereas company's powers are limited to object clause of Memorandum of Association.

14. **Restriction on Powers :** The restrictions on the powers of partners contained in the partnership will not avail against outsiders, whereas in company, restrictions can be known to general public through Articles of Association, since it is a public document.
15. **Accounts :** A partnership firm will have to maintain accounts as per partnership deed. There are no such statutory provisions in Partnership Act. In company, the books of accounts are to be maintained and audited by qualified auditors.
16. **Suffix After the Name :** The name of partnership firm does not require any suffix. In private company the name ends with 'private limited' or 'pvt. Ltd' and in case of public company the name of company ends with 'public limited' or 'ltd'.
17. **Insolvency/Winding Up :** The insolvency of partnership firm means insolvency of all the partners, whereas winding up of insolvent company does not make the members insolvent.
18. **Dissolution :** Unless partnership is created for fixed period, it may be dissolved at any time. It will automatically dissolve by death, insanity or insolvency of partner. A company has a perpetual succession. The death, insolvency or insanity of members does not affect the existence of company. It comes to an end as per the provisions of law.

**Check Your Progress – 2 :**

1. Joint Hindu Family arises from
  - a. Agreement
  - b. Operation of law
  - c. Status
  - d. contract
2. A minor in HUF becomes member by
  - a. Consent of other partners
  - b. Birth
  - c. Agreement
  - d. none
3. If nothing is mentioned in partnership agreement, then what will the profit sharing ratio between partners ?
  - a. Equal
  - b. Unequal
  - c. Depending on experience of partner
  - d. None of the above
4. What is not the feature of partnership business
  - a. Ease of formation
  - b. Limited liability
  - c. Limited life
  - d. Mutual agency

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**1.4 Let Us Sum Up :**

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This unit explained that partnership is a form of business organization which is created by contract, and not due to inheritance, status or operation of law. It is also understood through characteristics that

partnership is that form of business organization which is created to overcome the disadvantages of sole proprietor. In sole proprietor, the owner himself used to run the business and invest all capital and take all the risks. But partnership is totally different. It is relationship between persons who have agreed to share the profits of the business, carried on by all or any one of them acting for all. The law of Partnership was initially the part of Indian Contract Act, 1872. But the provisions were not exhaustive and so separate Act named Indian Partnership Act was enacted. It is totally different form other entities like co-ownership, Hindu Undivided Family (HUF) and Company.

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### **1.5 Answers for Check Your Progress :**

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#### **Check Your Progress – 1 :**

1. a                      2. c                      3. a                      4. d

#### **Check Your Progress – 2 :**

1. c                      2. b                      3. a                      4. b
- 

### **1.6 Glossary :**

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- 1. Co-Ownership :** The state or right of owing something jointly with another or others.
  - 2. Hindu Undivided Family (HUF) :** HUF consists of all individuals who are lineally descended from a common ancestor. HUF is not formed by a contract but by the status of a family i.e., it is created automatically in any Hindu Family. Having a common ancestor is a pre-requisite to form a HUF.
  - 3. Company :** Company means a company incorporated under Companies Act 2013 or any previous company law. A company is a legal entity which is formed by different individuals to generate profits through their commercial activities.
  - 4. Coparcener :** A person who shares equally with others in inheritance of an undivided estate or in rights to it.
- 

### **1.7 Assignment :**

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1. Explain difference between partnership and
    - Co-ownership
    - Company
- 

### **1.8 Activities :**

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1. Discuss the matters to be mentioned at the time of preparing partnership deed.

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**1.9 Case Study :**

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A, B and C are partners ABC Brothers. A, a partner, is entrusted work to collect the amount from debtors of the firm. He, while collecting amount from debtors made loss, as he could not collect full amount. Are other partners liable for loss made by A in collecting the amount ?

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**1.10 Further Readings :**

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1. Elements of Mercantile Laws by N. D. Kapoor
2. The Indian Partnership Act by Pollock, Mulla



**UNIT STRUCTURE :**

- 2.0 Learning Objectives**
- 2.1 Introduction**
- 2.2 Relations of Partners with One Another**
  - 2.2.1 Rights of a Partner**
  - 2.2.2 Duties and Liabilities of a Partner**
- 2.3 Reconstitution of Firm**
- 2.4 Dissolution of Firm**
- 2.5 Let Us Sum Up**
- 2.6 Answers for Check Your Progress**
- 2.7 Glossary**
- 2.8 Assignment**
- 2.9 Activities**
- 2.10 Case Study**
- 2.11 Further Readings**

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**2.0 Learning Objectives :**

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**After reading this unit, you will be able to :**

- Understand the relation of a partner with another partners
- Elaborate the rights and duties of a partner
- Understand the change in the structure of firm
- Know the difference between dissolution of firm and dissolution of partnership
- Know various methods of dissolution of firm, i.e. with and without the order of court.

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**2.1 Introduction :**

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Each partner has a right to share in the profits of the partnership firm. Unless the partnership agreement states otherwise, partners share profits equally. Moreover, partners must contribute equally to partnership losses unless a partnership agreement provides for another arrangement. In addition to sharing in the profits, each partner also has a right to participate equally in the management of the firm. In many partnerships, majority vote resolves dispute relating to management of partnership firm. Nevertheless, some decisions, such as admitting a new partner, expelling a partner, require partners' unanimous consent.

Each partner owes a fiduciary duty to the partnership firm and to copartners. This duty requires that every partner deals with copartners in good faith. It also requires a partner to account to copartners for any benefit that he has received while engaged in partnership business. Each partner thus has a duty to be loyal to the firm and also to other partners. Unless copartners consent, a partner's duty of loyalty restricts him from using partnership property for personal benefit and restricts the partner from competing with the firm's business, engaging in self-dealing and usurping partnership property.

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## **2.2 Relations of Partners with One Another :**

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The mutual relations between the partners of a firm come into existence through an agreement between the said partners. This gives rise to mutual right and duties to every partner involved in the firm's business. Section 9 to 17 of the Indian Partnership Act of 1932 lays down the provisions governing the mutual relations of all the partners. These relations are governed by an existing contract among them which may be implied or expressed by the course of dealing.

### **2.2.1 Rights of a Partner :**

All partners are free to form their own terms and conditions with respect to functioning in their partnership deed. The Indian Partnership Act, 1932 has also prescribed provisions to govern their relationship inter se (amongst them), and these provisions are applicable if no such deed exists. Following are their rights:

- 1. Right to Participate in the Business :** A partner in partnership has a right to take part in the business proceedings. But this right is subject to a contract to the contrary. This is based on the general principle that partnership business is the common business of all partners. But if one partner neglects his duties and the burden of performing such duties fall on other partners, then in such case other partners have right to claim compensation. It must be noted that partner can waive his right to participate in the management of business and can curtail his right if deed provides so.
- 2. Right to be Consulted :** Every partner has an inherent right to be consulted in all matters affecting the business of partnership. A partner can express his views before final decision is taken. If there is difference of opinion in any ordinary matters, it may be settled, by the opinion of majority partners. While expressing the opinion, the partner must always act in good faith. However, there can be no change in the nature of the business of the firm without the consent of all partners involved.
- 3. Right to Inspect Books of Accounts :** Every partner has a right to access, inspect and get a copy of books of the firm. However, this right must be exercised in bonafide manner. This right can be exercised by partner himself or his authorized agent. Minor



partner has a right to inspect any accounts of the firm but cannot have access to books.

4. **Right to Share Profits :** In absence of any agreement, the partners are entitled to share profits equally. At the same time, they are also liable to share the losses of the firm equally.
5. **Right to Pppose Entry of a New Partner :** All the partners of a partnership firm have a right to prevent the introduction of a new partner in a firm. A new partner cannot be admitted unless all other partners give their consent. This consent is required because partnership is founded on mutual trust and confidence.
6. **Right to Get Interest on Capital :** As per the general rule, no interest is paid on the capital of the partners, because partner is not the creditor of the firm. However, interest is given on the capital at a certain rate, if there is express or implied agreement to it.
7. **Right to Interest on Advances :** Where a partner makes any advance beyond his contribution towards capital, then he is entitled to interest on such advance at the rate of 6% per annum. Such interest is not payable out of the profits of the firm, but out of the assets of the firm.
8. **Right to be Indemnified :** In the case of emergency, partner has an authority to do all such acts which are required for protecting the firm from loss. Such acts of the partner bind the firm. If partner incurs any liability while performing such acts, then he has right to be indemnified.
9. **Right to Get Remuneration :** As per the general rule, partner is not entitled to claim remuneration, along with his share of profits in the business. But agreement may expressly provide for such remuneration. The partner may claim such remuneration, even if the custom of business prevails. It is a common practice in partnership that managing partner claims remuneration over and above his share in profits for extra efforts he is taking in the business.
10. **Right to use Partnership Property :** the partners must use the property of firm, exclusively for the purpose of business of firm. No partner has a right to treat the property as his individual property. If partner uses firm's property, directly or indirectly for his personal purpose, then he must give account to the firm for the profits which he has earned during the use of property.
11. **Right of a Partner as an Agent of The Firm :** Every partner for the purpose of business of the firm is the agent of the firm. It is the very essence of a partnership firm. Subject to the provisions of Indian Partnership Act, the acts of partner done to carry on firm's business, in ordinary course of business, binds the firm.
12. **Right to Retire :** Every partner of a partnership firm has the right to withdraw from the business with the consent of all the other

partners. In the case of a partnership formed at will, this may be done by giving a notice to that effect to all the other partners.

- 13. Right Not to be Expelled :** Every partner of a partnership firm has the right to continue in the business. A partner cannot be dismissed from the firm by any majority of the partners unless conferred by a partnership agreement and exercised in good faith and for the advantage of the partnership firm.
- 14. Right of an Outgoing Partner to Carry on Competing Business :** A partner outgoing from the partnership firm may carry on a business competing with that of the firm. The partner may even advertise such activity but has to do so without using the firm's name or representing himself as carrying on the business of the firm or soliciting the clients who were dealing with the firm before the partner cease to be a part of the partnership firm.
- 15. Right of an Outgoing Partner to Share :** Where a partner has died or has ceased to be a partner by retirement, expulsion, insolvency or any other reason, the surviving or continuing partners may carry on the business with property of the firm without any final settlement of accounts between them. In such case, legal representative of deceased partner is entitled to –
  - (a) Such share of profits as is proportionate to his share in the property of the firm
  - (b) Interest at the rate of 6% per annum on the amount of his share in the property of firm.

### **2.2.2 Duties and Liabilities of a Partner :**

All partners are free to form their own terms and conditions with respect to functioning in their partnership deed. The Indian Partnership Act, 1932 has also prescribed provisions to govern their relationship inter se (amongst them), and these provisions are applicable if no such deed exists. Partnership is a contract of *uberrimae fidei*. The partners must act with utmost good faith as the very basis of partnership is mutual trust and confidence. Following are the duties of a partner as per Sec. 9 of Partnership Act:

- (a) To carry on the business to the greatest common advantage
- (b) To render true accounts and full information of all things affecting the firm to any partner or his legal representative.
- (c) To be just and faithful to each other.

From the above duties, following duties are summed up as under :

- 1. Duty to Carry on the Business for Common Advantage :** It is the basic duty of every partner to carry on the business of the firm to the greatest common advantage, in order to be just and faithful to each other. His acts should focus on common interest of the firm. He must share the benefits with other partners, which he has received from other people, to be just and faithful.

2. **Duty to Render True Accounts :** According to Section 9 of the Indian Partnership Act, 1932 It is Duty of Partner to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative.
3. **Duty to Observe Faith :** Partnership is based on fiduciary relations. Every partner must be just and faithful, and observe utmost good faith towards every other partner of the firm. A partner should not obtain private advantage at the cost of firm. He is expected to act at his best in the common interest of the firm.
4. **Duty to Indemnify :** If firm has incurred any loss due to misconduct or fraud of partner, then it is his duty to indemnify for such loss. This is considered to be an absolute duty. The innocent partners are liable to third party for fraud done by any of the partners. And thereafter innocent partners can proceed towards the partner who has committed fraud.

It is also the duty of partner to indemnify for any loss caused to firm due his willful neglect in conducting the business of the firm. The firm however is liable for loss to third party due to neglect of partner.

5. **Duty to Share Losses :** It is the duty of every partner to contribute to the losses of the firm. In absence of any contract, the partners are bound to contribute equally to the losses of sustained by the firm. An agreement to share profits includes agreement to share losses.
6. **Duty to Attend Diligently :** It is the duty of every partner to attend his duties towards firm diligently. He must use his knowledge and skill for the advantage of the firm.
7. **Duty to use Firm's Property Exclusively for Firm :** The property of the firm shall be held and used by the partners exclusively for the purposes of the business. If a partner derives any profits for him from any transaction of the firm, or from the use of the property or business connection of the firm or the firm-name, he shall account for that profit and pay it to the firm.
8. **Duty to Account for Profits :** If partner makes any secret profit from partnership transactions, without the consent of other partners, then he must give the clear account of it to other partners. The partnership is based on fiduciary relations between the partners and so no partner is entitled to make personal profit.

A partner, at the same time must not carry on any business of same nature which is competing with that of firm. If he does any competing business and if he makes any profit out of it, then he is bound to give account for it. This is however dependant on the contract between the partners.

9. **Duty to Act Within Authority** : Every partner is bound to act within the scope of his implied authority. If he exceeds the authority conferred on him and the firm suffers a loss, then he shall have to compensate the firm for such loss.
10. **Duty to be Liable Jointly and Severally** : Every partner is jointly and severally liable for the acts of the firm while he is a partner. 'Act of the firm' means act or omission by all the partners or agent of the firm which gives rise to right enforceable against the firm.
11. **Duty not to Assign his Interest** : A partner cannot assign his rights and interest in the firm to an outsider, so as to make him partner of the firm. He can however, assign his share of profit in the assets of the firm.
12. **Duty not to Claim Remuneration** : a partner is not entitled to receive any remuneration in any form for taking part in the conduct of business of the firm. It is however a general trend to allow remuneration to working partners provided there is specific agreement for it.

**Check Your Progress – 1 :**

1. A partner cannot transfer his interest without the \_\_\_\_\_ of other partners.
  - a. Consent
  - b. Deed
  - c. Evidence
  - d. None of the above
2. Liability of partner is
  - a. Limited
  - b. Unlimited
  - c. Voluntary
  - d. None of the above
3. When partner makes advance beyond his capital, then he is entitled to get interest at the rate of \_\_\_\_\_ % per annum.
  - a. 9
  - b. 8
  - c. 7
  - d. 6
4. The very basis of partnership is \_\_\_\_\_
  - a. Property of firm
  - b. Capital of firm
  - c. Mutual trust and confidence
  - d. Relationship with outsiders.

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**2.3 Reconstitution of Firm :**

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Partnership can be defined as a mutual understanding between two or more persons for carrying on some business and mutual sharing of profits resulting from that business. The organization formed between those persons as a result of such understanding is known as a partnership firm. Any change in the structure of such firm is known as reconstitution of firm. A partnership firm is said to be reconstituted when any of the following changes occur :

1. Admission of a partner (Sec. 31)
2. Retirement of a partner (Sec. 32)

3. Expulsion of partner (Sec. 33)
4. Insolvency of a partner (Sec. 34)
5. Death of a partner (Sec. 35)
6. Transfer of partner's share (Sec. 29)

**1. Admission of Partner :** A person may be admitted as a new partner either –

- (a) With the consent of all existing partners or
- (b) As per the contract between the partners

❖ **Liability of Incoming Partner :**

- An incoming partner does not become liable for the acts of firm before his admission as a partner.
- The reason behind it is – old partners were not the agents of new partners at the time when they acted
- But by mutual agreement the new partner may agree with old partners, to become liable for the past liabilities
- In this situation, creditors cannot proceed against new partner for recovery of their past debts. The reason behind this is – the new partner was not in existence as a principal when the debts were created.
- The new partner is liable for past liabilities only if –
  - The new firm assumes the liabilities of old firm
  - The creditors accept the new firm as their debtor and discharge the old firm from its liability.

**2. Retirement of a Partner :** A partner may retire from a firm –

- (a) With consent of all other partners
- (b) In accordance with express agreement by partners
- (c) By giving notice in writing to all other partners of his intention to retire.

**A. Liabilities of Retiring Partner :** Following are the liabilities of a retiring partner –

- i. Liability Before Retirement :** A retired partner continues to be liable for all the acts of firm done before retirement, unless he is discharged from his liability. He may be discharged if–
  - There is agreement made by him with third party and partners of reconstituted firm. This is novation.
  - There is implied agreement, by course of dealing between third party and reconstituted firm.
- ii. Liability After Retirement :** A retired partner, along with other partners, continues to be liable to third party for any act done by them after retirement of partner until public notice

is given for retirement. It is very similar to the principle of holding out. The public notice may be given by retiring partner or any partner of reconstituted firm. A retired partner is not liable for the acts of firm done after his retirement.

**B. Rights of a Retiring Partner :** Following are his rights :

**i. To Carry on Competing Business :** A retired partner may carry on business competing with that of firm and he may advertise for such business. He may not –

- Use firm's name
- Represent himself as carrying on business of the firm
- Solicit the customers of firm before he ceased to be partner

**ii. To Share Subsequent Profits :** When partner dies, and if there is no final settlement of accounts between legal representative of deceased partner and surviving partners, and they carry on business with property of firm, then legal representatives can claim–

- Share in the profits after death or retirement
- Interest at the rate of 6% per annum on account of share in property.

**3. Expulsion of Partner :** A partner may be expelled from partnership firm if following conditions are satisfied:

- (a) The power of expulsion of a partner should be conferred by contract between the partners.
- (b) The power should be exercised by majority of partners
- (c) The power should be exercised in good faith

The test of good faith is also required. The terms 'good faith' includes –

- The expulsion must be in interest of partnership
- The partner to be expelled should be served with notice
- He is given authority of being heard.
- There may be provision in partnership that partner can be expelled on happening of event, misconduct of partner, etc.

**Irregular Expulsion :** Where expulsion of a partner takes place without fulfillment of above conditions, then expulsion is considered as irregular. The expelled partner may in such case either –

- (a) Claim re–instatement as a partner
- (b) Sue for refund of his share in capital and profits of the firm.

**4. Insolvency of a Partner :** When partner is declared insolvent, he ceases to be the partner on the date on which such order is made

by the court, whether or not the firm is dissolved. The effects of insolvency of a partner on firm are :

- (a) The firm is dissolved from the date of order of insolvency of partner but there can be a provision that on such contingency the firm shall not be dissolved.
- (b) The estate of insolvent partner is not liable for the acts of the firm done after the date of order of insolvency. A public notice regarding insolvency of a partner is not required.
- (c) The firm is not liable for any act of insolvent partner after the date of order of insolvency.

**5. Death of a Partner :** Subject to the contract between the partners, a firm is dissolved by the death of the partner. If contract between partners is not dissolved due to death of partner, then the estate of deceased partner is not liable for any act of the firm done after his death.

**6. Transfer of Partner's Interest :** A partner may transfer his interest in the firm by (i) sale (ii) mortgage or (iii) charge. The transfer may be absolute or partial. With transfer in share, the transferee is entitled for the following:

- (a) To interfere in the administration of the business
- (b) To require accounts of the firm
- (c) To inspect books of account

If the firm is dissolved or if the transferring partner ceases to be a partner, transferee is entitled to receive transferring partner's share in assets of the firm. For the purpose of ascertaining the share, transferee is entitled to check the accounts from the date of dissolution of firm.

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#### **2.4 Dissolution of Partnership Firm :**

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Section 39 of the Indian Partnership Act, 1932 defines dissolution of partnership firm. It defines the dissolution of partnership between all the partners of a firm is called the dissolution of the firm.

Dissolution of firm is different from the dissolution of partnership. Dissolution of the firm means to discontinue all the business activities within the firm. When the activities are stopped and the assets are used to pay off the debt it amounts to the dissolution of the firm. When a partner agrees to continue the same firm even after the retirement of a partnership then it is called dissolution of partnership and not firm. As the firm is still in process by the partner but the partnership between the partners is finished.

Dissolution of firm can be in following two ways :

- A. Dissolution without the order of court
  - (a) By agreement (Sec. 40)
  - (b) By compulsory dissolution (Sec. 41)

(c) On happening of certain contingency (Sec. 42)

(d) By notice (Sec. 43)

B. Dissolution by court

**A. DISSOLUTION WITHOUT THE ORDER OF COURT :**

**(a) By Agreement :** An agreement may be express or implied.

A firm may be dissolved –

- With the consent of all partners
- In accordance with contract between them

**(b) By Compulsory Dissolution :** It can take place in following circumstances –

- When all the partners/all the partners except one are declared insolvent. The reason is that if partner is declared insolvent then firm must be dissolved. So if all partners become insolvent then firm no longer exists.
- By happening of event which makes it unlawful for the firm to be carried on. If partnership business is illegal from the beginning then partnership is void from the inception. So there is no question of dissolution of the firm. If firm is indulged in many businesses and if some of them become illegal, then firm should not be dissolved for legal businesses.

**(c) On Happening of Certain Contingency :** A firm is dissolved due to following –

- The expiry of term for which the firm came into existence
- The completion of particular adventure
- The death of a partner
- When a partner is declared insolvent.

**(d) By Notice :** where partnership is at will, the firm may be dissolved by any partner. For that he has to give notice to other partners. Such notice must be in writing, mentioning his intention to dissolve the firm. The firm will be dissolved from the date mentioned in the notice. If the date is not mentioned by the partner giving notice, then it will be dissolved from the date of communication of notice. The notice must be the final intention to dissolve the firm. It must be served to all the partners. Notice once given cannot be withdrawn unless all partners give their consent to it.

**B. DISSOLUTION BY COURT :**

If a partner files a suit to dissolve the firm on following grounds then court may order dissolution :



- (a) **Insanity** : When the partner becomes insane, the court may give order to dissolve the firm on suit filed by any other partner or next friend of insane partner.
- (b) **Permanent Incapacity** : If any partner becomes permanently incapable of performing his duties as a partner, then court may order dissolution of firm.
- (c) **Misconduct** : If the partner is guilty of misconduct and is likely to affect prejudicially in carrying on the business of firm, then court may give order for dissolution of firm considering the nature of business. Following cases were considered to be the misconduct of partner and a reasonable ground for dissolution :
  - i. Gambling by a partner on stock exchange
  - ii. Fraudulent breach of trust
  - iii. Persistent neglect by a partner to attend the business
  - iv. Taking away of books of accounts.
- (d) **Persistent Breach of Agreement** : when the partner persistently commits breach of partnership agreement and if it is not practically possible for other partners to carry on business with him, then may order for dissolution of firm. For e.g. if a partner continuously quarrels with other partners, keep erroneous accounts, omits to enter receipts, etc then these transactions destroys the mutual confidence between them.
- (e) **Transfer of Interest** : When partner has transferred his whole interest in the firm to third party or where his share has been attached under a decree, or sold in recovery of arrears of land revenue, then court may order dissolution.
- (f) **Business Making Loss** : when business is continuously making losses then partner may sue in court and court may order dissolution. The court may dissolve the firm for a fixed term even though the term has not expired. The main aim of partnership is to earn profits. If the business is carried at loss then objective is not attained. In such case court orders dissolution.
- (g) **Any Other Ground** : If court finds any other ground to be just and equitable then it may order dissolution. There can be many grounds for such dissolution such as continued quarreling between partners, refusal to meet on the business matters, no friendly cooperation between them, etc.

**Check Your Progress – 2 :**

1. Which of the following is the valid ground for dissolution of firm on order of court.
  - a. Insanity of a partner
  - b. Misconduct of a partner
  - c. Transfer of interest to third party
  - d. All of the above.
2. Which of the following the valid ground for compulsory dissolution of firm i.e. without the order of court ?
  - a. When all partners/ all partners except one are declared insolvent
  - b. When partner to whom duty is allocated for collection from debtors, is not able to collect
  - c. When one partner becomes insane
  - d. When books of accounts of the firm are incomplete.
3. A partner can retire on
  - a. Reaching the age of superannuation
  - b. The balance in capital account reaching certain amount
  - c. In accordance with partnership deed
  - d. On condition of his nominee becoming a partner
4. A partner can retire if
  - a. Expulsion is in good faith
  - b. The majority of partners agree on such expulsion
  - c. The expelled partner is given the opportunity to start a business competing with that of firm.
  - d. Compensation is paid

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**2.5 Let Us Sum Up :**

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This unit explained us that partnership is considered as the relation between the persons who have agreed to share the profits of a business carried on by all or any of them actions all. The real relations between the parties as shown by relevant facts taken together into consideration, enables the partners to determine the existence of the partnership. Merely sharing of profits or thereby holding the property in joint name does not make persons as partners to the partnership. We also learnt that the partnership makes the partners duty bound to follow some of the general duties liking carrying on the business of partnership for the common advantage of all the partners jointly, to inculcate integrity and adhere to true representation of accounting and other information affecting any partner or his legal representative. We have learnt that Often times the partnership firm goes through a restructure. This could be on account of admission of a partner, retirement of a partner or simply a change

of terms between partners. It is known as reconstitution. This unit also taught us that when relations between all the partners of the firm come to an end is called dissolution of firm. Dissolution of firm is different from dissolution of partnership.

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**2.6 Answers for Check Your Progress :**

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**Check Your Progress – 1 :**

1. a            2. b            3. d            4. c

**Check Your Progress – 2 :**

1. d            2. a            3. c            4. a
- 

**2.7 Glossary :**

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1. **Reconstitution** : Any change in existing firm amounts to reconstitution.
  2. **Partnership Interest** : Partnership Interest means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
- 

**2.8 Assignment :**

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1. List out the instances where court will order compulsory dissolution of partnership firm.
- 

**2.9 Activities :**

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1. Discuss rights and liabilities of a retiring partner
- 

**2.10 Case Study :**

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X, Y and Z are partners in a partnership firm. X dies and Y and Z continues the business in the firm's name. Afterwards the firm becomes insolvent.. Discuss the liability of X's estate to the creditors of the firm. Will it make any difference if a person lends money to the firm believing that all three partners are alive ?

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**2.11 Further Readings :**

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1. Elements of Mercantile Laws by N. D. Kapoor



**: UNIT STRUCTURE :**

**3.0 Learning Objectives**

**3.1 Introduction**

**3.2 Objectives of The Act**

**3.3 Important Definitions**

**3.3.1 Consumer, Consumer Dispute, Goods, Services, Defect, Deficiency**

**3.4 Rights of Consumer**

**3.5 Trade Practices**

**3.5.1 Unfair Trade Practices**

**3.5.2 Restrictive Trade Practices**

**3.6 Consumer Disputes Redressal Agencies**

**3.6.1 Consumer Protection Councils**

**3.7 Let Us Sum Up**

**3.8 Answer for Check Your Progress**

**3.9 Glossary**

**3.10 Assignment**

**3.11 Activities**

**3.12 Case Study**

**3.13 Further Readings**

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**3.0 Learning Objectives :**

**After reading this Unit, you will be able to :**

- Explain the rights of consumers.
- Define important terms like consumers, services and defects
- Discuss the meaning and types of trade practices
- Understand the redressal mechanism available for consumer's grievances.

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**3.1 Introduction :**

The world is changing rapidly, and so are the age old norms of consumerism. Before it used to be buyer's market where the consumers had to accept the products at buyers choice. They didn't have much hold on the price, quality, delivery of the foods and services and that was due to high demand and less supply. The buyer use to make their own rules and consumer had no option than to accept them. But this trend changed with the privatisation, liberalisation and globalisation policy and many companies

opened providing goods at lesser price available through various mediums. Thus, the buyers were restricted from playing their games at expense of innocent consumers. Amidst this positive development many problems started surfacing like, lobbying by sellers, false claims regarding products, unfair trade practices like misleading advertisements etc.

To check these consumer's problems many legislation were enacted for instance, Sale of Goods act 1930, Prevention of food adulteration act 1954, The Standards of Weight and Measures Act 1956, Agricultural Products and Grading and Marketing (AGMARK) 1956, The MRTP Act 1969, etc. No doubt that these legislation provided relief in their specific areas like price, quality, service, safety etc but a need was felt for a more wider legislation that aims at protecting the consumers. The consumer Protection Act 1986, was therefore created with due references from the consumer protection laws in UK, Australia, New Zealand and USA. While drafting this legislation focus was on safeguarding consumer's interests.

The Digital Age has ushered in a new era of commerce and digital branding, as well as a new set of customer expectations. Digitisation has provided easy access, a large variety of choices, convenient payment mechanisms, improved services and shopping as per convenience. However, there are also associated challenges related to consumer protection. To help address the new set of challenges faced by consumers in the digital age, the Indian Parliament passed the landmark Consumer Protection Bill, 2019 which aims to provide timely and effective administration and settlement of consumer disputes.

The Consumer Protection Act, 2019 that is considered as one of its kind, was passed by the two houses of the parliament and eventually received the consent of the president of India. It focuses on giving more power to consumers by taking transparency to another level. The Consumer Protection Act, 2019 is an Act of Parliament of India. It repeals and replaces the Consumer Protection Act, 1986.

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### **3.2 Objectives of The Act :**

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The objects of the act are stated in the Preamble of the Constitution – An act to provide for better protection of the interest of consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for settlement of consumer's dispute and for matters connected therewith. Thus following are the object of the Act :

- To provide for better protection of interests of consumers
- To provide for consumer councils and other authorities for protection of consumer's interests.
- To empower the consumer councils and other authorities to settle consumer disputes and matters related therewith.

❖ **Applicability :**

- It extends to whole of India except the state of Jammu and Kashmir.
- Save as expressly provided by the Central Government, by notification, this Act shall apply to all goods and services.

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### **3.3 Important Definitions :**

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#### **3.3.1 Consumer, Consumer Dispute, Goods, Services, Defect, Deficiency :**

❖ **Consumer : S. 2(7)**

"Consumer" means any person who –

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

For the purposes of this clause, –

- (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- (b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

**Consumer Dispute : S. 2(8)**

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

**Goods : S. 2(21)**

"Goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of section 3 of the Food Safety and Standards Act, 2006;

**Services: S. 2(42)**

"Service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or

lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

**Defect : S. 2(10)**

"Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly

**Deficiency : S. 2(11)**

"Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes –

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer.

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**3.4 Rights of Consumer :**

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"Consumer Rights" includes, –

- (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- (iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate commission
- (v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- (vi) the right to consumer awareness;

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**3.5 Trade Practices :**

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**3.5.1 Unfair Trade Practices : S. 2(47)**

"Unfair Trade Practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely :

- (i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—
- (a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
  - (b) falsely represents that the services are of a particular standard, quality or grade;
  - (c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
  - (d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
  - (e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
  - (f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
  - (g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:  
Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;
  - (h) makes to the public a representation in a form that purports to be –
    - (A) a warranty or guarantee of a product or of any goods or services; or
    - (B) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
  - (i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;



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- (j) gives false or misleading facts disparaging the goods, services or trade of another person.
- (ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.
- (iii) permitting –
  - (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
  - (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;
  - (c) with holding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.
- (iv) permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (v) permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;
- (vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;
- (vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- (viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;

- (ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

### **3.5.2 Restrictive Trade Practice : S. 2(41)**

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

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

#### **Check Your Progress – 1 :**

1. The term 'goods' includes which of the following
  - a. Movable property
  - b. Immovable property
  - c. Selected goods
  - d. None of the above
2. The term 'service' includes which of the following
  - a. Banking and finance
  - b. House construction and entertainment
  - c. Both of these
  - d. None of these
3. When seller manipulates the price of goods, it is known as \_\_\_\_\_
  - a. Unfair trade practice
  - b. Restrictive trade practice
  - c. Manipulative trade practice
  - d. All of these.

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### **3.6 Consumer Disputes Redressal Agencies :**

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The main purpose of the consumer protection Act 2019 is to provide the consumers compensatory support by speedy, simple and in expensive redressal of their grievances.

For this the act thought of creating a three – tier quasi-judicial machinery to be set up at the :

- District level known as district forums
- State Level called as State commissions
- National Level called as National Consumer Disputes Redressal Commissions.

These judicial machineries are available to redress grievance raised by any of the following :

- a. The consumer to whom such goods or service has been sold or will sell in due course
- b. A group of aggrieved consumer, i.e., more than 1 consumers having same complaint. However they need to take consent from district forum to at act on behalf of all concerned.
- c. Any association of consumers that is duly recognised by the companies act, 1956.
- d. By the State or central Government

Dispute Redressal Agencies

**1. District Commission : S. 28**

The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State. Each District Commission shall consist of –

- (a) a President; and
- (b) not less than two and not more than such number of members

This is the lowest level at which grievances can be filed by consumers. These commission can entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees. Every district has one district commission specified under the act. The consumer needs to file a complaint in the district which is the hometown or business location of the opposing party. During first hearing of the complaint if it appears to the District Commission that there exist elements of a settlement which may be acceptable to the parties, then dispute may be settled by mediation. The District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit. Any person aggrieved by an order made by the District Commission may prefer an appeal to the State Commission within a period of forty–five days from the date of the order.

**2. State Commissions : S.42**

The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State. This is the second level machinery and at the next level of the district commission. Each State Commission shall consist of –

- (a) a President; and
- (b) not less than four or not more than such number of members

The State Commission shall have jurisdiction to entertain –

- (i) complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore:

- (ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;
- (iii) appeals against the orders of any District Commission within the State

Any person aggrieved by an order made by the State Commission may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order.

### **3. National Commissions : S. 53**

The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission. The National Commission shall consist of –

- (a) a President; and
- (b) not less than four and not more than such number of members the National Commission shall have jurisdiction to entertain –
  - (i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crore
  - (ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;
  - (iii) appeals against the orders of any State Commission;
  - (iv) appeals against the orders of the Central Authority.

Any person, aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order.

#### **3.6.1 Consumer Protection Councils :**

As per the provisions of the consumers protection Act 2019, consumer councils and remedial agencies have been established to protect consumer's interest.

##### **❖ Establishment of Councils :**

There are three classes of consumer councils :

1. The Central Consumer Protection Council
2. The State Consumer Protection Council
3. The District Consumer Protection Council

#### **1. The Central Consumer Protection Council :**

The Central Government shall, by notification, establish the Central Consumer Protection Council to be known as the Central Council. The Central Council shall be an advisory council and consist of the following members, namely :

- (a) the Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be the Chairperson; and
- (b) such number of other official or non-official members representing such interests.

The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year. The tenure of the council is for 3 years and members may resign by giving it in writing to chairman. The objects of the Central Council shall be to render advice on promotion and protection of the consumers' rights under this Act.

**2. The State Consumer Protection Council :**

Every State Government shall, by notification, establish a State Consumer Protection Council for such State to be known as the State Council. The State Council shall be an advisory council and consist of the following members, namely :

- (a) the Minister-in-charge of Consumer Affairs in the State Government who shall be the Chairperson;
- (b) such number of other official or non-official members representing such interests as may be prescribed;
- (c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The objects of every State Council shall be to render advice on promotion and protection of consumer rights under this Act within the State.

**3. District Consumer Protection Council :**

The State Government shall, by notification, establish for every District, a District Consumer Protection Council to be known as the District Council. The District Council shall be an advisory council and consist of the following members, namely :

- (a) the Collector of the district (by whatever name called), who shall be the Chairperson; and
- (b) such number of other official and non-official members representing such interests as may be prescribed.

The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The objects of every District Council shall be to render advice on promotion and protection of consumer rights under this Act within the district.

**Check Your Progress – 2 :**

1. How many rights does the consumer have under the Consumer Protection Act ?  
a. 3                      b. 4                      c. 5                      d. 6
2. The Consumer Protection Act, 2019 has replaced the Consumer Protection Act of which of the given year ?  
a. 1984                      b. 1986                      c. 1990                      d. 2005

3. Redressal mechanism for consumer disputes under the Consumer Protection Act envisages
- a. Single-tier system
  - b. Two-tier system
  - c. Three-tier system
  - d. None of the above
  - e. All of these

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### 3.7 Let Us Sum Up :

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This unit discussed about the availability of grievance redressal mechanism under the Indian legislation. It explained the meaning of the consumer who can be anyone who has bought goods that is not as per promised terms. The unit explained the various rights that are given to consumers like right of safety, right to information etc. The unit described in detail the various types of trade practices that are restricted by law and are known as unfair and restrictive trade practices. The provisions various commissions and council set up from district to national levels were discussed in detail.

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### 3.8 Answer for Check Your Progress :

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#### Check Your Progress – 1 :

1. a            2. c            3. b

#### Check Your Progress – 2 :

1. d            2. b            3. c

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### 3.9 Glossary :

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1. **Bargain Price** : It is a price that is reached as a result of negotiation between two parties.
2. **Restrictive Trade Practice** : These include such activities by the producer that leads to manipulation in price, distribution or supply of the products or services thereby imposing unjustified costs on the consumers to make undue profits. Such practices aim at reducing or preventing competition in the market.
3. **Spurious Goods and Services** : Such goods and services which are claimed to be genuine but they are actually not so. These goods are outwardly similar or corresponding to something without having its original qualities.

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### 3.10 Assignment :

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1. Discuss the objectives that the Consumer Protection Act, 2019 aims to achieve ?

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### 3.11 Activities :

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1. Discuss the various modes in which the consumer protection act 2019, help to redress consumers grievances ?

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**3.12 Case Study :**

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1. Prepare a report explaining –
    - The grievance redressal procedure followed by District Commission
    - The recommendation made by your District's councils in the last five years.
- 

**3.13 Further Readings :**

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1. Consumer Protection Law : Provisions and Procedure by Ram Naresh Prasad Chaudhary
2. Textbook on Consumer Protection Law by Dr. H. K. Saharay
3. Business Studies By Dr S K Bhatia, Meenu Ranjan Arora



**: UNIT STRUCTURE :**

**4.0 Learning Objectives**

**4.1 Introduction**

**4.2 Applicability of the Act**

**4.2.1 Role of the Act**

**4.2.2 Aim and Object of the Act**

**4.3 Competition Commission of India (CCI)**

**4.3.1 Duties, Powers and Functions of Commission**

**4.4 Let Us Sum Up**

**4.5 Answer for Check Your Progress**

**4.6 Glossary**

**4.7 Assignment**

**4.8 Activities**

**4.9 Case Study**

**4.10 Further Readings**

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**4.0 Learning Objectives :**

**After reading this Unit, you will be able to :**

- Understand the aim and objectives of the Act
- Elaborate the importance of the Act
- Know how monopolies are prevented and competition is promoted in the market
- Know how the interests of consumers is protected

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**4.1 Introduction :**

In the pursuit of globalization, India has responded by opening its economy by removing the controls and resorting to liberalization. The natural corollary of this is that the Indian market should be geared up to face competition from within the country and from outside.

Competition is the act of the sellers individually seeking to acquire the patronage of buyers in order to achieve profits or market share. The Competition Act, 2002 was enacted by the Parliament of India and replaced The Monopolies and Restrictive Trade Practices Act, 1969. It is in effect to govern Indian competition law. After its enactment The Competition Act, 2002 has been amended twice, The Competition (Amendment) Act, 2007 and The Competition (Amendment) Act, 2009.



Two of the main features of the Competition Act, 2002 is the framework it provides for the establishment of the Competition Commission, and the tools it provides to prevent anti-competitive practices and to promote positive competition in the Indian market.

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## **4.2 Applicability of The Act :**

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### **4.2.1 Role of the Act :**

The Competition Act, 2002 is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market. Competition law is equally applicable on written as well as oral agreement, arrangements between the enterprises or persons.

The Competition Act, 2002 was amended by the Competition (Amendment) Act, 2007 and again by the Competition (Amendment) Act, 2009.

The Competition Act establishes a Commission which is duty bound to protect the interests of free and fair competition (including the process of competition), and as a consequence, protect the interests of consumers. Through this Commission, the Act plays a following role:–

- It prohibits the agreements or practices that have or are likely to have an appreciable adverse effect on competition in a market in India, (horizontal and vertical agreements / conduct);
- It prohibits the abuse of dominance in a market;
- It prohibits acquisitions, mergers, amalgamations etc. between enterprises which have or are likely to have an appreciable adverse effect on competition in market(s) in India.

### **4.2.2 Aim and Object of the Act :**

The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 had become obsolete in the present world of throat cutting competition. The MRTP Act prevented the companies whose assets were 100 crores, because these companies had to take government permission for expansion. Thus that Act was choking the economy. There was a desperate need to shift our focus from monopoly to competition. The new law named Competition Act was enacted with the aim of bringing competition in Indian markets.

The main motive of the act was to promote the competition in the Indian market so that the interests of the customers can be protected and to ensure freedom of trade carried on by participants in the Indian market.

Following are the objectives of this Act –

- To prevent practices having adverse effect on competition;
- To promote and sustain competition in market;
- To protect the interest of consumers by providing them good products and services at reasonable price.

- To protect the interests of the smaller companies or prevent the abuse of dominant position in the market.
- To regulate the operation and activities of combinations (acquisitions, mergers and amalgamation).
- To ensure freedom of trade carried on by other participants in markets in India.
- Establishment of a Commission, keeping in view the economic development of the country.

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### **4.3 Competition Commission of India (CCI) :**

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- **Establishment of Commission :**

The Central Government may establish a Commission called 'Competition Commission of India'. The Central Government exercise powers on this Commission, having its head office at New Delhi. It is a body corporate and independent entity possessing a common seal with the power to enter into contracts and to sue in its name.

- **Composition of Commission :**

The Commission shall consist of Chair person and members (not less than two and not more than six). The members shall be appointed by Central Government.

The Chairperson and every member shall have special knowledge of and experience of not less than 15 years in international trade, economics, business, commerce, law, etc.

The chairperson and members shall be whole time members. They will be appointed from the panel of names recommended by Selection Committee.

- **Term of Office :**

The chairperson and members shall hold office for the term of five years from the date they enter on the post. No chairperson or other member shall hold the office after they attain 65 years of age.

- **Resignation and Removal :**

If chairperson or members want to resign from their post, they need to give notice in writing to Central Government.

The Central Government may remove chairperson or members from his office if –

- (a) He is adjudged insolvent
- (b) Has engaged himself in paid employment during his term of office
- (c) Has been convicted in the offence involving moral turpitude.
- (d) Has vested interest in the matter which is likely to affect prejudicially.
- (e) Has become mentally or physically incapable of acting on his post.

- **Salary and Allowances :**

The salary of chairperson and other members including travelling expenses shall be equal to that of Judge of the Supreme Court and Judges of High Courts respectively.

- **Vacancy Not to Invalidate Proceedings of Commission :**

No act of Commission shall become invalid merely by the reason of –

- (a) Any vacancy or defect in the constitution of Commission
- (b) Any defect in the appointment of chairperson or members
- (c) Any irregularity in the procedure of Commission.

- **Appointment of Director General :**

The Central Government may appoint Director General for the purpose of assisting the Commission and shall give him salary and allowances as prescribed by the Act.

#### **4.3.1 Duties, Powers and Functions of the Commission :**

- **Duties of the Commission :**

The Competition Act has charged Commission with following duties :

- (a) To eliminate practice having adverse effect on competition
- (b) To promote and sustain competition
- (c) To protect the interest of consumers
- (d) To ensure freedom of trade carried by the participants in the markets in India.

- **Powers and Functions of Commission :**

- 1. Inquire into certain agreements :** the Commission may inquire on its own –

- Receipt of information from any consumer or their association
- A reference made to it by Central Government or State Government.

- 2. Inquiry whether an enterprise enjoys dominant position :** Commission can make inquiry about dominant position of an enterprise from the following :

- Market share of the enterprise
- Size of enterprise
- Importance of competitors
- Dependence of consumers
- Monopoly of its products, etc

- 3. Inquiry into combination by Commission :** The Commission will have to inquire on its own or on the information received that whether merger or amalgamation or such combination has caused any adverse effect on the competition in India.

Factors having effect on combinations –

- Potential level of competition in market
- Extent of entry of barriers in the market
- Degree of countervailing power
- Nature and extent of vertical integration
- Possibility of a failing business, etc

4. **Power to grant interim relief :** Commission has a power to grant interim relief by the way of injunctions. If Commission is satisfied that there is contravention of any provisions of the Act then it may grant temporary injunction restraining any party from carrying on such act.
5. **Power to award compensation :** Any person may make application to Commission for recovery of compensation for loss suffered as a result of contravention of any provision of the Act. The Commission will make inquiry into the allegations and will order compensation.
6. **Power of Commission to regulate its own procedure :** The Commission is not bound by the procedure laid in Civil Procedure Code. It shall be guided by the principles of natural justice.
7. **Powers of Civil Court :** The Commission shall have same powers as are vested with civil courts under Civil Procedure Code, such as –
  - (a) Summoning the attendance of any party and examining him on oath
  - (b) Requiring the production of documents
  - (c) Receiving evidence on affidavits
  - (d) Issuing commission for examination of witnesses
  - (e) Dismissing an application and deciding ex–parte, etc.
8. **Power to review its own order :** Any person aggrieved by an order of the Commission from which the appeal is allowed, may within 30 days from the date of order apply to the Commission for review of order.

**Check Your Progress :**

1. The Competition Act, 2002 was enacted by Parliament of India and replaced \_\_\_\_\_.
  - a. The Partnership Act, 1932
  - b. The Sale of Goods Act, 1930
  - c. The Monopolies and Restrictive Trade Practices Act, 1969
  - d. None of the above.

2. Which practices does the Act prohibit ?
  - a. Agreements having adverse effects on competition in Indian markets.
  - b. The abuse of dominance in market
  - c. Mergers and amalgamations creating adverse effects on competition in Indian markets.
  - d. All of the above.
3. The maximum number of members that can be appointed by Central Government for Competition Commission of India are
  - a. 6
  - b. 7
  - c. 8
  - d. 9
4. Within how many days from the order of Commission, can an aggrieved party make application to Commission for review ?
  - a. 2
  - b. 5
  - c. 10
  - d. 30

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#### **4.4 Let Us Sum Up :**

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This unit explained us that Competition is the act of the sellers individually seeking to acquire the patronage of buyers in order to achieve profits or market share. The Competition Act, 2002 was enacted by the Parliament of India and replaced The Monopolies and Restrictive Trade Practices Act, 1969. It is in effect to govern Indian competition law.

We saw that it is worth to say that the Competition Commission of India is doing great job in protecting the rights of the consumers by increasing healthy competition in the Indian market which is the need of the hour.

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#### **4.5 Answer for Check Your Progress :**

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##### **Check Your Progress :**

1. c                      2. d                      3. a                      4. d

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#### **4.6 Glossary :**

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1. **Acquisition** : It means directly or indirectly acquiring or agreeing to acquire –
  - (a) Shares and voting rights or assets of an enterprise
  - (b) Control over management or control over assets of any enterprise
2. **Agreement** : It includes any arrangement or understanding in concert–
  - (a) Whether or not such arrangement, understanding or action is formal or in writing
  - (b) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

3. **Goods** : Goods means the goods defined under Sale of Goods Act, 1930. It includes all moveable property including shares, stocks, growing crops, trademarks, copyrights, goods, electricity, water, etc, but not money and actionable claim.
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**4.7 Assignment :**

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1. List out the powers and functions of the Commission.
- 

**4.8 Activities :**

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1. Discuss the reason for passing of the Competition Act, 2002.
- 

**4.9 Case Study :**

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The Central Government has formed an opinion that Mr. ABC (a member of Competition Commission of India) has a vested interest in the matter and it may affect prejudicially his function as a member and Government wants to remove him from his office. Whether Central Government can do so ?

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**4.10 Further Readings :**

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1. Competition Act, 2002 by V. K. Agrawal  
2. S. M. Dugar's Guide to Competition Act, 2002.

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**BLOCK SUMMARY**

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In this block we have covered Indian Partnership act, the Consumer Protection Act and Competition Act. Partnership is an improvement over sole-trade business. In partnership a number of persons can pool their resources and efforts and can start their larger business as compared to sole trader. Consumer Protection Act provides the rights to consumer which protects them against fraud or unfair practices. The competition act provides the framework for the establishment of Competition Commission to prevent monopolies and to promote competition in the market.

Unit 1 covers the Partnership Act, 1932. This unit defines the term 'partnership' and explains us the nature of partnership, its characteristics and various elements required to form partnership. It differentiates partnership from various entities like Hindu Undivided Family (H.U.F), co-ownership and company.

Unit 2 covers the relationship of partners with one another i.e. their rights and duties. The said unit also explains the change in the structure of firm i.e. reconstitution of firm. It explains the concept of dissolution of a partnership and dissolution of firm.

Unit 3 covers the Consumer Protection Act 2019. The unit gives us the new definition of consumer which covers consumers buying goods and hiring services through online transactions conducted through electronic means or direct selling or teleshopping or multilevel marketing. It explains the rights of consumers, types of trade practices and dispute redressal agencies.

Unit 4 covers the Competition Act 2002. The said unit explains us how to protect the interests of consumers by providing good quality products and services at reasonable price. It explains the establishment of Competition Commission of India, its composition, salary, term of office, powers, duties and functions.

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## **BLOCK ASSIGNMENT**

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### **Short Questions :**

1. Explain the term 'co-ownership' with one example.
2. If there is no specific agreement, can a partner claim any remuneration for contributing in running the business ?
3. If partner files a suit, then name two grounds on which the court will grant dissolution of partnership firm.
4. Which information regarding goods or services should be provided to consumer as a matter of right ?
5. Within how much time period can an aggrieved party file for appeal if he/she is not satisfied with the order of State commission ?
6. Who has the authority to establish Competition commission of India ?

### **Long Question :**

1. Explain the difference between Partnership and company.
2. Explain the provisions for admission and retirement of a partner.
3. Discuss in detail the dissolution of partnership with and without the order of court.
4. Who shall consist of State Commission and National commission under Consumer Protection Act ?
5. Explain Unfair Trade Practices under Consumer Protection Act
6. Write a detailed note on Competition Commission of India



**Business &  
Industrial Laws**

❖ **Enrolment No. :**

1. How many hours did you need for studying the units ?

Unit No.	1	2	3	4
No. of Hrs.				

2. Please give your reactions to the following items based on your reading of the block :

Items	Excellent	Very Good	Good	Poor	Give specific example if any
Presentation Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Language and Style	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Illustration used (Diagram, tables etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Conceptual Clarity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Check your progress Quest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Feed back to CYP Question	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

3. Any other Comments

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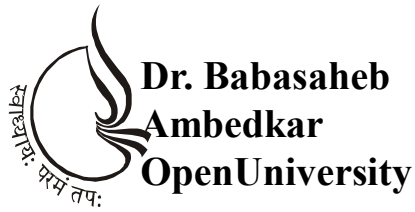
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**BBAR-402**

## **Business & Industrial Laws**

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### **BLOCK-3 COMPANY LAW AND ARBITRATION ACT**

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#### **UNIT 1**

COMPANY LAW (PART – I)

#### **UNIT 2**

COMPANY LAW (PART – II)

#### **UNIT 3**

ARBITRATION AND CONCILIATION ACT, 1996

#### **UNIT 4**

RIGHT TO INFORMATION ACT, 2005

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## **BLOCK 3 : COMPANY LAW AND ARBITRATION ACT**

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### **Block Introduction**

Management of a business demands in-depth knowledge of rules and regulations as set by the government from time to time. Today when globalisation has become an inevitable strategy business try to innovate their products, management style etc. But amidst such changes, the key transaction and business deals are always under threat from unforeseen forces. Thus, it is imperative to learn and understand the various arrangements made for smooth functioning of business transactions in various physical as well as virtual modes.

Unit 1 will explain the definition of company and different types of companies like public, private etc. You will get to know how a company raises capital for business operations and what are the technical provisions regarding setting up a company as per company law. Further you will learn the important documents required for formation of company.

Unit 2 will explain about the share capital of company. It is the portion of a corporation's equity that has been derived by the issue of shares in the corporation to a shareholder, usually for cash. "Share capital" may also denote the number and types of shares that compose a corporation's share structure. The said unit also teaches us how the company's management is done. It shows that the decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers through Resolutions passed by them. It also teaches us how to hold a valid meeting and roles and liabilities of members like board of directors, managing director etc.

Unit 3 will explain Arbitration and conciliation. Arbitration is the dispute settlement process between two agreeable parties to appoint an arbitrator to give a binding solution on the dispute. It is a way to settle disputes outside the courts thereby saving time and resources at the same time. Arbitration is a legal mechanism encouraging settlement of disputes between two or more parties mutually by the appointment of a third party whose decision is binding on the parties referring the said dispute. It further teaches us the objectives of the Act and the powers of judicial authority to refer the parties to arbitration.

Unit 4 provides us how Right to information empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense.

## **Block Objectives**

**After learning this block you will be able to :**

- Understand the definition of company
- Understand the different types of companies and their composition.
- Learn the process of preparing important document for formation of company.
- Know that by whom the management of company is done
- Know how the meetings in the company are conducted and what are its requisites
- Learn how the arbitrator is appointed to give a binding solution to the dispute.
- Learn the powers of judicial authority to refer the parties to arbitration.
- Learn how to empower citizens to demand accountability if various government departments.

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**Block Structure**

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Unit 1 : Company Law (Part – I)

Unit 2 : Company Law (Part – II)

Unit 3 : Arbitration And Conciliation Act, 1996

Unit 4 : Right To Information Act, 2005



**: UNIT STRUCTURE :**

- 1.0 Learning Objectives**
- 1.1 Introduction**
- 1.2 Companies Act 2013 – Definition of a Company**
  - 1.2.1 Types of Companies**
- 1.3 Procedure for Formation of Company**
  - 1.3.1 Memorandum of Association**
  - 1.3.2 Article of Association**
  - 1.3.3 Prospectus**
- 1.4 Let Us Sum Up**
- 1.5 Answer for Check Your Progress**
- 1.6 Glossary**
- 1.7 Assignment**
- 1.8 Activities**
- 1.9 Case Study**
- 1.10 Further Readings**

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**1.0 Learning Objectives :**

**After reading this unit, you will be able to :**

- Defines the term 'company' as per Companies Act 2013.
- Explain the meaning of different types of companies
- Understand the procedure of company formation.
- Know how various people in company's management are appointed
- Know that who is subject to the superintendence, control and direction of the Board of Directors.
- Explains the importance of various documents required for formation of company.

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**1.1 Introduction :**

During the time of British rule, around 19th century, lot of small and big scale companies were seen coming up. There were many issues regarding the nature, character of company's management, the nature of joint stock companies, and financing part. Thus a need was felt for the enactment of certain laws to administer the formation and management of companies thereby introducing it in 1857. Thereafter it was replaced by The Indian Companies Law 1913 for proper management of the

companies in India. The Indian Companies law has a major reference from the English law of companies act and used to be guided by its recommendation.

In 1956 under the guidance and chairmanship of HC Bhabha a committee was formed to review the law of 1913. Thereafter the company's act 1956 was introduced. The Indian Companies Act 1913 has been amended quite a few times so far to keep it updated as per the changing needs of business. The Act was recently amended in 2021 under the Companies (Amendment) act.

It is essential for every professional, entrepreneur and manager to have adequate knowledge about this act.

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### **1.2 Companies Act 2013 – Definition of a Company :**

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One of the most common definitions of a company is. It is a combination of different people who come together to achieve a common goal. But technically it is not right to state that every association of persons will constitute a company. Therefore, legally speaking, a company? as defined by the companies act 1857– sec 3(1)(i), " a company means a company formed and registered under this act or an existing company" Here Existing companies refer to a company that had been registered under any of the previous act like that passed in 1913, 1936 etc.

Since there are various types of companies like that limited by shares or guarantee or even unlimited companies it is better to define a company keeping its nature in mind. One interesting and more specific definition has been stated by Lord Lindley. He defined a company as "an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business, and who shares the profit and loss arising there from". This definition clearly outlines some important elements of company like, presence of members, capital and, shares". A company therefore is "a voluntary association of individuals for some common purpose. It has capital divided into parts known as shares. It is an artificial person created by a process of law. It has a perpetual succession and a common seal". As per Sec 2(68) of Companies Act, 2013, the term 'company' means a company incorporated under this Act or under any previous law. In common law, a company is a "legal person" or "legal entity" separate from, and capable of surviving beyond the lives of its members.

The definition highlights some important features of a company as per the Act these are :

- **Incorporate Association :** This means that members join the company that is duly registered or incorporated under the companies act. For a company to be registered under the act as per sec 12, it must have at least 2 members in case it's a public company. In case it is a private company, there should be minimum 7 members.

- **Separate Entity** : As against a partnership firm, a company has a distinct legal identity, a body corporate that is known by the name as mentioned in the memorandum. It is not known by the members name and therefore different and unique. This means that any dealing, negotiations are made on the company's name and not on themembers
- **Artificial Person** : A company has no physical shape, body or soul. It is artificial and created in law by a name or design having specified rights and obligations.
- **Limited Liability** : A Company is a separate identity and therefore its members are not liable to its entire debts. They are liable to an extent of the nominal value of share that they hold. In case of unlimited liability, however, the members are fully liable right till the last penny has been recovered.
- **Separate Property** : As per the Indian companies act, a shareholder cannot exercise his rights over the property of the company and are restricted by the share that they held. Apart from this, they are allowed certain rights like taking part in meetings, voting right or to receive the returns like dividends. The act also lays down that a shareholder even if he holds the entire shares cannot claim insurable interest in case of winding up. He has no right to claim himself as the owner.
- **Common Seal** : Since a company is an artificial person, it cannot sign on the various important documents like Deeds outside India, authorization documents outside Indian territory, share warrant, share certificate loan agreements, debentures etc. Therefore, every registered company is required to have a seal or stamp that is common for all its transactions and dealings. This seal is used by the company directors, officers and employees for completion any above said tasks. Similarly, in case of need of seal outside India, A facsimile bearing the place name may be used. However to use this facsimile, there should be specific person duly authorized
- **Perpetual Succession** : Being an artificial entity, a company has no effect of the death, retirement or insolvency of the members. It carries in with its work and therefore a company is said to never die irrespective of an entry or exit of its members.
- **Transferability of Shares** : This means that a member's share interest can be transferred as per the guidelines provided under S.56 of the act. Section 56(4) of the Companies Act, 2013 provides for the transfer of share under the depository system. Under this section when a company is doing a transfer of shares or other securities through a depository, then one should inform the details of allotment of shares or securities immediately to the depository. This is because the business of a company is distinct from its members. But this provision is provided in a restrictive mode in case of private



companies. However, the act does not take away the right to transfer right away.

- **Can Sue and be Sued :** Not having a body or soul does not limit the capacity to take legal action. Similarly it can also be sued by another party.

Apart from the above, there are some important terms that are important to understand. 'Lifting the Corporate Veil' refers to special powers by court to lift the veil that is to identify the person from the company who has committed some serious frauds. Thus, members who work in the background can be sued individually as a company in special cases.

There is yet another term 'Body Corporate' that may be used interchangeably with incorporated company. Both the terms are different and hold distinct obligations and rights.

### **1.2.1 Types of Companies :**

Based on the Company Law, Companies can be classified on the following basis :

1. Incorporation
2. Liability of members
3. Ownership
4. Nationality
5. Transferability of shares
6. One Person Company (introduced in 2013)

#### **1. On the basis of Incorporation a company there are three classification**

- a. **A Chartered Company** that is created by the issuance of a charter by a monarchy. Companies like The Bank of England, East India Company that was formed by the royal charter of Britain or the Hudson Bay Company are good examples of this type. Such companies are created for a specific purpose, have wider capacity in terms of rights. They have limited liability. However such type of companies is not in trend anymore and has no existence in India.
- b. **Statutory Company** – Such companies are the outcome of special legislations passed specifically for creating them. For example, LIC, Reserve Bank of India etc is created by passing special legislations for them separately, and has to work its laws. Statutory companies too have limited liability but are not bound to use limited – term after the name. They are created for national interest and enjoy better facilities and rights as compared to other companies.
- c. **By Registration** – This is one most common type of companies nowadays. Such companies are formed by being registered under the Companies Act 1956. It is also possible that a company is formed

under the companies act but is run under a separate law for example; electricity companies are run under the electricity supply act 1948 insurance companies under the insurance act 1938 etc.

**2. On the basis of member's liability :**

- a. Companies with unlimited liability are those whose members bear unlimited liability. Such companies may or may not have share capital.
- b. Limited by share companies– these are most common types of companies in India and are also termed as share company?. The members of such companies have limited liability up to the unpaid amount of shares that they bought. In case this amount has been paid, they are free from any liability.
- c. Limited by guarantee company– also known as Guarantee Company – the members of such companies by the memorandum are liable to pay such amount that they have undertaken to contribute in the event of winding up of the company. The working capital of such companies is usually derived by way of grants, subsidies, donations, endowment etc. and therefore do not have share capital.

A fusion of limited by guarantee as well as share makes a hybrid form of company starting with shareholder's capital and subsequently running by donations, charity etc.

- d. Unlimited Company – In such company the members have unlimited liability over the obligations in case of its winding up. However they are not liable to creditors due to the distinctive identity of the company.

**3. On The Basis of Ownership –** There are three types of companies under this :

- a. **Government Company** – As the name suggest in these type of companies, 51% of paid up share capital is owned by either state or central government or partially by state and partially by central government both for example, The State Trading Company, The Hindustan Machine Tools Ltd Etc. If they have any subsidiaries under them then they are also known as government companies.
- b. **Company** having one or more subsidiaries, is known as their holding company. Though the term is extensively used, it does not have any existence under the act. As per sec 2(46) of the Company Act, "a company is considered holding company of another company only when the other company is its subsidiary company".
- c. **Subsidiary Company** – As per the sec 2(87) of the companies act, a company is said to be subsidiary in following situations:
  - i. "When other company has more than 50% ownership of its equity shares capital.

- ii. When it is a subsidiary of another subsidiary company.
- iii. When the other company has control over the selection of Board of Directors for this company.

**4. Companies by Nationality** – There are two types of companies under this domain:

- a. **National Companies** – These companies irrespective of their work location are incorporated in India under the Indian Companies act 1956. They can be operating in India or abroad.
- b. **Foreign Companies** – Such companies operate in India but have been registered outside in other countries. Due to this they have to submit many documents and complete formalities with the registrar of companies act.

**5. Based on Transferability of Shares** – These are of three types :

- a. **Private Company** – sec 2(68) of Companies Act, 2013, defines private companies. According to that, private companies are those companies whose articles of association restrict the transferability of shares and prevent the public at large from subscribing to them. This is the basic criterion that differentiates private companies from public companies. Any of the limited or unlimited liability companies can either be private or public company. For a company to operate as private, it should have at least 2 members who have subscribed to the MOA. The Section further says private companies can have a maximum of 200 members (except for One Person Companies). This number does not include present and former employees who are also members. Moreover, more than two persons who own shares jointly are treated as a single member. As per old provision, it is a company having minimum 1 lakh paid up capital or as may be prescribed. But the law was amended in 2005 and thereafter private company can have amount as paid up capital. Therefore some important features of these type of companies that cannot be violated at all are :

- i. Prohibits public from subscribing to company's public deposits
- ii. Prohibits public from subscribing to its shares and debentures
- iii. Restricts members from transferring their shares.
- iv. Restricts number of member to 200 excluding current or past employee members.

Violation of any of the above points makes the private company a public company

- b. **Public Company** – As per Sec 2(71) of Companies Act, 2013, Public company is a company that has limited liability and offers shares to the general public. Its stock can be acquired by anyone, either privately through (IPO) initial public offering or via trades on the stock market. A Public Limited Company is strictly regulated and is required to publish its true financial health to its shareholders.

As per the provisions of the Companies Act, 2013 to start a public limited company, a minimum of 3 directors are required and there is no restriction on the maximum number of directors.

Its main features therefore are :

- i. No restriction on transfer of shares
- ii. No limit regarding maximum number of members.
- iii. Do not prohibit public from subscribing in its public deposits, shares and debentures
- iv. It is a compulsory requirement under the Companies Act, 2013 for all public companies to add the word 'limited' after their name.

A public company can also be a listed company if its securities are listed on any of the stock exchange that is recognized.

<b>Private Companies</b>	<b>Public Companies</b>
Parle products	Tata Iron & Steel
Samsung India Electric	Jaiprakash industries
Nirma consumer care	Jindal Strips
Citi Bank	Rallis India
Tata Sons	Larsen & Toubro
Bharat Aluminium Company	Ceat Tyres

The table above shows some examples of companies from both Public and Private sectors respectively.

- 6. One Person Company** – As per provision of section 2(62) of the Companies Act, 2013 defined (62) "one person company" means a company which has only one person as member. Only a natural person who is an Indian citizen and resident in India –
- shall be eligible to incorporate a One Person Company;
  - shall be a nominee for the sole member of a One Person Company.

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### **1.3 Procedure for Formation for a Company :**

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There are mainly three stages in which the formation of any company can be divided these are :

1. Promotion stage
  2. Registration stage
  3. Floatation stage.
- 1. Promotion Stage** – The very first stage in the formation of a company is Promotion that deals with the preliminary steps taken by a promoter towards registering and floating of the company. A

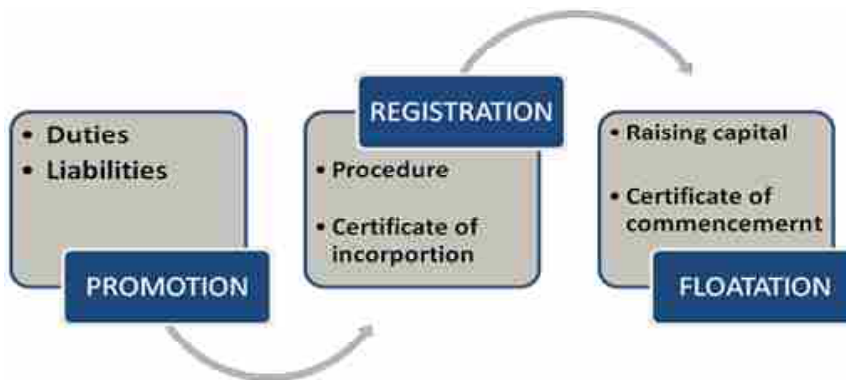
promoter is any person who believes in the formation of a company, initiates the registration process and is ready to fulfill the various duties and liabilities required by law while filing the details.

As per Sec 2(69) "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:

Here is also important to know that any professional representatives, solicitor, accountant or people helping or assisting him in the task cannot be held promoters, but if he refers someone as an interested party in buying the proposed company's shares, then this party will be considered as promoter. Some of the duties and liabilities of a promoter while applying for registration are :

- a. Following a fiduciary relationship built on trust and confidence.
- b. Submit full disclosure of facts that are in any way related to formation of the intended company.
- c. Should not involve in secret profit-making outside the company's knowledge and consent. If he does so, he will be held accountable.
- d. The disclosure of information should be made to Board of directors who are independent and competent to him. In absence of such a board, the shareholders by invitation to invest can be reported to. This is in order to disclose the details to all the induced parties
- e. The promoter is liable to the following parties in case of :
  - for making any misstatement in prospectus he is liable to the shareholder who is original allottee.
  - in case the company has to wind up its operation, he is liable for breach of trust or misfeasance on the basis of an application from official liquidator.
  - He is liable to undergo a public examination by court's order.
  - In case a promoter does not disclose complete information at the contract time, he is liable to company that can rescind the contract and recuperate the purchase price at which he sold his property to the company. The company, inspire of impossibility to claim rescission, and recover the profits. The promoter is also liable to pay any damages for violating his duties generated out of the fiduciary relationship.



2. **The Registration Stage** : Once the promoter has duly furnished the requisite details as per the norms of the company's at the next important stage is of registration. Registration means getting a legal identification for the company under the prevailing law. As per the provision of the Act, "any seven or more persons or where the company to be formed will be a private company, two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this act in respect of registration from an incorporated company, with or without limited liability".

The second stage of registration includes furnishing the required documents, choosing an appropriate name, making the declaration, and getting the certificate of incorporation that are duly explained as hereunder :

- i. **Furnishing Documents** – Three important documents should be submitted to the Registrar of companies in the state where the company want to establish its registered office. These three documents are :
  - a. The article, if any
  - b. The agreement, in case the company proposes to appoint any whole time manager, director or managing director.
  - c. The company's memorandum.

The articles and the agreement document should be duly signed by the members, at least seven in case of public company and 2 for a private company.

- ii. **Declaration** – the second stage is filing with the registrar, a declaration along with the memorandum as per sec 33 of the company act. The filing can be done by any CA, Company secretary, advocate from high court or Supreme Court or the managing director or manager as mentioned in the documents above. This filing of declaration is also called "Statutory Declaration of Compliances".
- iii. **Incorporation Certificate** – Once all the details gets accepted by the registrar along with requisite the registrar enters the company's name in the register of companies and thereafter

issues, as a token of company's registration, 'The Certificate of Incorporation' duly signed by him.

The registration certificate is an open document in the life of a company and is required at different times while proving its identity. However, it should be taken into account that getting a certificate does not discharge the members of any illegal activities even if the incorporation has been done with such illegal objectives.

Registration of a company gets done by giving away this certificate and thereafter the company under the XYZ name gets its identity as a distinctive and competent legal person existing under law, and can enjoy rights and liabilities to enter into contracts. At this stage the company gets distinct from its promoters and members.

**3. The Floatation Stage** – This stage has two parts, Raising Capital and certification for commencement.



**a. Raising Capital** – Once the company is incorporated, the next important task is to arrange for sufficient capital to start the operations. This is called rising of capital which has different norms for public and private companies respectively.

**i. In Case of Private Company** – As we know, a private company cannot invite general public to subscribe to share capital. It therefore has to arrange the capital by personal contacts, friends and family.

**ii. In Case of Public Company** – Although public companies can invite general public to subscribe and most of them do the same; however some of them also opt to do it private as the private companies. This is because public companies can take advantage of incorporation like conferring unrestricted rights for share transfer to members, invite unlimited members. A public company is required to fulfill the following two obligation –

- (1) If they intend to invite public for subscribing to its capital they have to issue a prospectus,
- (2) If they intend to raise capital privately, before three days of allotment, they should submit, 'a statement in lieu of prospectuses.

**b. Commencement Certificate** – This refers to a green signal given by the registrar to commence business. A certificate of commencement is issued by the registrar. A private company

however is exempted from obtaining this certificate due to certain privileges it enjoys over a public company like no need to present prospectus etc. In case of public company, on the other hand obtaining this certificate is important and depends on whether the company has issued a prospectus or not.

**Check Your Progress – 1 :**

1. In \_\_\_\_\_ company, the members have unlimited liability over the obligation in case of its winding up.
  - a. Limited Company
  - b. Holding
  - c. Unlimited Company
  - d. Subsidiary Company
2. \_\_\_\_\_ means that it has no physical shape, body or soul.
  - a. In lieu of
  - b. Natural Person
  - c. Artificial person
  - d. Perpetual succession
3. Corporate Veil refers to \_\_\_\_\_ to identify the person from the company who has committed some serious frauds.
  - a. Special powers by court
  - b. Special powers by the promoters.
  - c. Special powers by shareholders
  - d. All of these
4. Hudson bay company is an example of \_\_\_\_\_.
  - a. A registered Company
  - b. A chartered company
  - c. A subsidiary Company
  - d. A National Company

The important documents required to form a company are Memorandum of Association and Articles of Association.

**1.3.1 Memorandum of Association :**

S.2 of Companies Act, 2013 defines – '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. It is the document of great importance for any company. It contains the fundamental conditions upon which alone the company can be incorporated. It is the charter of company and defines the reason for its existence. It is often simply referred to as the memorandum. In the India, it has to be filed with the Registrar of Companies during the process of incorporating a company.

It is the document that regulates the company's external affairs, and complements the articles of association which cover the company's internal constitution. It contains the fundamental conditions under which the company is allowed to operate. The Memorandum of Company shall contain following clauses :



**1. The Name Clause :**

The name of the company should be stated in this clause. A company name should be which is not identical in any manner to any existing company also, there are some words which are strictly prohibited to be used in names of company in any manner. The Word "Private/PVT Limited" should be in end of any private company. And the word "Limited" should be in the end of every public limited Company.

**2. Publication of Name :**

Every company shall paint or affix its name and address of its registered office outside every place in which business is carried on. Its name should be engraved in legible characters. It shall be printed on all business letters, bill heads, notices and other publications.

**3. The Registered Office Clause :**

Under this clause, the company must specify the State in which the registered office is situated. This is essential because it helps in determining the jurisdiction of the Registrar of Companies. Sometimes, the company does not specify the address at the time of incorporation. In such cases, the company must provide this information to the Registrar within 30 days from the date of incorporation.

**4. The Objects Clause :**

The objects of the company shall be clearly set forth in the Memorandum. This clause states all the business which this proposed company will commence after incorporation that to in detail. Now as per The Companies Act, 2013 only Main objects and other objects which are ancillary to main objects are covered. The purpose of the object clause is –

- a. To enable subscribers to the Memorandum to know the uses to which their money may be put.
- b. To enable the creditors dealing with the company to know what its permitted range of enterprise or activities is.

**5. The Capital Clause :**

This clause states the Authorised Capital of the company and total number of shares along with value of per share. This is the limit a company can raise its capital maximum amount. There is no limit for amount of authorised capital a company can have in India as per The Companies Act, 2013.

**6. The Liability Clause :**

This clause mentions the liability of the members of the company. There are different categories of defining the liability of members :

- **A Company Limited by Guarantee** – In this category, the liability of the members is limited up to the amount each member has agreed to contribute. There are two ways of making this contribution :

- Contributing to the assets of the company in the event of its being wound-up while he is a member.
- Contributing to the costs, charges, and expenses of winding-up and for adjustment of the rights of the contributors among themselves.
- **A Company Limited by Shares** – In this category, the liability of its members is limited to the amount unpaid, if any, on the shares that they hold.
- **A Company with Unlimited Liability** – In this category, the liability of the members is unlimited.

#### **7. The Association Clause :**

It 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." Each subscriber has to take at least one share.

#### **1.3.2 Articles of Association :**

As per S. 2(5) of Companies Act, 2013, articles means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. The Articles of Association is similar to a rule book, within a company. This document contains internal detailed governing aspects of the company's organization. These include shares, (issue and rights attached), details in manner of holding the company meetings, the role and powers of the directors. Every company formed in India under Companies Act is required to have articles, without which a company cannot legally be formed. This requirement applies to all types of Companies.

#### **❖ Contents of Articles of Association :**

- **Share Capital** : including sub-division, rights of various shareholders, the relationship of these rights, share certificates, payment of commission.
- **Lien of Shares** : To retain or hold the possession of shares in case the member is unable to pay his debt to the company
- **Calls on Shares** : Calls on shares includes the whole or part unpaid on each share which has to be paid by the shareholders on the demand of the company.
- **Transfer of Shares** : The AOA include the process for the transfer of shares by the shareholder to other person (transferee).
- **Transmission of Shares** : Transmission includes title devolution by succession, death, marriage, insolvency, etc.

- **Forfeiture of Shares :** The AOA provides for the forfeiture of shares if the purchase requirements such as paying call money are not met with.
- **Surrender of Shares :** Surrender of shares is when the shareholders voluntarily give back or return the shares they own to the company.
- **Conversion of Shares in Stock :** In consonance with the Articles of association, the company can convert the shares into stock by an ordinary resolution in a general meeting.
- **Share Warrant :** A share warrant is a bearer document relating to the title of shares and cannot be issued by private companies; only public limited companies can issue a share warrant.
- **Alteration of Capital :** Increase, decrease or rearrangement of capital must be done as the Articles of association provide.
- **General Meetings and Proceedings :** All the provisions relating to the general meetings and the manner in which they are to be conducted are to be contained in the Articles of association. Voting rights of members, voting by poll, proxies: The members' right to vote on certain company matters and the manner in which voting can be done is provided in the Articles of association.
- Directors, their appointment, remuneration, qualifications, powers and proceedings of the boards of directors meetings.
- **Dividends and Reserves :** The Articles of association of a company also provide for the distribution of dividend to the shareholders.
- **Accounts and Audits :** The auditing of a company shall be done subject to the provisions of the Articles of association of the company.
- **Borrowing Powers :** Every company has powers to borrow. However; this must be done according to the Articles of association of the company.
- **Winding Up :** Provisions relating to the winding up of the company find mention in Articles of association of the company and must be done accordingly.

### **1.3.3 Prospectus :**

The Companies Act, 2013 defines a prospectus under section 2(70). Prospectus can be defined as "any document which is described or issued as a prospectus". This also includes any notice, circular, advertisement or any other document acting as an invitation to offers from the public. In order for a document to be considered a prospectus, it should act as an invitation for the public to purchase of stocks/shares, debentures or other instruments. Also, the prospectus should be issued by the company or an institution on behalf of the company and made solely for the public.

❖ **Matters Stated in Prospectus :**

- 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.
- Dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time
- 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 utilised and unutilised monies out of the previous issue.
- Details about underwriting of the issue, along with the names, addresses and telephone numbers of underwriters.
- Consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons
- The authority for the issue and the details of the resolution passed there of.
- Procedure and time schedule for allotment and issue of securities.
- Capital structure of the company in the prescribed manner. As per the rules, capital structure of the company shall be presented like—the authorised, issued, subscribed and paid up capital (number of securities, description and aggregate nominal value);
- The details of the existing share capital of the issuer company in a tabular form, indicating therein with regard to each allotment, the date of allotment, the number of shares allotted, the face value of the shares allotted, the price and the form of consideration.
- Main objects and present business of the company and its location, schedule of implementation of the project.
- Particulars relating to –
  - a. management perception of risk factors specific to the project;
  - b. gestation period of the project
- minimum subscription
- details of directors including their appointments and remuneration

**Check Your Progress – 2 :**

1. The most important document of company is \_\_\_\_\_.
  - a. Memorandum of Association
  - b. Articles of Association
  - c. Prospectus
  - d. Pre-incorporation contracts
2. How many members should sign Memorandum in case of One–Person Company ?
  - a. 3
  - b. 2
  - c. 1
  - d. None of the above

3. The Articles of Association must be signed by \_\_\_\_\_.
  - a. All proposed directors of the company
  - b. Registrar of the companies
  - c. Promoters
  - d. Subscribers of Memorandum of Association.
4. The Articles of Association contains the \_\_\_\_\_.
  - a. Rules
  - b. Regulations
  - c. Bye laws
  - d. All of the above
5. \_\_\_\_\_ company is prohibited from access to the public in raising its capital.
  - a. Public company
  - b. Private company
  - c. All of the above
  - d. None of the above

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#### **1.4 Let Us Sum Up :**

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In this unit we have learnt that there are different types of companies based on liabilities, share capital, members, etc. According to the provisions of Companies Act, 2013 there can also be One Person Company, which has only one person as a member. We also learnt that one-person company, just like other company, is a legal entity distinct from its members. We have also gone through various important documents required for formation of company. Memorandum of Association is the first document which is charter of the company and defines the reason of its existence, whereas Articles of Association is a document which is subsidiary to Memorandum. Prospectus is the document that invites the public to subscribe to the securities of body corporate. The public is invited to subscribe to shares and debentures of the company through an advertisement.

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#### **1.5 Answer for Check Your Progress :**

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##### **Check Your Progress – 1 :**

1. c            2. c            3. a            4. b

##### **Check Your Progress – 2 :**

1. a            2. c            3. d            4. d            5. b

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#### **1.6 Glossary :**

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1. **Holding Company :** If a company has a subsidiary company under its name then it is called holding of subsidiary company.
2. **Lifting of Corporate Veil :** A company is an artificial but has an identity like any other person. It is liable for any of the actions taken under its name and therefore the members, directors stand relieved from being liable. But, if any dishonest transaction has been made by its members then the law permits to lift the veil and hold the person liable and sues for damages.

3. **Incorporation** : the process of constituting a company, city or other organization as a legal corporation.
4. **Fiduciary Relationship** : "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship."

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**1.7 Assignment :**

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1. Explain various clauses of Memorandum of association
- 

**1.8 Activities :**

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1. Discuss the points of difference between public company and private company.
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**1.9 Case study :**

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Study and prepare a report on the managing structure of any two private and two public limited Companies of India

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**1.10 Further Reading :**

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1. Corporate Accounting By V. K. Goyal, Ruchi Goyal
2. Business Law By Sheth
3. Business Law By S.S.Gulshan



**UNIT STRUCTURE :**

- 2.0 Learning Objectives**
- 2.1 Introduction**
- 2.2 Share Capital**
  - 2.2.1 Kinds of Share Capital**
- 2.3 Company's Management**
  - 2.3.1 Board of Directors**
  - 2.3.2 Managing Director**
  - 2.3.3 Manager**
  - 2.3.4 Audit Committee**
- 2.4 Meetings**
  - 2.4.1 Requisites of a Valid Meeting**
- 2.5 Let Us Sum Up**
- 2.6 Answers for Check Your Progress**
- 2.7 Glossary**
- 2.8 Assignment**
- 2.9 Activities**
- 2.10 Case Study**
- 2.11 Further Readings**

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**2.0 Learning Objectives :**

**After reading this unit, you will be able to :**

- Understand how the share capital represents the interest of share holder in the company
- Know the various types of share capital
- Analyze how different types of shares have different sets of rights and liabilities associated with them.
- Know as to who is responsible for directing, managing and conducting the affairs of the company.
- Understand the scope of audit activities in the company.
- Know various types of meetings required for smooth functioning of company's affairs.

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## 2.1 Introduction :

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In the year 1850, the first Company enactment for the registration of the joint-stock company was introduced in India. This enactment as mentioned before was based upon the English Companies Act, 1844. Later in the year 1857, the concept of limited liability was recognized in the company's legislation but the said limited liability was not extended to the banking company. The concept of limited liability into the Companies Act was introduced earlier in the English Companies Act of 1856. Capital structure of the company, meetings, constitution of Board of Directors, powers and functions of Directors, etc were major amendments made in Company Law, 1956. Company Law of 2013 replaced the Company Law of 1956.

Under this unit we will come across to the concept of share capital, its various types and persons handling company's affairs i.e. company's management.

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## 2.2 Share Capital :

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A company's share capital is the money it raises from selling common or preferred stock. Authorized share capital is the maximum amount a company has been approved to raise in a public offering. A company may opt for a new offer of stock in order to increase the share capital on its balance sheet. Every company requires substantial working capital to keep their business smooth and running. Such capital proves effective at times when the company is faced with financial restrictions to keep its regular operations active. More than often, companies use their equity shares to raise the required capital known as equity share capital.

### ❖ Definition :

Section 2(84) of the Companies Act, 2013, "share" means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Share, debentures or other interest of any member in a company shall be movable property. It shall be transferable in any manner provided for in the articles of association of the company. A member may transfer any "other interest" in the company in the manner provided in the articles. For example rights attached to a member in a guarantee company such as membership interest, suspension of membership or assignment of interest may be made transferable by making a provision in the Articles of the company.



❖ **Parts of Capital :**

There are various parts of share capital like :

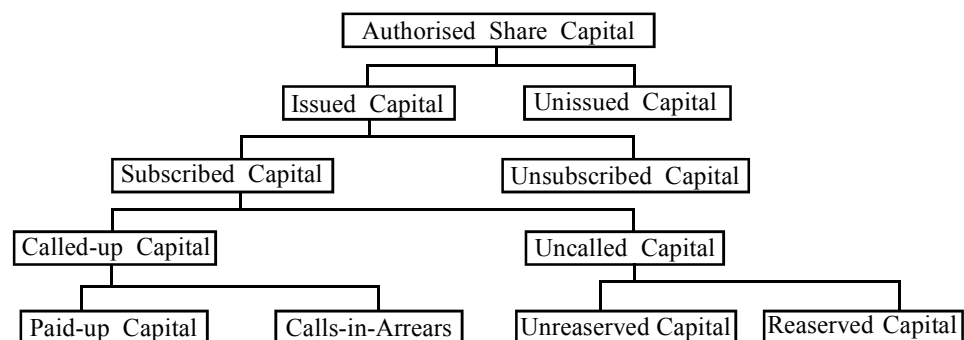
- **Nominal or Authorised or Registered Capital** – A company can issue a nominal amount of capital that it has mentioned in its memorandum of association at the time of registration and on which it pays the stamp duty. It is also the maximum authorised amount to be raised.
- **Issued Capital** – It is that amount that is issued for subscription from the authorised capital. We can say authorised capital is total amount available and the amount of capital to be issued is taken from this authorised amount. It may be less than or equal to the total authorised capital.
- **Subscribed Capital** – It is the capital actually subscribed out of the issue capital and there will be less than or equal to the issued capital. For example :

Total Authorised Capital – 2,00,000.

Issued Capital or Shares – 1,00,000

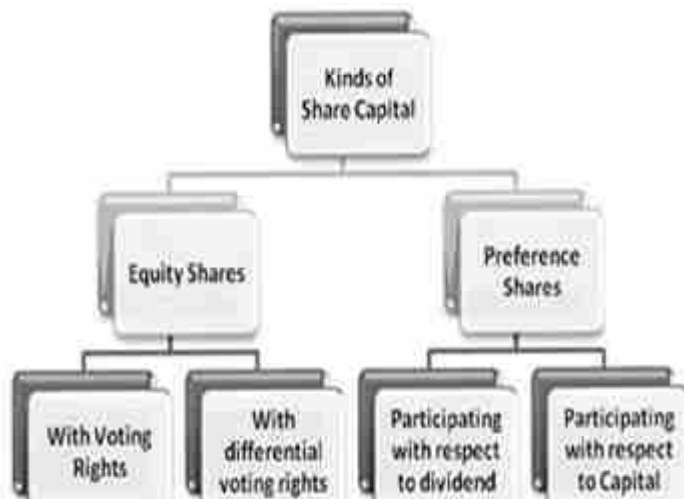
Subscribed Capital – 75,000

- **Called Up Capital** – This is the amount that is called up at a time from its face value. For example face value of a share is 100; a company may call Rs. 50 only. Thus called up capital is either less than or equal to subscribed capital. It is called up depending on current requirements. The amount that remains to be called up is called uncalled capital. Thus remaining 50 is the unpaid capital



**Categories of Share Capital IndianBlogger.com**

- **Paid-up Capital** – The amount that shareholder pays on the subscribed shares at a given time.
- **Reserve Capital** – It is that part of uncalled capital that can be called up in case of winding up of a company. As per the law, by passing a special resolution such arrangements can be made that is also known as 'reserve liability'.



### **Rights and Liabilities of a Share Holder :**

Shareholders of a company are the owners of the company owning equity shares issued by the company. Shareholders of a company are granted various rights and protections under the Companies Act, 2013.

- Memorandum and Articles of Association of a company can be amended by providing sufficient notice to the share holders of company.
- Board of Directors will convey an Extraordinary General Meeting if share holders holding 10% of paid up capital request.
- All share holders of the company have a right to receive notice of Annual General Meeting and to vote for the same
- Share holders can freely transfer their shares. This right is not available to share holders of private company.
- The declaration of dividend is subject to share holder's approval at Annual General Meeting.
- 100 or more share holders or not less than 10% of total share holders can apply to Company Law Board if affairs of the company are prejudicial to the interest of public or share holders.
- Share holder's ordinary resolution is required for appointment or removal of director.

#### **2.2.1 Kinds of Share Capital :**

As per the Company act, a public limited company by shares can issue the following two types of shares :

##### **1. Preference Shares –**

These shares are known by having an edge over equity shareholders. They enjoy two special right over equity that includes preferential right to payment of dividend at a fixed amount or rate, and secondly in case of winding of the company preference of right to repayment.

These can be further divided into :

- a. **Participating Shares** – If after payment of dividends at a specified rate on equity shares, they are allowed to participate in any further profits and, if they are allowed to participate in surplus assets while winding up, they are called participating shares.
- b. **Non-Participating Shares** – Usually it is presumed that preference shares are non participating shares unless expressed. If they do not have any rights enjoyed by participating shares they are known as non- participating shares.

**2. Equity Shares –**

As per sec 85, shares that are not preferential are equity shares. There is no fixed rate of dividend as in case of preference shares. Except preference share capital equity shares, also known as ordinary shares, include all capital. The equity shareholders have right to vote that is in proportion to the capital that is paid up by them.

<ul style="list-style-type: none"> <li>⊗ Nominal value is lower.</li> <li>⊗ Dividend varies according to profit.</li> <li>⊗ No right for arrears of dividend.</li> <li>⊗ No priority in dividend and repayment of capital.</li> <li>⊗ Cannot be redeemed.</li> <li>⊗ There is more risk.</li> <li>⊗ Wider voting right.</li> <li>⊗ Control over management.</li> <li>⊗ Highly speculative.</li> <li>⊗ Ready to take risk and to get greater dividend prefer this.</li> </ul>	<ul style="list-style-type: none"> <li>⊗ Nominal value is higher.</li> <li>⊗ Rate dividend is fixed.</li> <li>⊗ Cumulative preference shares get arrears.</li> <li>⊗ Priority in dividend and repayment of capital.</li> <li>⊗ Can be redeemed.</li> <li>⊗ The risk is lower.</li> <li>⊗ Limited voting right.</li> <li>⊗ No control over management.</li> <li>⊗ Less speculative.</li> <li>⊗ Not ready to take risk and expect steady income prefer this.</li> </ul>
<b>Equity Shares</b>	<b>Preference Shares</b>

**Check Your Progress – 1 :**

1. Reserve liability is also known as :
  - a. Paid-up capital
  - b. Reserved Capital
  - c. Registered capital
  - d. None of these
2. \_\_\_\_\_ shares have an edge over equity shareholders.
  - a. Equity
  - b. Preference
  - c. Deferred
  - d. Non-Voting
3. \_\_\_\_\_ is that capital that is mentioned in company's memorandum of association at the time of registration.
  - a. Nominal amount
  - b. Registered
  - c. Authorised
  - d. All of these

4. In which of the following the rate of dividend varies according to profit ?  
 a. Equity            b. Preference    c. Both            d. None

**2.3 Company's Management :**

Management of a company is an important aspect of the company's Act. And deals with appointment of people like Board of directors, Managing Director or a Manager and an audit committee.



The basic nature of a company as we know is artificial but the day to day operations cannot be dealt artificially. It needs discussions, liabilities, signatures etc. thus as per sec 197–A of the act it is mandatory for every to have a board of director. Let us discuss the provisions related to appointment of these persons.

**2.3.1 Board of Directors :**

As per sec 2(34) a director is defined as "any person who is appointed to the Board of company". Thus, directors are usually involved in the superintending the affairs of a company including directing, managing and conducting. They are the ones who will draft company's policy within the purview of company's memorandum, appoint officers for company and declare dividend rates. Sec 291, of the company's act entrust them with managing the company's affairs. All the directors in a company are collectively termed as "The Board of Directors?". Based on judicial pronouncements, directors are described as:

- **Agents** – in this capacity they have to work under ordinary rules of agency contract. In this capacity directors can make contract on company’s behalf without being liable within the prescribed authority. The doctrine of Ultra virus shall apply in case they perform outside the company’s object clause. This means that company will not be able to approve any such activity. It is also important to note that directors are agent to company but not to its individual shareholders

- **Trustees** – Directors are trustees for; money that they get to control, for powers conferred on them, for the fiduciary relationship. Just like agents, directors too are not trustees for shareholders.
- **Managing Partners** – On behalf of the shareholder who have elected them and on self–behalf they fulfil the affairs of the company.

❖ **Legal Provisions for Director in a Company :**

The legal provision refers to the standards or minimum or maximum requirements as per company act related to administration of directors in a company. This includes appointment of directors, their minimum numbers, number of directors and other associated rules.

1. Number of directors as per sec 149(1) should minimum three in case of public company, at least two in case of private company and one director in case of One Person Company.
2. Maximum number of directorships, including any alternate directorship a person can hold is 20.
3. Only a person can hold this position and no company or firm can be appointed as a director
4. As per Indian Contract Act, 1872, such a person (minor) cannot enter into any agreement. Therefore, a minor cannot enter into contract. However, Companies Act, 2013, states that any person, irrespective of age, can be appointed as a director and hold shares in the company
5. Section 149 (3) of the Act has provided for residence of a director in India as a compulsory i.e. every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.
6. Every listed company shall appoint at least one woman director within one year from the commencement
7. Every listed public company shall have at least one–third of the total number of directors as independent directors (fraction is to be rounded off to one)
8. According to section 151 of the Act every listed company may have one director elected by such small shareholders. For the purpose of this section, "small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees
9. The director's office stands vacant in following situation.
  - a. In case he is adjudged having unsound mind by a court
  - b. If he declared insolvent
  - c. In case he cannot obtain share qualification
  - d. Fails in submitting paid up call within six months from the time it become due
  - e. If he is found to be invited in an offence

- f. He does not attend board meetings continuously for three months
- g. By a court's order
- h. If he accepts any loan that is a breach of law
- i. His non disclosure of interest in any of company's contract

### 2.3.2 Managing Director :

As per Section 2(54) of the Companies Act, 2013, a "Managing Director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

In other words, Managing Director is a person who is entrusted with substantial powers of management of the affairs of the company. This position falls under the definition of "Key Managerial Personnel" under the Companies Act, 2013. As a member of senior management, the managing director is also expected to keep a company solvent and to promote expansion and innovation within the industry. Managing Director is someone who sees and manages the operations of a company while having substantial power to take decisions on the matters relating to the business of the company.

A MD of a company exercises his powers under the control and superintendence of the Board of directors (BOD). Some of his administrative activities include:

- Affixation of company seal on any document.
- Endorse or draw a cheque on company's accounts.
- Endorse or draw a negotiable instrument
- Signing of share certificates
- Giving direction for transfer of any shares.

#### ❖ Legal Provisions of a MD Include :

- He should be an individual
- He is subject and accountable to the BOD and performs his duties as assigned by them
- Managing directors in a company can be two or, more than two.
- A MD cannot hold same position in more than two companies simultaneously. Permission from central government will be required in this case
- He must be delegate with considerable powers of management.

### 2.3.3 Manager :

Section 2(53) of the Companies Act, 2013 defines "manager" as an individual who, subject to the superintendence, control and direction

of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

❖ **Legal Provisions Regarding Manager of a Company :**

- A manager should be an individual.
- He is resident in India.
- S. 196(3) lays down that no company shall appoint or continue the employment of any person as its managing director, whole time director or manager who –
  - a. is below the age of twenty–one years or has attained the age of seventy years:
  - b. is an undischarged insolvent or has at anytime been adjudged as an insolvent;
  - c. has at any time suspended payment to his creditors, or makes, or has at any time made, a composition with them; or
  - d. has at any time been, convicted by a court of an offence and sentenced for a period of more than six months.
- where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section.

**2.3.4 Audit Committee :**

Section 177 of the Companies Act,2013 deals with the Audit Committee.

❖ **Applicability of Audit Committee :**

The Board of directors of every listed companies and the following classes of companies, shall constitute an Audit Committee.

- i. all public companies with a paid up capital of Rs.10 Crores or more;
- ii. all public companies having turnover of Rs.100 Crores or more;
- iii. all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 Crores or more.

❖ **Composition :**

The Audit Committee shall consist of a minimum of 3 directors with independent directors forming a majority.

❖ **Functions of Audit Committee :**

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall include –

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;

- (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors' report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;
- (v) scrutiny of inter–corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters.

❖ **Powers of Audit Committee :**

The Audit committee shall have the authority –

- To call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board
- To discuss any related issues with the internal and statutory auditors and the management of the company.
- To investigate into any matter in relation to the items or referred to it by the Board
- To obtain professional advice from external sources
- To have full access to information contained in the records of the company.

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**2.4 Meetings :**

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A company is managed by its directors, shareholders, managers etc. since a company is an artificial entity therefore it needs to keep working over the progress through its board of directors and shareholders. For smooth functioning and working in consent it is important to discuss various activities from time to time. Under Company Law, the board of directors is empowered to manage company's affairs and can arrange meetings towards this cause.

❖ **Meaning :**

Meeting is not defined under any provisions of Companies Act of 2013, but taking references from common business and market parlance and through citations of various renowned authors, we can gather that a 'Company Meeting' is basically coming together of at least two persons to either transact any ordinary or special business for lawful purposes.



❖ **Meeting Quorum :**

Quorum is the minimum number of members required to conduct a meeting. This number is usually mentioned by the company's in its articles or in its rules or by-laws. Any kind of decisions taken without the quorum is deemed to be invalid.

❖ **Types of Meeting :**

The meetings of the company can be classified as follows :

**1. Shareholders Meeting :**

**a. Annual General Meeting (AGM) –**

This is defined u/s 96 of CA'13, wherein every company, whether public or private, except One Person Company, is required to convene first AGM within 9 months from the end of first Financial Year to decide the overall progress of the company as well as to plan future courses of action.

**Place :** Such meeting is called at Registered Office of the Company or any other such place in the city where such Registered Office is situated.

**Time Hours :** Between 9.00 am – 6:00 pm., and not on any public holiday as so declared by Central or State Government.

**Quorum :** In case of Public Company –

5 if members are less than 1000

15 if between 1000–5000

30 if more than 5000 members

**Time Gap :** Gap between two meetings not more than 15 months, and after conducting first AGM, the subsequent AGMs need to be conducted within 6 months from the end of Financial Year (F.Y.), and if there any urgent circumstances or emergency situations arises, when company wasn't able to conduct the AGM, then the Tribunal may grant the extension of 3 months, but said extension not available in first AGM, and therefore first AGM must be conducted within 9 months from end of F.Y.

Punishment on default u/s 99 – For Company and every such defaulting Officer – Rs. 1 Lakh, and if default continues then Rs. 1000 per day.

**b. Extraordinary General Meeting :** Certain matters are so much important that they require an immediate attention of the members, and that's where the Board has been granted to call for such EGM. It can be called through the following ways :

– By Board, on suo-moto basis, and the same can be held at any parts of the country.

- By requisition of eligible members, wherein the company if having Share Capital, then members holding at least 1/10th of such Share Capital, and if not having Share Capital, then members holding at least 10% of the total voting powers in that company can request to call for such meeting.

**Place :** At Reg. Office or any such place in the city where such Reg. Office is situated

- c. Class Meeting :** Such meeting is convened by a particular class of shareholders only and only if they think that their rights are being altered or if they want to vary their attached rights, if under Mergers and Amalgamation scheme, meetings of particular shareholders and creditors can be convened if their rights/privileges are being varied to their interests in such company.

## **2. Directors Meeting :**

As per Sec. 173, every company needs to convene first board meeting within 30 days of its incorporation, and then minimum four meetings in each calendar year, with time gap of not more than 120 days( at present it is 180 days because of COVID–19) between two board meetings

In case of OPC, Dormant Company, Small Company or any private company( Start–Up), then required to hold two board meetings in each half of calendar year with time gap of at least 90 days.

**Quorum :** 1/3rd of total directors or two directors, whichever is higher

In case of OPC, 1/4th of total strength or 8 members, whichever is higher

Matters that cannot be dealt in this meeting are: E.g. Approving Prospectus/ Boards Report/ Annual Financial Statements, scheme of Merger, Amalgamation, Demerger, etc.

## **3. Other Meetings :**

- Creditors Meeting (Sec. 230) / Debenture Holders Meeting with the Board of Directors
- Audit Committee Meeting (Sec. 177)
- Nomination and Remuneration Committee Meeting (Sec. 178)
- Any other committee meetings with the respective Board of Directors of the Company, as and here specified under Companies Act of 2013.



#### **2.4.1 Requisites of a Valid Meeting :**

Meetings are held to be valid only when they are conducted as prescribed by company's articles and provisions of law. Any kind of transaction, decision or consensus taken during a meeting that does not fulfill the requirements will be invalid and void.

- **Called by an Authorized Person** – That the meeting is to be held, should be informed by a person of authority in the company. Usually they are the board of directors who by passing resolution allows for a meeting. The notice to be sent to members and shareholders for holding a general meeting should be passed in a valid meeting of board of directors. In the absence of such requirement the meeting shall be considered invalid
- **Notice of Meetings** – All the members should be properly intimated about the meeting at least 21 days before in writing. The notice should clearly mention about calling of the meeting with the time and place along with and of business transactions. Members in case of a share capital company should also be intimated about possibility of proxy arrangements.
- **Presence of Chairman** – In every meeting there has to be a chairman who should have been appointed by the articles or if not so, should be elected separately in every meeting by its members.
- **Resolutions to be Passed** – the two types of resolutions that can be passed at the meetings are:
  - **Ordinary Resolutions** – these include resolutions that need not be passed by the articles or the company's act.
  - **Special Resolutions** – All resolutions other than ordinary are special resolutions.

- **Meeting Agenda** – The agenda of the meetings is an important part and should be well informed to all concerned with the meetings like members, businesses etc.
- **Recording of Minutes** – all the transactions made during the meetings need to be properly recorded that are called as Minutes of Meetings. They are important documents useful in many future situations.

**Check Your Progress – 2 :**

1. The Chairman of the audit committee is elected by the shareholder of the company.
  - a. True
  - b. False.
2. Appointment of directors is based on which of the following :
  - a. Memorandum subscribers
  - b. Third Parties.
  - c. Board of directors
  - d. All of the above
3. A manager works under the superintendence of :
  - a. Audit Committee
  - b. Shareholders
  - c. Board of Directors
  - d. Branch Manager
4. Which of the following is not a part of activities performed by board of directors ?
  - a. Giving direction for transfer of any shares
  - b. Draw a cheque on company's accounts.
  - c. Endorse a negotiable instrument.
  - d. None of these

**2.5 Let Us Sum Up :**

In this unit we learnt how the company's management is responsible for creating value for share holders and to run the company in the interest of share holders. The management of a company is done by appointing board of directors, managers and managing directors who have their set of duties and liabilities as per the company law provisions. There is also an audit committee being made to review company's financial work and that can provide recommendation binding on all the members. Since a company is an artificial person, there is a need for the members to keep discussing the issues for taking decision from time to time. For this the law provides conducting periodical meetings at the registered office that are duly communicated. Minutes of meetings have to be prepared for future references and every meeting should fulfill the quorum requirements as mentioned in the articles to make it valid.

**2.6 Answers for Check Your Progress :**

**Check Your Progress – 1 :**

1. b                      2. b                      3. a                      4. a

**Check Your Progress – 2 :**

1. b                      2. d                      3. c                      4. d
- 

**2.7 Glossary :**

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1. **Quorum :** It is the minimum number of members required to be present during a meeting as per provisions mentioned in company's act, articles or Memorandum.
  2. **Minutes of Meetings :** The various discussions, transactions, decision etc taken during a meeting g a recorded in a register or electronically for future references. These are called minutes of meetings.
  3. **Company's Management :** The management of a company is done by appointing some responsible person who may or may not be employee of the company. Usually it consists of the Board of Directors, Managing director, Manager and an Audit committee.
- 

**2.8 Assignment :**

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1. Explain various types of meetings conducted by company from time to time.
- 

**2.9 Activities :**

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1. Make a list of requisites of a valid meeting
- 

**2.10 Case Study :**

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Is there any scope for virtual meetings under the companies Act? If possible, then list out the disadvantages of conducting virtual meetings.

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**2.11 Further Reading :**

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1. Corporate Accounting By V. K. Goyal, Ruchi Goyal
2. Business Law By Sheth
3. Business Law By S.S.Gulshan



## ARBITRATION AND CONCILIATION ACT, 1996

### : UNIT STRUCTURE :

#### **3.0 Learning Objectives**

#### **3.1 Introduction**

#### **3.2 Scheme of the Act**

##### **3.2.1 Objectives of the Act**

##### **3.2.2 Power of Judicial Authority to Refer Parties to Arbitration**

#### **3.3 Composition of Arbitral Tribunal**

##### **3.3.1 Jurisdiction of Arbitral Tribunals**

##### **3.3.2 Conduct of Arbitral Proceedings**

#### **3.4 Conciliation (Section 61 To 81)**

##### **3.4.1 Mediation – (The Parties Decide)**

##### **3.4.2 Negotiation**

#### **3.5 Let Us Sum Up**

#### **3.6 Answer for Check Your Progress**

#### **3.7 Glossary**

#### **3.8 Assignment**

#### **3.9 Activities**

#### **3.10 Case Study**

#### **3.11 Further Readings**

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#### **3.0 Learning Objectives :**

**After reading this Unit, you will be able to :**

- Understand the applicability ADR methods.
- Explain the process of arbitration
- Strike a difference between Arbitration and conciliation with respect to its usage, benefits and legal status.

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#### **3.1 Introduction :**

The very first act for purposes including commercial cases in India was the Arbitration Act 1940. This act was referred to in any cases related to national or domestic arbitration but when it comes to handling International arbitration that too in commercial cases, there was no legal framework. Such cases used to be dealt under Arbitration (protocol and convention) act 1936 or Foreign awards (Recognition and Enforcement Act) 1961. A similar problem that all the countries were facing was delay in arbitration cases for international commercial cases including commercial

ones. The rapid increase in international trade brought along more cases that were not getting resolved timely by the local courts of the country. This was adversely affecting the trust in global business. Due to these circumstances a need was felt for an Alternate Dispute Resolution System specially to resolve commercial cases.

Meanwhile in 1995, UNICITRAL Model Law for International commercial Arbitration had been adopted by the UN commission on International Trade. This Model law was subsequently adopted by many countries in their legislations. India too followed the Model Law by passing the Arbitration and Conciliation Act in 1996 that replaced the prevailing law of Arbitration Act 1940, enacted during British rule.

Conciliation is the process of removing differences between two parties out of the court with the intervention of a neutral third party. Arbitration is a quasi judicial process in which an arbitrator intervenes between the disputed parties and announces an award (the resolution) that is binding.

The newly passed Act of 1996, considered both domestic as well as International arbitration specially the commercial cases. This law provided more powers to arbitrators, reduces possibility of obstructive tactics. It also minimizes court intervention.

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### **3.2 Scheme of the Act :**

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The Arbitration and Conciliation Act 1996 is divided into four parts having three schedules. The details are as under :

<b>Parts</b>	<b>Schedules</b>
<b>Part – 1</b> : Domestic Arbitration	<b>First</b> : Based on New York Convention, it covers the convention on recognition and enforcement of foreign arbitral awards.
<b>Part – 2</b> : Enforcement of foreign awards	<b>Second</b> : It covers protocol on Arbitration Clauses
<b>Part – 3</b> : Conciliation Procedures	<b>Third</b> : Convention on execution of foreign arbitral awards as per Geneva convention.
<b>Part – 4</b> : Supplementary Provisions	

#### **3.2.1 Objectives of the Act :**

Following are the objectives of the Arbitration and Conciliation Act 1996.

1. To minimise court's role in the arbitration process.
2. To encourage the ADR (Alternate Dispute Resolution) mechanism that includes, Arbitration, Conciliation and mediation.
3. To bring in its purview both international as well as national arbitration and conciliation.

4. To limit the scope of arbitral tribunals with jurisdiction.
5. Provide effective, fair and efficient arbitration procedure.
6. To provide equal status to conciliation agreement as that of an arbitral award.
7. To make provisions for reasons by arbitral tribunal on its award as well as making these award enforceable similar to decree of court.

### **3.2.2 Power of Judicial Authority to Refer Parties to Arbitration :**

Section 8 of the Arbitration and Conciliation Act 1996 describes about the Powers vested in the judicial authorities to refer parties to arbitration and is in the form of a legislative command. The different powers are as follows :

1. The judicial authority is vested with the power to refer such parties to arbitration that have approached with a subject that forms part of an arbitration agreement. The time is an important factor and the authority should refer not later than receiving the first intimation of the dispute.
2. The application received by the judicial authority should be provided along with a duly certified copy or the original arbitration agreement by the parties.
3. The arbitration can be commenced or continue that includes declaration of an award, even if the application as received in sub section (1) is under process with the judicial authority.

Thus it becomes obligatory for the court to refer the parties to arbitration if they have an arbitration agreement and they have applied for it. The court however should take measures to ensure that the subject of dispute is same before and after making of agreement. Considering these facts following are mandatory requirements for referring parties to arbitration by court :

- There must be an arbitration agreement.
- One party should bring the action against other in the court.
- The move by a party for reference to arbitration should be made before submitting the first statement on the substance of dispute.
- Similarity of subject matter in both the action in court and arbitration agreement.

### **Check Your Progress – 1 :**

1. The newly passed Act of 1996, considered only domestic arbitration cases.
  - a. True
  - b. False
2. ADR mechanism includes
  - a. Conciliation
  - b. Arbitration
  - c. Negotiation
  - d. None of these
  - e. All of these



3. The application received by the judicial authority should be provided along with :
  - a. A duly certified copy
  - b. Original arbitration agreement.
  - c. a OR b
  - d. Both a & b

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### **3.3 Composition of Arbitral Tribunal :**

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One of the methods of alternate dispute Resolution (ADR) is Arbitration that deals with settling issues outside the court with the help of an arbitrator who makes an award that is mutually binding. The parties agree to be bound by the resolution made by the arbitrator. An arbitrator is an independent person or an official body appointed by the court to resolve the referred disputes.

As per sec 2(d) of the act, an Arbitral Tribunal means "a sole arbitrator or a panel of arbitrators". Therefore an Arbitration Tribunal is a body consisting of one or more arbitrators for the resolution of a referred dispute. Their function is to make judicial arrangements and that is why they assume a role of the judge.

The composition of An Arbitration tribunal consists of the following elements :

1. Number of arbitrators
2. Appointment of Arbitrators
3. Termination of Mandate
4. Jurisdiction of Arbitral Tribunal

#### **1. Number of Arbitrators :**

Basically, the number of arbitrators is in sync with the arbitration agreement as per sec 10, the number of arbitrators depends on the parties concerned, but in any case it should not be an even number. In that case, it has to be one arbitrator. Further, there is a concept of presiding officer, that is different from that of an 'umpire' as used in the Arbitration act 1940. The umpire used to have a limited role in the proceedings. In case of Tribunals however, the role is better, but in case there are more than one arbitrator then the majority is taken into consideration.

#### **2. Appointment of Arbitrators :**

Based on sec 11, following are the provisions regarding appointment of arbitrators :

- In case not specified, arbitrators can be from any nationality.
- The parties are free to select a procedure for selecting the arbitrators
- In case there are three arbitrators then, out of them two will be appointed by the parties and those selected two will appoint the third arbitrator who shall be presiding the process.

- In case the parties fail to appoint an arbitrator or the selected two arbitrators within thirty days from their appointment date are unable to find the third one then on request the third arbitrator can be appointed by the Chief Justice.
- During the appointment procedure based on parties if,
  - One of the party fails to act as per the procedure,
  - The parties or the arbitrators are unable to reach on an expected agreement or
  - A person a body is unable to fulfil a function as entrusted on him,
- The party can request the Chief Justice to Intervene and take necessary actions.
- In case a matter is entrusted on the chief justice or any of the institution by him, then the decision taken by them will be final.
- In case of an international commercial arbitration, where parties are from differing nationalities, and where there are one or more arbitrators, the Chief Justice may appoint one arbitrator who is from a different country from that of the concerned parties. So if parties for arbitration are from Singapore and the US, the arbitrator should be from any other country except US and Singapore.
- Where an award has been made by the arbitrator and one of her parties challenge that the arbitrator then the same party can apply for setting aside any award by that arbitrator.

### **3. Termination of Mandate :**

Termination of mandate refers to incapability of the arbitrator to perform his function and termination of his authority. This may happened under specific situation like :

- Bad Health
- Loss of Nationality
- Death
- Withdrawal from office etc

Thus, an arbitrator's mandate will get terminated if,

1. 'He comes de jure or de facto.' This means he is unable to perform at without undue delay.
2. He himself withdraws from office or parties agree to his termination.
3. If any controversy remains concerning any of the grounds then a party can apply to the court for his termination decision. This is not applicable if parties have decided otherwise.

### **3.3.1 Jurisdiction of Arbitral Tribunal :**

The jurisdiction here refers to the power to decide on a certain matter. Because tribunals are separate bodies consisting of arbitrators, they have been provided powers to take decision on the dispute agreements just like courts. As per sec 16 of the act. In case there of no jurisdiction any proceedings commenced shall be considered null and void. The arbitral tribunal can take decision like ultra vires, non-existence of agreements, the contract is void etc.

Sec 16(1) of the act states "the arbitral tribunal may rule on its own jurisdiction, including, ruling on any objection with respect to the existence or validity of the arbitration agreement and for that purpose –

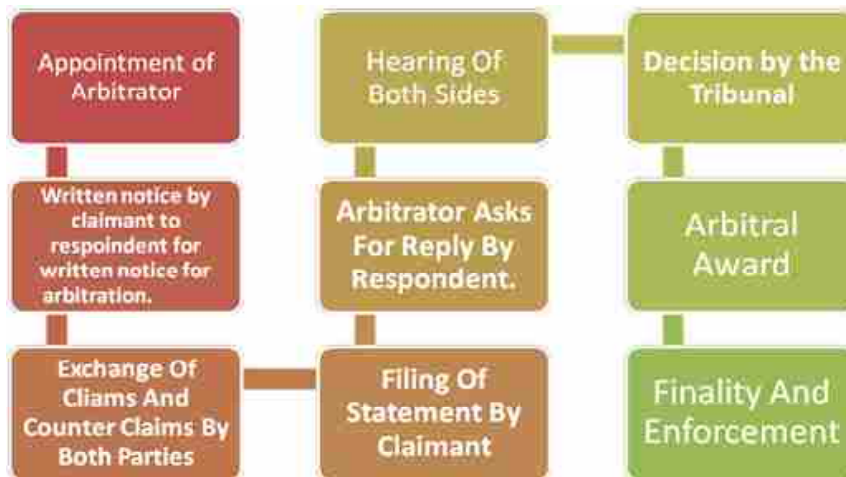
- a. an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract, and
- b. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso facto the validity of the arbitration clause".

### **3.3.2 Conduct of Arbitral Proceedings :**

The details regarding the rules and procedures to conduct arbitral meetings are contained in sections 18 to 43. Some of the basic elements to be taken into accounts before starting the arbitral procedure are :

- **Obligation for equality and opportunity:** Section 18 of the act outlined two essential obligations on the tribunal out of the principle of natural justice. These are :
  - Handling both the parties equally and
  - Giving both the parties appropriate opportunity to put their points.
- **The Procedure Rules :** Since the tribunal is an independent body it is under no obligation to follow rules made by either the Code of Civil Procedure 1908 or by Indian Evidence Act 1972. However here also the principle of natural justice should be the base for taking any decisions. The procedure to be followed by tribunals is usually described with discussion of the parties concerned but in its absence the tribunal can draft its own procedure.
- **Place and Commencement of the Procedure Sec (20) :** Although the place for the procedure is mutually decided by the parties and the tribunals but in case parties do not suggest any place, then tribunal can decide. The finalization of place is important as it is mentioned in the final award being made by the tribunal.
- **Use of Language :** As per sec 22 selection of language can be made by the parties depending on their familiarity and convenience. If it is not provided then the tribunal opts for English which is an International language medium.

❖ **The Arbitration Procedure :**



The arbitration procedure basically deals with ten main steps that are as under :

1. The arbitration procedure starts by the appointment of an arbitrator discussed in earlier topics.
2. The second step is sending a written notice to the respondent by the claimant for referring the dispute to arbitration.
3. Third step is the exchange of the claims and counter claims by both parties as supervised by the arbitrator.
4. The fourth step consists of filing of "Statement of Claim" by the claimant. The statement of claim is a sort of application that consists of claims, allegations and reasons for the actions. It also includes any sort of prayers regarding taking corrective measures by the authorities. The statement is used while filing a suit. Thus, there are two main parties involved, one, the claimant who puts allegation and the respondent to whom the claims are addressed.
5. The next step, is asking for a reply from the respondent. The arbitrator demands a reply to the claims made by claimant in step fourth.
6. When the claimant received the reply, he may like to add some more useful points, information to his claim statement. This document containing additional claims added after receiving the reply is called a 'Rejoinder'. And if the respondent, too make some further amendments to his reply, it is called 'Sur-Rejoinder'.
7. Once the claims and explanation from both sides have been duly received by the arbitrator, the next step is of hearing of both sides by the arbitrator as per sec 24. The various provisions in this regards are :
  - a. Related to mode of communication, whether oral or with material and evidence support. This is decided mutually by all the parties.

- b. The parties are well informed in advance about the hearing so that they can do the homework like checking and inspection of records etc. The act provides special provisions related to:
- i. **Absence of a party from attending hearings as per sec 25 :** This may be intentionally or unintentionally. In case the arbitrator feels that the party is doing it intentionally in spite of being duly intimated, he has the authority to proceed ex-parte i.e., in absence of the concerned party. But if the case is otherwise, the party is being absent due to some valid reason then arbitrator must wait and should not precede ex-parte.
  - ii. **Taking court's assistance for evidence as per sec 27 :** In case there is a need of evidence for which the tribunal or party seeks courts intervention for help, the court on being requested with application can issue summon to the witness to appear before the tribunal. If the witness doesn't comply with court's order he will be liable for punishment by the tribunal.
8. The next stage is taking decisions by tribunals which are mainly of two types: (i) Decisions on dispute that includes taking decision by majority of arbitrators on the claims or disputes. (ii) Decision regarding question of procedure that is presided by the arbitrator. This is decided mutually by all the parties who give authority top arbitrator.

There may be a situation when no decision could be made due to difference of opinion of the arbitrators or parties. In such a case, the arbitral tribunal shall issue an order to terminate the proceedings.

9. The next stage is making an award. The term award refers to the final decision or judgment by the arbitral tribunal on the referred matters. Some important elements related to passing of an award are :
- a. The award should be ex aequo at bono (in good faith and natural justice).
  - b. The award should be in writing
  - c. It should be duly signed by the tribunal
  - d. The decision or judgment should be by majority.
  - e. The award should be on a stamp paper of a certain value as per norms.
  - f. Incase final award will be made in due course of time; there is provision of making an interim award.
  - g. The award should not be vague. It should be clear in understanding.



- Private and confidential
- Has control over outcome.

In the conciliation process there is no formal hearing like arbitration. A conciliator is the person who plays the role of a facilitator between the two parties but it is completely informal. He derives the authority from his parties but do not take any decision or make an award. Its main aim is to encourage the parties to reach to a settlement.

#### Initiation or Commencement of Conciliation

Before the actual conciliation procedure starts. There is certain preliminary arrangement to be made. This includes:

- (Sec 62) Sending a written invitation by the party initiating the conciliation procedure to the other party. The other party on receiving the invitation should accept the same in writing within 30 days from the receipt. Failing which the invitation is treated as cancelled.
- (Sec 63–64). Deciding on the conciliator name and number. Usually there is one conciliator whose name is finalized after mutual consent. But in case there is more than one then the parties can appoint one conciliator from each side. Also more than two conciliators should act jointly. The maximum number of conciliators is allowed to be three and in this case, the third conciliator is decided by both the parties who presides the meetings and is called presiding conciliator.

The conciliator can be privately invited by any party or they can take help of any institution to recommend a conciliator.

#### The Conciliation Procedure.

The conciliation procedure and its related provision are stated under section 65 to section 73. The various steps are:

1. The conciliator starts by collecting information from each party separately related to details of issue, point of dispute, their individual stands and his position, any facts etc. a copy of such document should be provided to each party as a written statement.
2. The conciliator should ensure the fulfillment of the following three principles while trying to make the parties reach a settlement:
  - a. Natural Justice
  - b. Objectivity
  - c. Fairness
3. The decision on the method of conducting a meeting is solely on the conciliator and at any time he can ask the parties to make a settlement
4. The parties should cooperate with the conciliator. And the conciliator should, on receiving any factual information from one party, inform the other party for preparation. Here, any information given on confidential terms should not be disclosed to other party.

5. The time and place of meetings are decided by parties concerned.
6. Finally, during the meetings if the conciliator is able to find any scope for settlement at any point he can write it and forward to both the parties. Both parties should take time and consider the settlement details and if both agree then they can draw a written settlement agreement duly signed by both parties and authenticated by the conciliator.

#### **Section 74, 75, and section 77**

The settlement made through the conciliator is final and binding on both parties and one with due signs and authentication it enjoys the same status as that of award by arbitral tribunal. Further as per sec75, the details of the conciliation meetings and related documents need to be kept confidential except otherwise. An important provision in this context as per section 77 is non-reference of issue to the tribunal. The parties cannot refer the dispute for arbitration if it's in the middle of conciliation proceedings except in a situation where it becomes necessary for preserving rights.

#### **Section 76, terminating the conciliation**

The process of conciliation come to an end or stands terminated in the following situations :

- When settlement has been made and the settlement agreement has been signed.
- By sending a written statement to the conciliator by the parties that the proceeding is terminated as on declaration date.
- When the conciliator declares in writing that there is no need to take the conciliation further, effective from the date of such an declaration

#### **Section 78 to section 79**

After the conciliation is terminated the conciliator should inform the parties about the cost to be paid that includes :

- Any expenses, fees of the conciliator as well as the witnesses to the procedure.
- Expenses on administrative activities, expert advised with due consent of the parties, the cost is borne equally by both the parties.
- The deposits can be demanded by the conciliator in equal proportion by both the parties as full or supplementary. In case the payments are not, made within 30 days time, he can cancel the conciliation proceedings.

#### **Section 80 and section 81**

These last two sections prohibits the –

- Conciliator from acting as an arbitrator in any arbitration or judicial processes.



- Use of information related to conciliation process as evidence in any arbitration process or judicial proceedings. These include any document, any admissions of a party or any proposal.

**3.4.1 Mediation – (The Parties Decide) :**

Mediation is a process in which a neutral third party tries to bring together the opposing groups to talking terms and help them resolve differences and finding a solution.

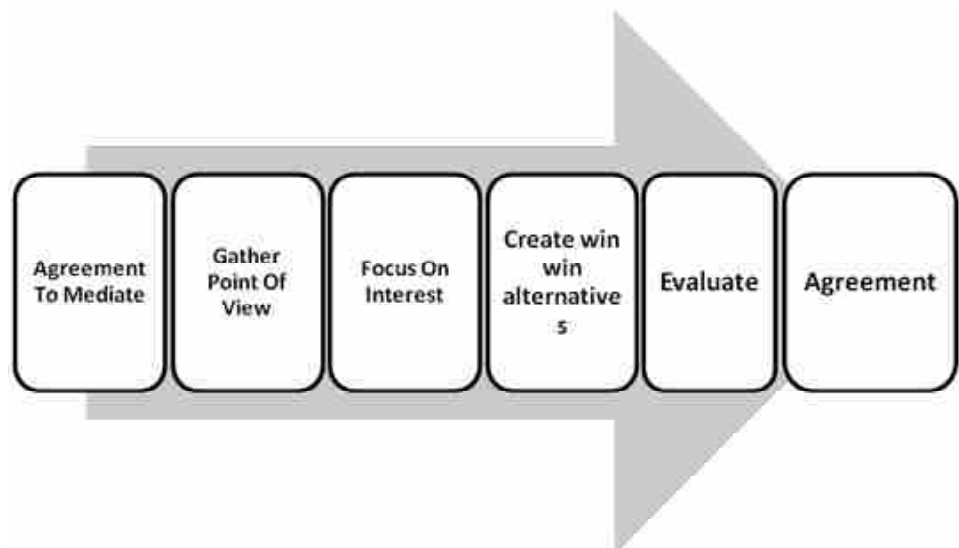
Mediation is often confused with conciliation but there is a very thin line of difference between the two. As per Prof Davey, "In theory the distinction is almost hair-splitting. In practice, conciliation shades into mediation. The difference between the two is essentially differences of degree rather than of kind".

Thus, in Mediation the third party tries to settle the dispute by assisting the parties. He acts as a confidential adviser or an industrial diplomat. His role is that of a messenger who helps each party understand their issues, their needs and the importance of a win-win resolution. His work is to influence both parties to come to talking terms and find themselves a solution to their problem. He does not render any award or a judgement. "Mediation is an effort to avert an impending rupture between the disputant". The process of Mediation is driven mainly by the two parties who are helped by the mediator. Thus the final outcome and the direction of progress rest on the parties. They however are being guided by the mediator who is a master in influencing the parties with his expertise and wide range of maneuver.

There are mainly three types of mediators:

1. The reputed outsider
2. A non-government board
3. Board associated with country's government system.

❖ **Process of Mediation :**



1. The success of the mediation exercise mainly rests on the two parties to dispute and therefore a wholehearted participation with positive outlook is must. One of the party shall invite the other party for mediation. Once they agree, they shall look for a neutral third party who has expertise in facilitating the meeting along with giving expert suggestion.
2. The parties shall find out the point of views on both on each other issues. This shall require inputs from the mediator who can give his impartial views based on his experiences and knowledge.
3. Next, efforts shall be made to understand the interests of each other and of self also. This helps in sidelining any unwanted points or issue that are not useful and may create unnecessary distraction.
4. The dialogues between both the parties shall be guided by the principle of win-win. This means that both parties shall make efforts to accommodate each other interest so that none of them loose.
5. Once sufficient points have been made, they should be evaluated from the perspectives of booth the parties. Here the mediatory shall take requisite actions to include points of interests of both parties.
6. Finally after assessing all the points and possible alternatives, an agreement shall be made that is mutually acceptable by parties concerned.

**Conciliation:** Seeks to encourage each party to agree concessions as a means of settling differing demands or offers, usually by prioritising what is most important for them and what they are most ready to trade.

**Arbitration:** A process for settling a dispute facilitated by an independent individual or body which is empowered to reach a judgment to reach closure.

**Mediation:** An intervention between disagreeing parties involving a third party, aimed at bringing the dispute to a conclusion which both can accept.

### 3.4.2 Negotiation :

Negotiation is a process of finding solution orb an agreement that is agreed upon by both the parties. This agreement can be made either by barter system that give and take something in return or by win- win agreement.



❖ **The Process of Negotiation Includes :**

1. **Preparation :** This include planning the objective of the negotiation process, what is required to be achieved and how it has to be achieved.
2. **Exchange of Information :** Here both the parties share each other's information related to claims, issues, demands etc. This is necessary as it gives the other party an understanding of the other party's point of view. It also helps the other party to prepare their case with evidences, proofs and supporting information. Since this is a positively oriented position both parties prepare considering the other party's point as well.
3. **Bargaining :** This is the stage when both parties sit face to face and starts the dialogue. The aim here is to reach a solution that is mutually acceptable to each. At this stage, both parties put their points in support of their demands and issues and try to get most of them accepted by the other party. A series of concessions and arrangements are tried in order to reach a mutually beneficial solution.



There are four types of outcome of a bargaining process –

1. Win – Loose
2. Loose – Win



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### **3.7 Glossary :**

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1. **Negotiation** : It is a process of making a dialogue between two parties with an objective to find a beneficial outcome.
2. **Interim Award** : It's a partial judgment given by the third party like arbitrators.
3. **Bargaining** : It is the process in which two parties negotiate with each other on the terms and conditions related to some transaction.
4. **Termination of Mandate** : This refers to ending the role of an arbitrator by the completion or failure of the arbitration process.

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### **3.8 Assignment :**

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1. Define Arbitration. Discuss in details the procedure of arbitration.

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### **3.9 Activities :**

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1. Form three group. 2 groups denote the parties at dispute having not more than 3–4 members and the 3rd group depicting third party. Conduct a role play performing a negotiation meeting. Outline your planning final results.

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### **3.10 Case Study :**

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Arrange for a personal meeting with an Arbitrator and a conciliator in your city. Discuss with him his roles and responsibilities, the challenges that they face in the role and their fee structures. Prepare a detailed report.

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### **3.11 Further Reading :**

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1. Business Legislation For Management, 4th Edition By M. C. Kuchhal & Vivek Kuchhal
2. Business Law By S S Gulshan Second Edition

**: UNIT STRUCTURE :**

**4.0 Learning Objectives**

**4.1 Introduction**

**4.2 Application of the Act**

**4.2.1 Scope of the Act**

**4.2.2 What Does it Include ?**

**4.2.3 Challenges**

**4.3 Mechanism and Important Provisions of the Act**

**4.3.1 What is Information According to RTI ?**

**4.3.2 Supply of Information only to Citizens of India**

**4.3.3 What does Public Authority Mean ?**

**4.3.4 Who are Public Information Officers (PIO) ?**

**4.3.5 Pro-Active Disclosure**

**4.3.6 Format of Application**

**4.3.7 How can one Request for Information ?**

**4.3.8 Fees for Seeking Information**

**4.3.9 Time Limit for Providing Information**

**4.3.10 Information Exclusion**

**4.3.11 Severability**

**4.3.12 Third Party Information**

**4.3.13 Appellate Authorities**

**4.3.14 Penalty Provisions**

**4.3.15 Grounds for Rejection**

**4.4 Let Us Sum Up**

**4.5 Answers for Check Your Progress**

**4.6 Assignment**

**4.7 Activities**

**4.8 Case Study**

**4.9 Further Readings**

---

**4.0 Learning Objectives :**

**After reading this Act, you will be able to :**

- Understand the scope of the Act and what does it include ?

- Understand the working of government departments and transparency and accountability maintained in it.
- Understand empowerment of citizens by enabling them to access information about Central Government, State Governments including non-governmental organizations which are substantially funded by the government.
- Know from the information received from various departments of government, whether their Constitutional Rights have been met?
- Know how to hold various departments of government accountable.
- Elaborate the importance of the Act.

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#### **4.1 Introduction :**

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Right to Information is a fundamental right for every citizen of India. Information is necessary to form and express opinions, dissent or support any matter. It is therefore a part of Article 19 (1) (a) of Constitution of India. For proper enjoyment of freedom of Speech and Expression, it is imperative that correct information is available to the Citizens. The Right to Information is a fundamental right in every sense of the word because it is absolutely essential to the healthy functioning of a modern democracy since an uninformed citizen cannot possibly be expected to be a good citizen. The Right to Information Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

This Act replaced the former Freedom of Information Act, 2002. Under the provisions of Right to Information Act, 2005, any citizen of India may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. In case of matter involving a petitioner's life and liberty, the information has to be provided within 48 hours. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally.

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#### **4.2 Application of the Act: :**

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##### **4.2.1 Scope of the Act :**

- The Act covers whole of India. Earlier it was not applicable to Jammu and Kashmir, as J&K Right to Information Act was in force. After revocation of Article 370 of Indian Constitution, the Union Territory of Jammu and Kashmir came under Central Act.

- It covers all constitutional authorities including executive, legislative and judiciary, any institution or body established or constituted by the Act of Parliament or State Legislature.

#### **4.2.2 What Does it Include ?**

The Right to Information includes the right to :

- Inspection of work, documents, records (Sec 2(i);
- Taking notes, extracts, or certified copies of documents or records;
- Taking certified samples of material;
- Obtaining information in the form diskettes, floppies, tapes, video cassettes or any other electronic mode or through print outs where such information is stored in a computer or any other device.

#### **4.2.3 Challenges :**

- Different types of information is sought which has no public interest and sometimes can be used to misuse the law and harass the public authorities. For example –
  - Asking for desperate and voluminous information.
  - To attain publicity by filing RTI
  - RTI filed as vindictive tool to harass or pressurize the public authority
- Because of the illiteracy and unawareness among the majority of population in the country, the RTI cannot be exercised.
- Though RTI's aim is not to create a grievance redressal mechanism, the notices from Information Commissions often spur the public authorities to redress grievances.

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### **4.3 Mechanism and Important Provisions of the Act :**

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#### **4.3.1 What is Information According to RTI ?**

"Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force." [S.2(f)]

#### **Check Your Progress – 1 :**

1. Which of the following is not covered under the definition of 'information' of RTI Act, 2005 ?
  - a. Log books
  - b. File notings
  - c. Data material held in any electronic form
  - d. Circulars



2. Which of the following are the challenges of RTI Act ?
  - a. Asking for voluminous information
  - b. Illiteracy and unawareness of majority of population
  - c. Pressurizing public authorities
  - d. All of the above.
3. Right to information means right to
  - a. Inspect work and records
  - b. Taking notes or certifies copies
  - c. Taking certified samples of material
  - d. Obtaining information in electronic form
  - e. All of the above

#### **4.3.2 Supply of Information only to Citizens of India :**

The Act gives the right to information only to the citizens of India. It does not make provision for giving information to corporation, associations, companies etc., which are legal entities but not citizen. Person living abroad can make an application to Embassy of India in respective countries.

#### **4.3.3 What does Public Authority Mean ?**

It means any authority or body or institution of self-government established or constituted :

- a. by or under the Constitution;
- b. by any other law made by Parliament;
- c. by any other law made by State Legislature;
- d. by notification issued or order made by the appropriate Government.and includes any
  - i. Body owned, controlled or substantially financed
  - ii. Non-governmental organization substantially financed directly or indirectly by the appropriate government. [S.2(h)]

#### **4.3.4 Who are Public Information Officers (PIO) ?**

According to this act, Public Information Officers (PIOs) are "to provide information to persons requesting information under this Act." [S.2.(5)(1)]

#### **4.3.5 Pro-Active Disclosure (Section 4(1)(b)) :**

Under this section, every public authority is bound to publish 16 category of information e.g.

- The particular of organization, functions and duties,
- The powers and duties of its officers and employee,
- The procedure followed in decision making process, including channels of supervision and accountability,

- Directory of its officers and employees,
- The rules, regulations instructions, manuals and records held by it
- or under its control or used by its employee,
- The budget allocated to each its agency indicating particular of all plans, proposed expenditure and reports on disbursement made,
- A statement of the board, council, committee and other bodies consisting of two or more person constituted as its parts or the purpose of its advice.
- The monthly remuneration received by each of its officer and employee including the system of compensation as provided in its regulations,
- The name designation and other particular of Public Information Officer, Appellate Authority etc.

#### **4.3.6 Format of Application :**

There is no prescribed format for application for seeking information at central level. The application can be made on simple paper. The application should however have the name and complete postal address of the applicant. Even in the case where the information is sought electronically, the application should contain name and postal address of the applicant.

States are given power under section 27 of RTI Act, 2005 to make Rules, prescribing various forms, fees for RTI application, appeal etc.

The information seeker is not required to give reason for seeking information. (Sec 6)

#### **4.3.7 How can one Request for Information ?**

A person can request information in writing or through electronic means in English, Hindi or in the official language of the area in which the application is being made, along with the prescribed application fee [S. 6(1)]. The application can be made to the Central Public Information officer, State Public Information Officer, Central Assistant Public Information Officer, or State Assistant Public Officer depending on the case.

#### **4.3.8 Fees for Seeking Information :**

- Fees of Rs. 10 with application (Cash / DD / IPO /,)  
(The fees may vary from state to state, Kerala Rs. 10, Gujarat Rs. 20, Delhi Rs. 25, Haryana Rs. 50)

Rates of Fees for other charges as prescribed in the rules are given below.

- Rs. 2 for each page (A4/A3) created or copied
- Actual charge or cost price of a copy in a larger size copy.

- Actual cost or price for model or samples.
- For information provided in diskette/floppy etc. Rs. 50 per diskette/floppy

**Note :** States are given power under Sec. 27 of RTI Act to make rules prescribing forms, fees for RTI application, appeal etc.

- If further fees are required, the person concerned has to be informed in writing along with calculation details of how the figure was arrived at.
- No fee will be charged to people living below the poverty line.
- Applicants can seek review of the decision on fees charged by the PIO by applying to the appropriate **Appellate (terms to know)** Authority.
- Applicant must be provided information free of cost if the PIO fails to provide information within the prescribed time limit.

#### **4.3.9 Time Limit for Providing Information :**

- Information to be provided as expeditiously as possible as and not later than 30 days,
- 48 hours where life or liberty is involved,
- 35 days where request is given to Assistant PIO,
- 40 days where third party is involved and
- 45 days for information about human rights violation from listed security/intelligence agencies.

#### **Check Your Progress – 2 :**

1. What is the time limit to get the information under RTI Act, 2005 ?  
a. 15 days      b. 45 days      c. 60 days      d. 30 days
2. The officer designated by public authorities in all administrative units to provide information to the citizens requesting for information under the Act is known as  
a. Appellate authority  
b. Chief Information Commissioner (CIC)  
c. Public Information Officer (PIO)  
d. Assistant Public Information Officer
3. What is the time limit to get information concerning life and liberty of a person ?  
a. 48 hours      b. 24 hours      c. 5 days      d. 10 days

#### **4.3.10 Information Exclusion (Section 8) :**

- a. Information, disclosure of which would prejudicially affect the sovereignty integrity of India, the security, strategic, scientific or economic interest of the state, relation with foreign states.

- b. Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court
- c. Information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual.
- d. Information including commercial confidence, trade secrets or intellectual property etc.

Notwithstanding any of the exemption listed above, a public authority may allow to access to information if public interest in disclosure outweighs the harm to the protected interest.

#### **4.3.11 Severability (Section 10) :**

Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then,

Notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

#### **4.3.12 Third Party Information (Section 11) :**

Central Public Information Officer (CPIO)/ State Public Information Officer (SPIO) after having request from applicant for the information of third party within 5 days of the receipt will inform third party

Third party within 10 days from the receipt of letter will reply (positive/negative) to CPIO/SPIO.

Then CPIO/SPIO will make a decision in 40 days as whether or not to disclose the information or record or part thereof and give writing the notice of his decision to the third party.

Third party is entitled to prefer appeal under Section 19 of the RTI Act.

#### **4.3.13 Appellate Authorities :**

- An Appellate Authority is required to look into complaints made by people regarding
  - inability to submit requests to a Central or State Public Information Officer
  - denial of access to information
  - no response to information within the specified time limit
  - unreasonable fee amount to be paid
  - any other matter relating to requesting or obtaining access to information

- A first appeal can be made to a senior ranked Central Public Information Officer or State Public Information Officer within thirty days from the date of expiry or from receipt of decision. [S.5.(19)(1)]
- Third party appeal against decision made by the Public Information Officer (PIO) must be made within 30 days from date of decision.
- *A second appeal can be made to Central Information Commission or the State Information Commission within "ninety days from the date on which the decision should have been made or was actually received."* [S.5.(19)(3)]
- The responsibility of proving denial for request lies with the Public Information Officer who denied the request. [S.5.(19)(5)]
- An appeal will be disposed of within 30 days from date of receipt or within an extended period of 15 days. [S.5.(19)(6)]

#### **4.3.14 Penalty Provisions :**

- A penalty of Rs. 250 up to a maximum of Rs. 25,000 will be issued to any Public Information Officer on the following grounds
  - Refusing to receive an application for information
  - Not furnishing information within the specified time
  - Denying request for information in bad faith
  - Destroying information requested
  - Obstructing access to information

#### **4.3.15 Grounds for Rejection :**

An application can be rejected if the disclosure of information

- Affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of India or would lead to incitement of an offence. [S.2.(8)(a)]
- Is forbidden to be published by any court, tribunal or if disclosure may constitute contempt of court. [S.2.(8)(b)]
- Including information such as trade secrets, commercial confidence, and intellectual property. [S.2.(8)(d)]

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#### **4.4 Let Us Sum Up :**

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The unit explained the objectives of the Right to Information Act, 2005. This Act will change the attitude of officials in every office i.e. the duty from one of secrecy to one of sharing and openness. Right to information has been seen as the key to strengthening participatory democracy and ushering in people centred governance. Access to information can empower the poor and the weaker sections of society to demand and get information about public policies and actions, thereby leading to their welfare. This Act has helped us to understand the working of government departments and transparency and accountability maintained in it. This Act has also helped us to understand empowerment of citizens

by enabling them to access information about Central Government, State Governments including non-governmental organizations which are substantially funded by the government. We can judge from the information received from various departments of government, whether their Constitutional Rights have been met ?

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**4.5 Answer for Check Your Progress :**

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**Check Your Progress – 1 :**

1. b            2. d            3. e

**Check Your Progress – 2 :**

1. d            2. c            3. a

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**4.6 Assignment :**

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1. Explain the time limit for providing information under RTI Act, 2005.
2. Which information cannot be disclosed under RTI Act and why ?

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**4.7 Activities :**

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1. Discuss from practical approach, the misuse of RTI Act, 2005. Also discuss what should be done to create awareness among people to use their Right to information effectively ?

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**4.8 Case study :**

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- (a) In one of the village of Chhattisgarh, the daily wage worker is paid lower than mandated wages. A laborer's literate friend comes to know about RTI Act and wants to secure correct wage for the workers. What should he do against this sort of injustice ?
- (b) A student is not given any bifurcation regarding marks i.e. theory and practical exams in his certificate for graduation under recognized university. Explain what should a student do to know his exact marks for theory and practical exams ?

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**4.9 Further Readings :**

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1. Right to Information: Law and Practice – by Dr. R. K. Verma, Dr. (Mrs) Anuradha Verma
2. Right to Information Act, 2005 – by U. N. Gupta

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**BLOCK SUMMARY**

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This block highlighted three important aspects concerning legal framework with respect to management of business. The block elaborated on the company law, the arbitration and conciliation act and Right to Information Act. Unit 1 explained the meaning and formation of company in case of private or public form. It explained about raising capital and its procedure that include registration, flotation and certificate etc. Unit 2 explained how company's affairs are managed by various people. We saw that share capital is share holder's interest in company's property. The meetings of companies are arranged and one can know when how and which meeting will be conveyed in the company. The meetings of the company are important because decisions taken at the valid meeting are binding on the members of association, whether present at the meeting or not.

Unit 3 explained the various elements of ADR, Alternate which place it can be arranged. and at dispute redressal that includes arbitration, conciliation, mediation and negotiation. The provisions related to these four elements are contained in arbitration and conciliation act that is derived from UNICITRAL. One of the same aspects is the intervention of a neutral third party who is invited by the parties at dispute and who depending on the authority in each case may take judgment, help in making an agreement, render an award or just facilitate parties to talk by leaving aside any negative feelings.

Unit 4 explained us the citizens' Right to Information. It is a fundamental right in every sense of the word because it is absolutely essential to the healthy functioning of a modern democracy since an uninformed citizen cannot possibly be expected to be a good citizen. The Right to Information Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

This block provided a details explanation on the various acts essential for the smooth running of a business. The unit also explained alternatives available for redressal by both the legal provisions as well as outside court settlement especially for commercial purposes. The unit has set a practical understanding about the different types of companies and what are the rights and liabilities associated with each. This block has given adequate information on the formation and administration of a company along with giving understanding of the methodology of resolving disputes. It gave us adequate information about citizen's fundamental right to information and how this information can be acquired by formally requesting to public authorities.

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## **BLOCK ASSIGNMENT**

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### **Short Questions :**

1. Differentiate between Private and public company.
2. Explain the registration process for a company.
3. Write short notes on:
  - a. Quorum
  - b. Minutes of meetings
  - c. Share Capital
  - d. Negotiation process
4. What is time limit for providing information under Right to Information Act, 2005 ?
5. Who are appellate authorities under Right to Information Act, 2005 ?
6. Explain the composition of an Arbitral tribunal.

### **Long Question :**

1. Discuss the requisites for holding a valid meeting.
2. Differentiate between Conciliation and Negotiation.
3. Classify various types of company
4. Classify the types of meetings and quorum required under each of them as per Companies Act, 2013
5. What is information as per Right to Information Act, 2005 and state the procedure to seek such information ?
6. What can be different types of information seek by people to misuse the authority to claim information under Right to Information Act ?
7. What do you understand by Share capital? Discuss various types of share capital in use by the corporate sector.



**Business &  
Industrial Laws**

❖ **Enrolment No. :**

1. How many hours did you need for studying the units ?

Unit No.	1	2	3	4
No. of Hrs.				

2. Please give your reactions to the following items based on your reading of the block :

Items	Excellent	Very Good	Good	Poor	Give specific example if any
Presentation Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Language and Style	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Illustration used (Diagram, tables etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Conceptual Clarity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Check your progress Quest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Feed back to CYP Question	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

3. Any other Comments

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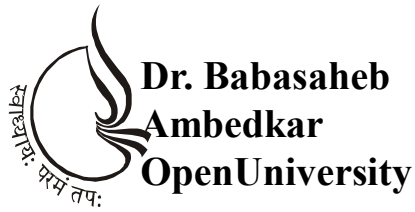
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**BBAR-402**

## **Business & Industrial Laws**

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### **BLOCK-4 OTHER IMPORTANT LEGISLATIONS**

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#### **UNIT 1**

THE TRADE UNION ACT, 1929

#### **UNIT 2**

FACTORIES ACT, 1948

#### **UNIT 3**

PAYMENT OF GRATUITY ACT, 1972

#### **UNIT 4**

INFORMATION TECHNOLOGY ACT, 2000

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## **BLOCK 4 : OTHER IMPORTANT LEGISLATIONS**

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### **Block Introduction**

Today when globalisation has become an inevitable strategy business try to innovate their products, management style etc. But amidst such changes, the key transaction and business deals are always under threat from unforeseen forces. Thus, it is imperative to learn and understand the various arrangements made for smooth functioning of business transactions in various physical as well as virtual modes. Employees work to accomplish a company's objective and therefore should be properly handled and cared for. The various acts in this block aims at safeguarding the interest of both these parties against any sort of exploitation.

Unit 1 will provide information on the significance of Trade Unions for workers in India and its scope of work. The unit will explain the method of formation of a Trade Union based on provisions laid down by the act. The minim requirement of members, the registration etc. You will also understand the reasons of workers for joining unions and what are problems faced by Trade Unions in fulfilling its objectives.

Unit 2 will elaborate on the various provisions provided by law to safeguard the interest of factory workers. You will understand the meaning of some important terms like factory, worker, adult worker, adolescent etc from the point of view of applicability of the Factories Act 1948. The unit will present the various types of provisions related to health and safety of workers, for men and women separately. This unit will provide information regarding rights and liabilities of the workers and the occupier respectively.

Unit 3 will include details regarding computation and payment procedures of Gratuity. You will learn the applicability conditions based on the definitions given in the chapter. You will understand the reasons under which an employee may lose his right to claim gratuity. The unit will explain the need for the act and how it benefit employees and workers in long term.

Unit 4 will explain the meaning and significance of different types of companies like public, private etc. You will get to know how a company raises capital for business operations and what are the technical provisions regarding setting up a company as per company law. Further you will learn about holding a valid meeting and roles and liabilities of members like board of directors, managing director etc.

## **Block Objectives**

**After reading this block you will be able to :**

- Analyse the reasons for formation of Trade Unions.
- Examine the problems of Trade Unions in India.
- Understand the procedure of Trade Union formation
- Comprehend the significance of IT Act from Business perspectives.
- Explain the various provisions of the factories act for concerned for health and Welfare of workers.
- Understand the payment, computation and eligibility conditions for payment of gratuity to workers.

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**Block Structure**

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Unit 1 : The Trade Union Act, 1929

Unit 2 : Factories Act, 1948

Unit 3 : Payment of Gratuity Act, 1972

Unit 4 : Information Technology Act, 2000



## THE TRADE UNION ACT, 1929

### : UNIT STRUCTURE :

- 1.0 Learning Objectives**
- 1.1 Introduction**
- 1.2 Objectives of the Trade Union Act**
  - 1.2.1 Social Responsibility and Trade Unions**
- 1.3 Reasons for Workers to Join a Trade Union**
  - 1.3.1 Problems Faced by Trade Unions**
- 1.4 The Trade Union Act 1929 – Features**
  - 1.4.1 Important Definitions**
  - 1.4.2 Procedure of Registration**
  - 1.4.3 Privileges of Trade Unions**
- 1.5 Let Us Sum Up**
- 1.6 Answer for Check Your Progress**
- 1.7 Glossary**
- 1.8 Assignment**
- 1.9 Activities**
- 1.10 Case Study**
- 1.11 Further Readings**

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### **1.0 Learning Objectives :**

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**After reading this Unit, you will be able to :**

- Understand the aims and objectives of trade unions.
- Explain the mode of trade union registration.
- Elaborate on problems of trade unions in India.
- Discuss the rights of a registered trade union.

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### **1.1 Introduction :**

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The concept of trade union has been there since the beginning of industrialization across the world. The workers in order to get their demands fulfilled resort to forming associations. In India, trade unions started developing during the First World War. – The emergence of trade unionism is spontaneous and inherent in the growth of capitalism. The origin of trade unionism lies in the Industrial revolution which disrupted the older way of life and created a new society forged by the shop, the factory, the mine and the industry. As per Flippo, – labour union is an

organization of workers formed to promote, protect and improve through collective action, the social, economic and political interests of its members.

The Indian Trade Union Act 1926 was enacted on English law pattern as a result of the prosecution of trade union leaders in a case of Madras Textile Labour Union by Binny & Co. in 1920. The act came into force on 1st June 1927 and is applicable to registered Trade Unions and extends to whole of India except the Jammu and Kashmir state.

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### **1.2 Objectives of the Trade Union Act :**

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Trade Unions work towards protecting the rights of the workers and the union members against exploitation done by employers. These Trade Unions work towards promoting their interests of employment and living conditions. The key objectives of trade unions are much wider than just safeguarding wages, etc. these are:

- **Ensuring Participation and Recognition :** Trade Unions unite to being recognized as an important factor in the production process. They thrive to get identified as having equal intellectual faculty as that of other management personnel's. Getting recognized as equal partners in the industry is an important agenda as it give them power to voice their concerns and to be heard with equal regard.
- **Stable Employment :** This is a basic objective for which workers join Trade Unions. In absence of a united forum for raising voice there is fear of being exploited or being asked to do illegitimate work. Thus, Trade Unions aim at getting enough jobs at fair pay from the employers by making arrangements. Continuous employment is an important factor in a worker's life to take care of his family and responsibilities.
- **Rationalizing Personnel Rules and Policies :** Along with getting fair pay and steady employment unions also thrive to get fair deal in personnel policies that are justified and s per prevailing laws and legislations. They work to get fair deal in case of termination, retrenchment transfers and promotions etc. An assurance of rationalization in such cases by the employer is important from worker's perspective.
- **Participation in Workers Related Decisions :** Ensuring stable employment and proper wages is an important issue for workers but at the same time, they also work to ensure transparency and participation in management's decision related to their work and performance. Important strategic decisions like relocating a plant, installing new machinery, production targets etc indirectly affect the well being of workers. Thus trade unions by getting recognized ensure that their suggestions and opinions be taken into account before taking such decisions.
- **Gaining Legislative Enactments :** Trade unions not only try to work in tandem with the employer, but they also work to get their

demands approved and if required enacted by the Government into laws. This provide permanent solution to frequently arising issues like wage revisions, rules regarding compensation in case of accidents, overtime, leaves, transfer, casual worker, daily workers etc.

- **Miscellaneous Activities :** Other than the immediate requirement to workers employment and related issues, trade unions also work towards overall upliftment of their society. For this they work towards social welfare activities, education, recreation and medical facilities like calling for amendment in ESI, PF, Gratuity laws, women upliftment, child labour etc.

### **1.2.1 Social Responsibility and Trade Unions :**

Trade unions are association of workers for safeguarding their interest at work. Today these trade unions have membership in lakhs that signifies their strength; they also get support of national and international bodies, political parties and institutions that make them strong enough to get their demands fulfilled. In this regard, trade unions are the representatives of their society and thus owe some responsibility towards it. They are required to keep the well being the community on top priority and take steps towards building national integrity and unity. They should in fact use it as a platform to drive change in the mindset and of society about collective prosperity of the nation as well as its people. Thus, trade unions need to thrive towards fulfillment of some social responsibilities that include :

- Promoting National Integrity
- Awakening trade union members with sense of ownership towards Industry as well as the Community.
- Creating awareness among public about important of socio-economic changes.
- Support in women empowerment and child labour prohibition etc.

### **Check Your Progress – 1 :**

1. Trade unions aim at getting enough jobs at from \_\_\_\_\_ the employers by making arrangements.
  - a. Minimum pay
  - b. Fair Pay
  - c. Higher salary
  - d. International pay
2. The Trade Union Act, 1929, came into force on \_\_\_\_\_.
  - a. 1st July 1927
  - b. 1st June 1929
  - c. 1st June 1927
  - d. 11th June 1927
3. Trade Unions work for Gaining Legislative
  - a. Support
  - b. Enactments
  - c. Autonomy
  - d. None of these



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### **1.3 Reasons for Workers to Join a Trade Union :**

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Joining a trade Unions provide workers lot of benefits and support in various dimensions. In India based on the 2012 statistics were 6,154 trade unions which had a combined membership of 9.18 million workers. This shows the popularity of trade unions among workers and how they perceive them as an unavoidable association. Trade unions not only provide security in employment conditions but there is many other reasons due to which workers like to join them. The most common reasons are:

1. **Platform for Expressing Personal Thoughts :** Every human being likes to get noticed for their ideas, leadership, communication etc. Joining a Trade Union provides the worker with this opportunity. They get chance to come forward and express themselves. There are various positions with a Trade Union like leaders, secretaries, etc who work on behalf of the member workers.
2. **Economic Benefits :** An important reason due to which most of the workers prefer joining a Trade Union is the benefit of negotiations and collective bargaining that are usually on worker centric issues of salaries, wages, over time, working days, PF, Bonus etc. A single worker cannot get his demand fulfilled by management but when the same are raised collectively their chances of being fulfilled are more, thereby proving monetary gains.
3. **To keep a Check on Management's Arbitrary Decisions :** Many time management may try to make irrational or discriminatory decisions that are against the worker's interest. Trade Unions in collective forms can put pressure on management to avoid such activities and ensure to workers just and fair and equitable rights.
4. **Security :** Trade Unions with their high connection and large membership are able to strike a bargain on worker centric deals that include, right to compensation, medial, and welfare benefits, etc. Thus workers feel secure for their employment, their jobs and their work being a part of Trade Union.
5. **Senses of Belongingness :** There are many industries in which at the time of joining a factory workers are required to become members of its Trade Union. This helps workers in becoming a part of the factory and gets assured of being protected and one among all. This sense of belongingness is an important aspect of human needs that keeps them motivated and happy.
6. **Sense of Participation :** Workers join unions to contribute in the various activities like social awareness, making agendas, conducting meeting, dialogue with management etc. there is a sense of personal satisfaction by participating in various union activities.
7. **Compulsory Membership :** This is a condition in which workers have to join unions out of pressure from trade union leaders for want of protection etc. There are militant unions that try to control

workers joining a factory by skin them to become the members first.

### **1.3.1 Problems Faced by Trade Unions :**

Trade Unions are undoubtedly a workers protection but there are many problems that have started creeping up. There is a lot to be done to the Trade unions to keep them in loop with their objectives. These problems are :

- a. Problem of Irregular Growth :** Trade Unions in India face uneven growth in their membership, industries etc. Majority of the trade unions are found in large sized industries and key industries like agriculture domestic industry etc are still away from being unionized. Similarly, most of the unions around 70 percent are found to be in Public sector whereas only 30 % is in Private sector. Similarly small sale industries do not have proper unions. Such type of uneven growth of unions across industries makes it difficult to get proper representation of workers at different events and forums.
- b. Financially Weak and Unstable :** As the National Commission on Labour observes, – an important factor limiting the effective functioning of unions in our country has been their financial weakness. In most unions, poor finances are the result of inadequate membership strength. This in turn, can be traced to the small size of units. In a majority of unions, the rate of contributions required of members is also small. With a relatively low rate of unionization, total funds collected are small. The general picture of finances of unions is disappointing?. Thus trade unions are unable to fulfil their objectives and agendas due to low finances. Which are mainly due to the problem of low membership and a lack of adequate membership fees? The subscription rate charged from workers is usually very low up to Rs. 1 per month that is not sufficient to manage the various functions and activities. Other than subscription fees unions manage their finances from donations, periodical sales etc, on the hand there is long list of expenditure that include: salaries and allowances to office bearers, expenses on annual convention/meeting, stationery, rents, printing, welfare activities etc. These expenses are much higher than what is received. Many times workers do not pay the amount and the defaulter's list keep expanding without proper action as members cannot be expelled as per union rules.
- c. Outside Leadership :** Many trade unions work under professional and political leadership. This is a serious concern as such leaderships neither have interest in workers problems nor they have the requisite knowledge and experience to fulfil the union goals. In fact most of the time the unions are used for the personal benefit and political purposes and cause harm to the workers. Recently there has been an increase in militant unionisms that is also an outcome of such pressures.

- d. **Inter-Union Rivalry** : The trade union act allows any 7 person to make a union. This has created multiple unions in same industry, factory or company. With more than 1 union there are frequent clashes due to difference of opinions. This situation gives management as well as union leaders to play political tactics at the cost of the innocent workers. Each unions try to present themselves as the stronger one, get recognition from employer etc thereby creating deadlock situations, good for management and other outside forces.
- e. **Absence of Whole Time Office Bearers** : Trade union work requires whole time office bearers but with lack of funds and expertise, trade unions have to appoint honorary office bearers who are unable to devote enough time to union work. This leads to de-motivation among workers.
- f. **Lack of Interest of Workers** : The members of a trade unions are workers who come from varied backgrounds. Most of them not sufficiently educated that leads to unawareness of many workers related issue. The workers prefer to take alternative work assignments rather than spending time in union meetings or its activities. Due to lack of support, unions are unable to keep up their agendas.

**Check Your Progress – 2 :**

- 1. Which among the following is not a reason for joining trade unions by workers ?
  - a. Security of employment
  - b. Criminal Conspiracy.
  - c. Economic Benefits
  - d. Social Benefits
- 2. Other than \_\_\_\_\_ unions manage their finances from donations, periodical sales etc.
  - a. Monthly wages
  - b. Subscription fees.
  - c. Employer's contribution
  - d. None of these
- 3. What are the reasons for lack of whole time office bearers in tradeunions ?
  - a. Lack of funds
  - b. disinterest
  - c. lack of knowledge
  - d. Lack of powers

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**1.4 The Trade Union Act 1929 – Features :**

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The Trade Union Act came in to force on 1st June 2007 and since has been amended many times. A trade Union is a worker's organisation that is voluntary in nature. The important features of the act are :

- 1. Registration of the union : A trade union is registered with the registrar.
- 2. A registered trade union is known to be a body corporate that has perpetual succession and common seal.
- 3. The office bearers or the trade union enjoys immunity under the law in case of civil suits.

4. Acts like, the companies act, the cooperative societies act 1912 and the Societies Registration act 1860 does not apply to a registered trade union.

#### **1.4.1 Important Definitions**

1. **Appropriate Government means** – in relation to trade unions whose objects are not confined to any one state, the Central Government, and in relation to other trade unions, state government.
2. **Trade Dispute [Section 2(g)] states** – any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labor, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.
3. **Trade Union [Section 2(h)] states** – any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.
4. **Executive [Section 2(a)] states** – the body, by whatever name called, to which the management of the affairs of a Trade Union is entrusted.
5. **Office-Bearer [Section 2(b)] states** – in the case of a Trade Union, includes any member of the executive thereof, but does not include an auditor.
6. **Prescribed means** – the regulations as prescribed or stated under the Act.
7. **Registered Office [Section 2(d)], states** – that office of a Trade Union which is registered under this Act as the head office thereof.
8. **Registered Trade Union [Section 2(e)] states,** – a Trade Union registered under this Act
9. **Registrar [section 2(f)] states** –
  - a. a registrar of Trade Unions appointed by the appropriate Government under section 3, and includes any Additional or Deputy Registrar of Trade Unions
  - b. In relation to any Trade Union, the Registrar appointed for the State in which the head or registered office, as the case may be, of the Trade Union is situated.
10. **Workmen [Section 2(g)] states** – all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises. Workmen as per trade union definition also include employees who have been discharged, dismissed, retrenched or removed.

### **1.4.2 Procedure of Registration of Trade Unions :**

The procedure of Trade Union Registration consists of following stages :

- 1. Appointment of Registrar :** Under sec 3 of the act, the appropriate government appoints a registrar for the trade unions for the State. The appropriate government can also appoint additional or deputy registrars depending on the scope of the work.
- 2. Method of Registration :** As per sec 4 of the act, following are the steps of registration :
  - a. Any seven or more workers can apply their names to the trade unions charter.
  - b. The application shall contain the following documents as per section 5 of the act :
    - i. A copy of trade unions rules.
    - ii. Names, address and job details of person making the application
    - iii. The name and office address of the trade union.
    - iv. The details of the office bearer viz., name, age, titles, address and job details.
    - v. Details of assets and liabilities and prescribed information in case of already existing trade unions.
- 3. Important Provisions for Trade Unions Rules :** For a trade union to get registered, section 6 of the act requires the following information to be furnished with the copy of the rules :
  1. Objectives of the trade unions
  2. Purpose of trade union funds as per law.
  3. List of trade union members and inspection facilities
  4. Monthly subscription payment by members not less than 25 paisa.
  5. Procedures for amendment of rules
  6. Appointment and removal procedures for office bearers and union's executives.
  7. Procedure for dissolution of trade union
  8. Safe custody of trade union funds, their inspection and accounts details.
- 4. Getting Registered [section 8] :** Once the registrar is satisfied that all the requirements of the act are being complied with, he will enter the name of the trade union in a register that is maintained with him along with all submitted particulars. The registrar has the powers as per sec 7 (1) and (2) to ask for more details if required or alter the proposed names due to similarity with an existing one.

5. **Registration Certificate** : Section 9 provides for issuing of a certificate of trade union registration by the registrar. The certificate shall have prescribed format as it is an evidence of the existence of the registered trade union. Certificate of registration provides many privileges to a trade union that includes:
  - a. Status of body corporate
  - b. Common seal and Perpetual succession
  - c. Power to enter into contract with others.
  - d. Power to sue and be sued.
  - e. Power to hold and acquire movable as well as immovable property [section 13].
6. **Cancellation of Trade Union Registration** : As per section 10, registrar can cancel or withdraw the registration of a trade union in the following cases :
  - a. If the trade union itself apply for cancellation.
  - b. If registrar finds that Certificate has been obtained with fraud methods.
  - c. In case trade union has ended its activities.
  - d. If the trade union is found to be following such rules that registrar has asked to stop due to its inconsistency with the rules and laws.
  - e. If the trade union has rescinded any norm that were required as per the provision of section 6.

#### **1.4.3 Privileges of a Registered Trade Union :**

1. **Immunity from Criminal Prosecution [section 17]** : This provides immunity to office bearer from any criminal conspiracy if it is associated with fulfilling the objectives of a trade union. But it shall not be an offence as per the Indian Penal code.
2. **Immunity from Civil Suits [section 18]** : Trade unions or its members or office bearers are provided with immunity from civil suits in case of activities related to furthering a trade dispute. However, there shall not be any sort of interference or inducement in employment contracts, business or trade. Also if any of its agents does any tortuous activity that is outside the knowledge of the office bearers or members then also they will be provided immunity from civil proceedings.
3. **Enforceability of Agreement [section 19]** : – An agreement between the members of a registered trade union shall be void or voidable merely by reasons of the fact that any of the objects of the agreement is in restraint of trade ?
4. **Right to Inspection of Trade Union Books [section 20]** : The office bearers or trade union members can inspect the union books at any time as prescribed in trade union rules.

- 5. Minor's Right to be Trade Union's Member [section 21] :** A minor worker who has attained 15th year of age can become a member of registered trade union and enjoys all rights including execution of instruments and give all necessary acquaintances as per rules. However, a minor cannot hold the position of an office – bearer till he attains 18 years of age.

❖ **Miscellaneous Provisions :**

Apart from the above there are some other important provisions related to :

- a. Trade Union Amalgamation :** section 24 of the act provides that any two trade unions can form a single union with or without dissolving the original or dividing the funds. The essential requirement in this case is that firstly at least one-half members of each union should vote and secondly at least sixty percent of those who voted shall vote in favour of the amalgamation. However even after such changes , the rights of the trade unions or its creditors will not be affected
- b. Changing Trade Union's Name [section 24] :** A trade union if needed can change its name with consent or vote of no less than two-third of its members.
- c. Disqualification of Office Bearers [section 21 A] :** The office bearer of a registered trade union shall be disqualified from the position if... either he has not attained the age of majority i.e., eighteen years, or in case he is found to be guilty of an offence of moral turpitude or has been imprisoned in such cases.
- d. Trade Union Dissolution [section 27 (1)] :** To dissolve a trade union, at least seven members along with trade union secretary should sign a notice containing such intention and submit it to the registrar within 14 days of such dissolution. The registrar on being satisfied with the notice and its contents as per prescribed norms shall register the notice. The dissolution stands comes in effect from the date on which the registrar accepts the notice.

**Check Your Progress – 3 :**

1. A registered trade union is known to :
- a. Be a body corporate                      b. Have perpetual succession.  
c. Have a common seal                      d. All of these
2. A trade union can change its name with consent or vote of no less than \_\_\_\_\_ of its members.
- a. One-Third    b. Two-third    c. Half                      d. Seven
3. What is the eligible age as per trade union's act to hold the position of office bearer ?
- a. 15 years            b. 21 years            c. 25 years            d. 18 years

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### 1.5 Let Us Sum Up :

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This unit explained the significance of trade unions for a worker and its various functions. A trade union is an association of seven or more workers from same or different industries who unite to safeguard and protect their rights related to employment and employment conditions. Trade unions in India suffer many problems like low membership, political interference, low funds etc. but play an important role in social and economic upliftment of workers and nation on the whole. In India trade unions are registered under the trade unions act 1929. Registered trade unions enjoy many benefits like immunity from civil suits and criminal prosecution, right to inspect trade union books etc. The functions of trade unions are administered by appointing office bearers and other administrative staff. For any kind of changes in the organisation, or name or objectives of trade unions, it has to be certified by the registrar of trade unions who is appointed by the appropriate government in every State.

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### 1.6 Answer for Check Your Progress :

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#### Check Your Progress – 1 :

1. b                      2. c                      3. b

#### Check Your Progress – 2 :

1. b                      2. b                      3. c

#### Check Your Progress – 3 :

1. d                      2. b                      3. d

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### 1.7 Glossary :

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1. **Provident Fund** : an investment fund contributed to by employees, employers and (sometimes) the State, out of which a lump sum is provided to each employee on retirement.
2. **Execution of Instrument** : the completion of legal instrument (such as contract or deed) by signing it so that it becomes legally binding and enforceable.
3. **Perpetual Succession** : continuation of organization's existence despite the death, bankruptcy, insanity, change in membership or an exit of any member.
4. **Office Bearer** : They are appointed by the members as key persons who represent the union at different places, agreements etc. they are the authorised persons for any official activities.
5. Immunity from civil suits refers to protection of trade union members or office bearers from any court proceedings.
6. Registration refers to getting the trade union enrolled under law by the appointed registrar who is the main authority to accept or reject such applications.



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**1.8 Assignment :**

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1. Discuss the role and problems of trade unions in India.
- 

**1.9 Activities :**

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1. Discuss the various objects of Trade Union.
- 

**1.10 Case Study :**

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- Prepare a list of accidents cases of workers in the course of employment from the following two states :
    1. Maharashtra
    2. Uttar Pradesh
  - Analyse the similarities and differences in accidents cases and the status of their claims.
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**1.11 Further Readings :**

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1. Dynamics of Industrial Relations by Mamoria, Mamoria and Gankar

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**: UNIT STRUCTURE :**

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- 2.0 Learning Objectives**
  - 2.1 Introduction**
  - 2.2 Applicability**
  - 2.3 Important Definitions**
  - 2.4 Health Provisions for Workers**
  - 2.5 Welfare Provisions for Workers in Factories**
  - 2.6 Labour Welfare Officer**
  - 2.7 Penalty for Offences**
  - 2.8 Let Us Sum Up**
  - 2.9 Answer for Check Your Progress**
  - 2.10 Glossary**
  - 2.11 Assignment**
  - 2.12 Activities**
  - 2.13 Case Study**
  - 2.14 Further Readings**
- 

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**2.0 Learning Objectives :**

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**After reading this Unit, you will be able to :**

- Understand the significance of Factories Act.
  - Appreciate the steps taken by law to safeguard worker's interests.
  - Discuss the rights of workers in factories regarding health and safety issues.
  - Explain the role of welfare officers in factory.
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**2.1 Introduction :**

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During the time of British rule in India the worker were exploited in many ways specially in terms of working hours, wages and amount of work. Due to which the workers started raising voice. Thus, an act was passed to safeguard worker against the exploitation. However after independence, in 1948, the act to regulate employments conditions was passed and called as the Factories Act 1948.

❖ **Scope and Applicability of the Act :**

The Act aims at :

- Protecting the factory workers and labourers from unduly long working hours or bodily strain.

- Providing workers healthy and sanitary conditions.
- Providing safety precaution for workers
- Maintaining effective supervision through staff appointments by the state government.

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## **2.2 Applicability of the Act :**

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The factories act 1948 is aimed at regulating employment conditions of labours in India. It extends to the whole of India including the state of Jammu & Kashmir.

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## **2.3 Important Definitions :**

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The important definitions in respect to various provisions of the factories act of 1948 are as under :

- Adult As per Sec2 (a) – Adult means a person who has completed eighteenth year of age.
- Adolescent Sec 2 (b) – Adolescent means a person who has completed his fifteenth year of age but not completed 18th year.
- Child– Sec 2(c) defines child as “any person who has not completed his 15th year of age.
- Young Person – AS per Sec2 (d) “any person who is either a child or an adolescent is a young person?”.
- Manufacturing Process. As per sec 2(k) Manufacturing process includes any process for:
  - i. Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use sale, transport, delivery or disposal, or,
  - ii. Pumping oil, water, sewage or any 3 other substance; or
  - iii. generating, transforming or transmitting power; or
  - iv. Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding
  - v. Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
  - vi. Preserving or storing any article in cold storage.

Thus, the following industries are held as manufacturing process :

- Bidi making
- Ginning and pressing
- Bottle of liquids
- Work of composing in printing press
- Preparation of food in hotel's kitchen.

- Packing of chocolates in boxes and tying them with a ribbon.
- **Workers** as per Sec 2 (l), – workers means a person employed directly or through any agency and whether for remuneration or not –
  - i. In any manufacturing process
  - ii. In cleaning any part of machinery or premises used for a manufacturing process
  - iii. In any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the union.

To be a worker, he should be under the control of his employer and therefore should be bound by a contract between employees and management.

- Factory as per Sec 2(m) 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,

Does not include a mine as per the Mines Act, 1952, a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

- Occupier Sec 2 (n) – An occupier is any person who has ultimate control over company's affairs including a manager, managing agent, a firm or an association of individual persons. The definition also includes a lessee, owner or licensee who has right to occupation of property and can order terms of management.
- Relay and Shift. Sec 2 (r) of the act defines where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a relay and each of such periods is called a shift.

**Check Your Progress – 1 :**

1. Any person who has not completed his 15th year of age is termed as a \_\_\_\_\_.
  - a. Adolescent    b. Adult            c. Child            d. Minor
2. The different time intervals in which different group of workers are required to work in a factory is called as :
  - a. A relay            b. A shift            c. An Interval    d. None of these

3. One of the aims of the Factories Act 1948 is maintaining effective supervision through staff appointments by the \_\_\_\_\_ government.
- |                       |                      |
|-----------------------|----------------------|
| a. Central Government | b. State Government. |
| c. None of these      | d. Both a & b        |

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**2.4 Health Provisions for Workers :**

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The factories act works to provide workers their legitimate right and protect them against any type of exploitation. In this regard, the act lays down provision related to creation of a healthy working environment for the workers. The main provisions to be followed by companies that fall under the purview of the act related to Health of workers are

1. Cleanliness [sec. 11] – This requires factories keep their premises clean from dirt and any kind of refuse. For this there shall be daily cleaning, sweeping of floors, staircases, drainage etc. This shall also include re- varnishing, painting of walls, ceilings etc.
2. Disposal of wastes and Effluents [Sec. 12] – Any kind of manufacturing waste should be properly disposed, so as to render the innocuous.
3. Ventilation and Temperature. [Sec 13] – This section requires for proper arrangement of ventilation and lighting in every workroom. There shall be proper lighting, cooling and air as per the standard requirement of any individual. There should be insulation facilities for hot rooms and the construction of roof, walls etc should be made with heat resistant material and paints.
4. Dust and Fume [Sec.14] – If the factory runs a manufacturing process that gives off injurious fumes and dust then arrangement should be made so that workers do not inhale these injurious gases. Any sort of stationery internal combustion engine should not be used or operated.
5. Artificial humidification [sec.15] – Incase of factories where humidity levels are artificially increased, the state government can make rules regarding –
  - a. testing for humidity determination
  - b. Recommending humidification standards
  - c. Prescribing methods for increasing artificial humidity, ventilation and cooling
6. Overcrowding [sec. 19] – This section sets guidelines for restricting number of workers above a set standard. This is to encourage overcrowding and provide comfortable work setting as per basic human needs. The act lays provision for at least three hundred cubic feet of space per worker.

7. Lighting [se. 17] – all the places in a factory where a worker stays or passes there shall be proper lighting either natural or artificial. Any sort of glare or shadow formation should be prevented as they may cause eyestrain.
8. Drinking Water [sec 18] – There should be adequate supply of safe drinking water at all places where there are workers. The places should be marked with a signboard 'drinking water' in a local language. Such points should be located within 20 ft. (or 7.5 meters) from any washing place, urinals etc. If there are more than 250 workers working in any factory there should be provision for cold drinking in the hot weather
9. Latrines and Urinals [sec 19] – there should be in every factory facility for Separate urinals and enclosed places for male and female workers.
  - a. Regular cleaning and sanitary condition by appointed sweepers.
  - b. Proper lighting
  - c. There should be no intervening open space or side room with urinals.
10. Spittoons [sec 20] – There shall be properly placed spittoons for the workers convenience maintained in hygienic conditions.

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**2.5 Welfare Provisions for Workers in Factories :**

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1. Washing Facilities [sec. 42] – Every factory should maintain proper cleaning facilities for men and women. These should be adequately maintained with daily cleaning.
2. Storing and drying [sec. 43] – As per the rules made by the State Government there shall be proper arrangement for storing clothes of workers as well as area for washing in specific factory cases.
3. Sitting Facilities [sec 44] – Adequate arrangement for sitting areas should be made for workers who are required to work in a standing position and incase the work is of sitting nature then the sitting arrangements should be as prescribed by the Chief Inspector.
4. First Aid Appliances [sec. 45] – every factory is required to maintain first-aid boxes or cupboard at adequate places within the reach of the workers. These boxes should have contents as per prescription. For every 150 workers there should be 1 first aid box that should be easily available. These boxes should be managed by a state government certified person.

In case of factory having more than 500 workers there should be arrangement for an ambulance room having required equipment that is managed by prescribed nursing and medical in-charge.
5. Canteens [sec 46] – The state government may make rules for setting up of a canteen or canteens in a factory where more than 250 workers are employed. The rules should be related to –



welfare officer's u/s 49. The section states, – In every factory wherein 500 or more workers are ordinarily employed, the employer shall employ in the factory such number of welfare officers as prescribed. The state is authorised to prescribe the duties, qualification and conditions of service of such officers?. This signifies that in factories where 500 or more workers are ordinarily employed, there should be at least one welfare officer and where this number exceeds 2500, additional or assistant welfare officers should be appointed.

The act further states that, ?in every plantation wherein 300 or more workers are ordinarily employed, the employers shall employ such numbers of welfare officers as may be prescribed. The state government may prescribe the duties, responsibilities and conditions of services of officers employed.

Section 58 of the Mines act provides, – For every mine wherein 500 or more persons are employed the owner, the agent or manager shall appoint qualified person as welfare officers.

#### ❖ **Qualification Requirements for Welfare Officers :**

The educational criteria includes for a labour welfare officer includes :

- A degree in any field from a recognised university and
- Diploma or degree in social sciences or social welfare or social work from a recognised institution and
- Knowledge of the local language spoken in the area of work in case of mines, factories and plantations.

The Labour welfare committee and National commission on labour are of the view that the labour welfare officers should –

- Work exclusively for worker's interest.
- Should be a part of company's management for better discharge of their duties
- Not act on management's behalf in case of labour disputes.
- An existing officer from personnel department should be designated as welfare officer and they should be properly qualified in welfare work.

#### ❖ **Roles and Responsibilities of Labour Welfare Officers :**

The duties of a welfare officers include a variety of jobs that includes –

- Supervisory Duty – The officer is responsible to supervise the following:
  - ⇒ Programs related to health, safety and welfare of the worker as disused in previous topics.
  - ⇒ Joint committee's working– Joint committees are group of members from labour and management side who work collectively for betterment of the company swell as the workers.



## **Business & Industrial Laws**

- ⇒ Leave management that includes, leave record maintenance, payments of wages for eligible leaves etc
- ⇒ Grievance redressal procedures.
- Welfare Officer as a Counsellor – A welfare officer is appointed for the workers and therefore need to guide them in case of:
  - ⇒ Personal issues related to family, personal etc.
  - ⇒ Work adjustments, handling issues like coping with pressures of work, rules, regulations etc.
  - ⇒ Making them aware of their rights and privileges given by law.
- Advisory duties– These are related to management based on labour needs etc and include advise on matters related to:
  - ⇒ Formulating policies for labour welfare
  - ⇒ Training programs for apprentices
  - ⇒ Statutory obligation of workers
  - ⇒ Education of workers
  - ⇒ Developing fringe benefits systems
- Liaison – This is an important responsibility of welfare officer and includes liaison with both the workers, as well as the management. They also need to liaison with outside parties, associations etc.
  - Liaison with Management – This includes topics related to:
    - Matters of workers interest that is pending with management.
    - Different departments and their obligations as given under the act.
    - Harmonious relations in factory
    - Measures to promote general well-being of workers.
  - Liaison with Workers Include :
    - Making them understand their work limitations,
    - Significance of healthy work relations and their effect on the workers,
    - Interpreting policies of companies,
    - Motivating them to agree for settlement with company.

Liaison with outside agencies– Outside parties includes factory inspectors, medical officers, trade union leaders etc. Thus, a welfare officer is required to deal with such people from time to time in order to get some acts enforced or help workers in using community services etc.

The welfare officers are important persons in a factory and are required to work simultaneously with both the management as well as

the workers. His scope of duties is much wider and envisages the functions of personnel management as well. He is responsible for the implementation of various labour laws in the factory. His responsibility encompasses harmonious relations, proper working conditions and peaceful relations between labour & management. – He acts as a maintenance engineer on the human side.

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### **2.7 Penalty for Offences :**

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The factories act 1948 lays down provisions for penalties in case of offences made against it. These are contained u/s 92 to 106.

In case of any offense the occupier as defined by the act is responsible for the act. But if he proves that he has taken due steps to enforce the provisions and someone else has committed such offences without his consent then he can be exempted from such charges.

The offences and their penalties are as under :

1. For obstructing Inspector from doing his duties or knowingly avoids making some entries, examinations etc he is liable to imprisonment of up to 3 months and/or fine Up to Rs 500.
2. For wrongfully disclosing result of analysis of sample is liable for punishment as in point 1.
3. Anyone who contravenes with the duty or liability of worker is liable to pay Rs. 20/ as fine
4. Anyone who uses a false fitness certificate is liable to imprisonment of up to 1 month or with fine of Rs 50/-.
5. Any guardian, parents or someone who directly avails the benefits from such double employment is liable to fine of up to Rs.50.
6. For such cases that are not provided otherwise an imprisonment of up to 3 months or with a fine of Rs. 2000.

### **Check Your Progress – 3 :**

1. What is the penalty for using false fitness certificate ?
  - a. Two months imprisonment and Rs 1000 fine.
  - b. One month imprisonment and Rs 50 fine.
  - c. Three months imprisonment and Rs 50 fine.
  - d. One month's imprisonment and Rs 1000 fine.
2. To be appointed as a welfare officer, he should have:
  - a. Diploma or degree in social sciences
  - b. Diploma or degree in social welfare
  - c. Diploma or decree in social work
  - d. Any of these
3. Additional or assistant welfare officers should be appointed in case the number of workers exceeds \_\_\_\_\_.
  - a. 2500
  - b. 2400
  - c. 2000
  - d. 500

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## **2.8 Let Us Sum Up :**

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This Unit explained the meaning of adults, child and adolescents to understand the employment eligibility of individuals in a factory. any person who does not fulfill the given criteria cannot be made to work and the occupier will be held liable for punishments. The unit explained the various provisions for maintaining health of workers that include proper cleaning of workplaces, keep them dust and fumes proof, providing clean and hygienic urinals, etc. The welfare facilities includes provisions for canteens, first aid, crèches etc. every factory should appoint a welfare officer and assistant officers depending on the number of workers. Further the welfare officers appointed by the state government should fulfill their duties and responsibilities that included mentoring, visioning, counseling etc.

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## **2.9 Answer for Check Your Progress :**

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### **Check Your Progress – 1 :**

1. c                      2. b                      3. b

### **Check Your Progress – 2 :**

1. d                      2. d                      3. c

### **Check Your Progress – 3 :**

1. b                      2. d                      3. a

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## **2.10 Glossary :**

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- 1. Precinct :** the area within the walls or perceived boundaries of a particular building or space.
- 2. Effluent :** liquid waste or sewage discharged into river or sea
- 3. Insulation Facility :** the objects used in building for thermal management, which helps the building to use less energy for heating or cooling.
- 4. Crèches :** These are separate areas usually rooms for children of working females. The mothers can leave their children in this room while they work, It is a facility that is been provided by all the companies and factories.
- 5. Relay and Shift :** In factories the production process continues for 24 hours seven days week. Thus workers are employed in different time shifts based on maximum working hours as prescribed by the act. Thus shift is the time period for which workers work in a single day and relay is the continuing shift after that.
- 6. Child :** In factories, a child is prohibited from working. For this the age limit has been defined by the government. Any person who is below Fifteen years of age is considered a child and he is governed by special provisions for employment purpose.

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**2.11 Assignment :**

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1. Describe the various roles and responsibilities of a welfare officer.
- 

**2.12 Activities :**

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1. Prepare a list of various health and welfare activities practiced by any three national level manufacturing companies in India.
- 

**2.13 Case Study :**

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Visit any nearby factory and observe the various facilities provided to workers. Prepare a report describing the company's profile and listing the provisions that are duly complied with by the occupier.

Also, list any discrepancies in the fulfillment of rules as per factory act.

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**2.14 Further Readings :**

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1. Dynamics of Industrial Relations by Mamoria and Gankar.



**: UNIT STRUCTURE :**

- 3.0 Learning Objectives**
- 3.1 Introduction**
- 3.2 Applicability of the Act**
- 3.3 Important Definitions**
- 3.4 Gratuity when Payable**
- 3.5 Computation of Gratuity**
- 3.6 Forfeiture of Gratuity**
- 3.7 Let Us Sum Up**
- 3.8 Answer for Check Your Progress**
- 3.9 Glossary**
- 3.10 Assignment**
- 3.11 Activities**
- 3.12 Case Study**
- 3.13 Further Readings**

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**3.0 Learning Objectives :**

**After reading this Unit, you will be able to :**

- Describe the important features of Payment of Gratuity Act 1972.
- Understand how gratuity is computed.
- Explain the objectives of Payment of Gratuity Act, 1972.

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**3.1 Introduction :**

Gratuity is a benefit that is paid by employer on the retirement of an employee as a token of appreciation for spending number of years with the company as well as to provide support for the new situations that arise post retirement. This is paid to the employee or in case of death, to his survivors.

The concept of gratuity in India originated around the end of the First World War as a result of employer's voluntary decision or due to some agreements between the employer and the workers. But, such program was restricted to few selected categories of workers and many employees were unable to avail the benefits. This led to opposition by workers and many tribunals came to raise their voice in favour of a generalised scheme that covers the entire employee who has a fair and long track record with the company. Thus, the Supreme Court pointed with reference to one of the similar cases that the object of providing

a gratuity scheme is to provide retirement benefit to the workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer.

Consequently, on 24th and 25th August 1971, a proposal was made to have a central legislation on gratuity that was discussed in the Labour Minister's conference organised at New Delhi. It was thus, decided, that a central legislation on gratuity is needed. Thus, in August 1972, the payment of gratuity Act 1972 was passed in the parliament and after receiving due consent of the President it came into force on 16th September 1972.

The main factories to which the act is targeted are oil fields, mines, plantations, railways, ports, companies, shops and other establishment. It provides social security to workers and employees. Whereas in the beginning it used to be on the employers, how much payment to be made but with the passing of the act, it has become a legitimate right that workers can claim. It protects the employees against loss of income that may arise due to old age, incapacity to work or unemployment.

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### **3.2 Applicability of the Act :**

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As per sec 1(3), this act is applicable to –

- Every factory, mine, oilfield, plantation, port and railway company;
- Every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- Such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

In exercise of the powers conferred by clause (c), the central government has specified chambers of commerce and industry, Motor Transport undertakings, clubs, Solicitor's local bodies and inland water transport establishments circus industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishment to which the act shall apply.

As per sec 3A, – A shop or establishment to which this Act has become applicable shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

#### **❖ Essential Features of the Act :**

Following are the main features of the Payment of Gratuity Act 1972 :

- It has a wide reach and covers all factories, railways, mines, oil fields, plantations etc.

- It is a social security measures that aims at compulsory payment of gratuity to the eligible employs.
- There are quasi judicial as well as executive provisions under the act by which employees can claim for determination, nomination and recovery of gratuity amount
- The act provides statutory right to employees who have completed Five years of service to their company. It also includes those employee whose services were terminated due to retirement or resignation or super annotation but after the act came into force.

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### **3.3 Important Definitions :**

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1. "Employee means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.
2. "Appropriate Government" means,
  - (i) in relation to an establishment :
    - (a) belonging to, or under the control of, the Central Government
    - (b) having branches in more than one State
    - (c) of a factory belonging to, or under the control of, the Central Government.
    - (d) Of a major port, mine, oilfield or railway company, the Central Government.
  - (ii) In any other case, the State Government.
3. "Family", in relation to an employee, shall be deemed to consist of :
  - (i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any.
  - (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such

child shall be deemed to be excluded from the family of the employee?.

4. Continuous Service [Section 2A]

As defined by the act, it states that –

1. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;
2. Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer –
  - (a) For the said period of one year, if the employee during the 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 any employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) Two hundred and forty days, in any other case;
  - (b) For the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than –
    - (i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
    - (ii) one hundred and twenty days, in any other case.

For the purposes of clause (2) the number of days on which an employee has actually worked under an employer shall include the days on which –



- (i) He has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
  - (ii) He has been on leave with full wages, earned in the previous year;
  - (iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
  - (iv) In the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.
3. Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy- five per cent. Of the number of days on which the establishment was in operation during such period.

5. Retirement [Sec 2(q)]

Retirement refers to termination of the services of an employee otherwise than on superannuation.

6. Superannuation [Sec 2(r)]

Superannuation in relation to an employee means the attainment by the employee of such age as is fixed in the contract or conditions of services as the age on attainment of which the employee shall vacate the employment.

7. Wages [Sec 2(s)]

Wages include all emoluments which are earned by an employee while on duty or on leave in accordance terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime, wages and other allowance.

**Check Your Progress – 1 :**

1. Gratuity is a \_\_\_\_\_ measures that aims at compulsory payment of gratuity to the eligible employees.
  - a. Social security
  - b. Health security
  - c. Family Security
  - d. Economic

2. Which of the following category of employees are eligible for gratuity under the Payment of Gratuity act ?
  - a. Central Government
  - b. State Government
  - c. Railway company
  - d. None of these
3. The act is applicable to establishments in which \_\_\_\_\_ or more employees are employed, or were employed, on any day of the preceding \_\_\_\_\_ months.
  - a. 10, 12
  - b. 12, 10
  - c. 10, 10
  - d. 10. 6

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### **3.4 Gratuity when Payable :**

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As per sec 4(1) an employee is eligible for payment of gratuity when his services gets terminated and after giving continuous services for minimum of five years on–

- His resignation or retirement
- His Superannuation
- His death or disablement due to disease or accident. In this case it is not necessary that the employee should have completed five years of continuous service. In this case the payment is made to nominees or heirs of the deceased employee.

Gratuity is normally paid to the concerned employee only. But in special cases like death, it is paid to nominee, and if there are no nominees then to his heirs. However if the nominee or heirs is a minor person then the amount is deposited with the controlling authority who then invest the amount in a bank or institution as prescribed. The authority invests the amount for the minor's benefit till he attains majority.

#### **❖ Procedure for Nomination [Section 6] :**

The employee can make following arrangements for allotting the gratuity payment to his nominees :

1. On completing 1 year of service the employee shall fill the nomination form as prescribed.
2. There can be more than 1 nominee and the amount can be divided among them.
3. In case the employee has a family while filling the nomination form then the nominees should be from the family only. Outside nominations are void.
4. If there is no family, then nominees can be from outside. But in due course if the employee makes a family then the outside nomination will stand invalid. The employee has to declare new nominees from within his family.
5. The employee can make alteration in nominees name by giving a notice to the employer.
6. The nominations are to be kept in safe custody by the employer.

7. If in case the nominee predeceases the employee then employee should make fresh declaration of nominee's name.

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### **3.5 Computation of Gratuity [Section 4A] :**

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The calculation for Gratuity payable is done in three ways based on the nature of employment :

- 1. When establishment is not of seasonal nature :** This refers to those companies or work which are done on an annual basis and are not seasonal. In this case, gratuity is computed as per sec 4(2), based on:

For every completed year of service above six months payment is made at the rate of 15 days wages for every completed year of service on the last drawn wages.

Gratuity = Last drawn wages × 15/26 × Completed years of Service (including a part of year in excess of six months)

- Where, Wages are the Last Drawn,
- Month refers to a Period of 26 Days;
- 15 days wages = Last drawn wages × 15/26.

- 2. In case of an employee on piece rate :** For employees who earn wages on piece rate system, wages for gratuity computation are calculated on the basis of average wages received in the preceding three months from termination. Also, any kind of overtime is not included in calculations.

- 3. For seasonal establishment employees :** There are two types of employees in this category :

**(a) Employees working full year :** their gratuity is computed at a rate of 15 days wages for every completed of service or part thereof.

**(b) Employees working only during the season :** payment of gratuity are made at the rate of seven days for each season.

❖ **Important Notes :**

- The Maximum limit for gratuity amount to be paid is Rs 10, 00000.
- For an employee working on monthly basis, the calculation of 15 days wages is done by dividing monthly wage rate by 26 and multiplying the quotient by 15.

### **Gratuity Calculation**

$$\text{Gratuity} = \frac{\text{Last Drawn Monthly Salary}}{26} \times 15 \times \text{Number of Years}$$

1 Month = 26 Days

**Check Your Progress – 2 :**

1. For payment of gratuity, a month refers to \_\_\_\_\_ days.  
a. 30                      b. 31                      c. 26                      d. 24
2. The payment of gratuity for employees working only in a season is made at the rate of \_\_\_\_\_ days for each season.  
a. 7                      b. 6                      c. 15                      d. 26
3. For employees earning wages on \_\_\_\_\_ gratuity is calculated on the basis of average wages received in the preceding three months from termination.  
a. Seasonal work                      b. Non seasonal  
c. piece rate system                      d. project basis

---

**3.6 Forfeiture of Gratuity :**

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The Forfeiture of gratuity refers to the withdrawal or cancellation of the payable gratuity. In this context there are two clauses that give right to forfeit an employee's gratuity. These are :

- a. Sec 4(6)(a) provides for forfeiture of gratuity can take place when an employee has been terminated from his services due to wilful omission or any sort of wilful negligence that causes loss or damage to employer's property. The amount forfeited shall be to the extent of destruction or loss caused.
- b. Sec 4(6)(b) refers to a condition when services are terminated due to –
  - a. An act of violence or disorder or riotous behaviour.
  - b. An act of committing an offence of moral turpitude during the course of employment.

In cases of such nature the gratuity payable can be fully or partially forfeited.

**Check Your Progress – 3 :**

1. \_\_\_\_\_ refers to cancellation of payable gratuity.  
a. Forfeiture                      b. Termination  
c. Superannuation                      d. Termination
2. Which of the following actions will be taken regarding payment of gratuity, against an employee who conducts an immoral act ?
  - a. Gratuity will be transferred to nominee
  - b. Central authority will submit it in bank
  - c. Payable gratuity will be forfeited
  - d. None of these

---

### **3.7 Let Us Sum Up :**

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This unit explained that Gratuity is a legitimate right of every employee and is payable after completing five years of continuous service with a company. The gratuity is payable on the retirement or superannuation or termination of services dues to resignation. The employee can nominate 1 or more person from his family for payment of gratuity in case of his death. The gratuity is calculated differently for different types of employees and considers the last wages drawn for a period as specified. The act lays down strict rules regarding provision for forfeiting the payable gratuity amount in case an employee is found to be guilty of an offense against the company that causes loss, destruction or damage to its property.

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### **3.8 Answer for Check Your Progress :**

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#### **Check Your Progress – 1 :**

1. a                      2. c                      3. a

#### **Check Your Progress – 2 :**

1. c                      2. a                      3. c

#### **Check Your Progress – 3 :**

1. a                      2. c

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### **3.9 Glossary :**

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1. **Seasonal Establishment** : an industrial establishment which normally works during defined periods or seasons of the year. This refers to occupation that take place at particular time in year. It is not continuous and includes jobs like vegetable pickers, life guards during monsoons etc.
2. **Lay Off** : discharge of a worker temporarily or permanently because of shortage of work.
3. **Offence of Moral Turpitude** : an act or behavior that gravely violates the sentiment or accepted standard of the community; a quality of dishonesty or other immorality that is determined by a court to be present in the commission of a criminal offence.
4. **Gratuity** : In amount that is paid to employees on termination of services due to resignation, retirement etc. It is a social security measure for safeguarding employee's future.
5. **Piece Rate** : when an employee is paid on the basis of the number of items made in the given time, it is called piece rate.

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### **3.10 Assignment :**

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#### **Define :**

1. Continuous service
2. Family
3. Wages
4. Superannuation

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**3.11 Activities :**

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1. When does gratuity become payable? What is the procedure to calculate gratuity ?
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**3.12 Case Study :**

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1. List down at least five cases from the different employers, when gratuity has been forfeited from an employee.
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**3.13 Further Readings :**

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1. Industrial Law (2 Vols. Set) By Arun Kumar



**UNIT STRUCTURE :**

- 4.0 Learning Objectives**
- 4.1 Introduction**
- 4.2 Overview of the IT Act**
- 4.3 Important Elements of the IT Act**
- 4.4 What Does IT Act Enable ?**
- 4.5 Why Cyber Law in India ?**
- 4.6 Let Us Sum Up**
- 4.7 Answer for Check Your Progress**
- 4.8 Glossary**
- 4.9 Assignment**
- 4.10 Activities**
- 4.11 Case Study**
- 4.12 Further Readings**

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**4.0 Learning Objectives :**

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**After reading this Unit, you will be able to :**

- Understand how the IT Act applies to the day to day transactions.
- Explain types of Cyber Threats and its remedies.
- Discuss the legal framework applicable to sharing of information on internet and computers.

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**4.1 Introduction :**

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The world has become a global village. This has become possible due to the advent of computers and internet. These two elements of communication have changed the way we used to interact, deal or transact. It's an altogether parallel world that in which business, day to day shopping, business deals, professional dialogues take place. When business and other activities are done over this technology, it brings along with similar threats as in the physical world. Issues like internet frauds, theft of data, cybercrimes have started posing a serious threat to the internet community. Thus, globally a need was felt to protect the people from being any sort of cybercrimes. This is essential especially in India because we have recently got this momentum to ecommerce and digitization and this is important to compete on a global arena.

In this regard the UN General assembly has already passed many resolutions that are followed by many countries. The UN Commission

on International Trade Law (UNCITRAL) adopted a model law for electronic commerce in the year 1996. This model law was considered keeping in view the increasing use of ecommerce for business transactions. India too reacted positively to this update and accepting UN recommendation and after duly revising some aspects; India passed its first law in communication in the year 1997, known as Telecom Regulatory Authority of India at 1997. Subsequently considering the need to protect internet transaction and sharing of information, India's first IT act, and known as Information Technology Act 2000 (IT Act) was passed. This act is also based on the Model Law in electronic and commerce of the UNCITRAL. The IT Act 2000 was later amended Information Technology (Amendment) Act 2000. With this India became world's twelfth country to enact laws in areas of cyber crime.

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#### **4.2 The Information Technology Act 2000 : An Overview :**

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##### **❖ Reasons for Enactment of the IT Act 2000**

The formation of IT act in India is important due to following reasons :

1. International mode of doing was changing and companies were shifting from traditional methods to modern electronic ,methods
2. The UN, WTO had already conveyed of shifting to this electronic mode.
3. India being its members had to be in line with such developments.
4. Ease of doing business due to faster results.
5. Cheaper mode of transferring, editing and transacting.
6. The business fraternity In India was well aware of these benefits but there was reluctance due to unavailability of any security by Law.

##### **❖ Objectives of the IT ACT 2000**

1. To enable ecommerce activities by amending suitable laws.
2. Provide legal recognition to e–signatures and e–records.
3. Make the Electronic data Interchange (EDI) and any other form of electronically generated communication legal and binding.
4. To encourage and facilitate E–governance. As defined by the World Bank e– governance is "as the use of information and communication technologies by government agencies to transform relations with citizens, business and other arms of the government". Therefore e–governance refers to applying electronic means in the following types of interactions:
  - a. Internal government operation (G2G)
  - b. Government and Citizens (G2C)
  - c. Citizen and Government (C2G)



- d. Government and Business (G2B)
- e. Business and Government (B2G)
- 5. To prevent any sort of misuse of e–transactions as well as create liability for such offences.
- 6. To recognise business contacts legally.
- 7. To encourage and facilitate data storage in electronic form rather than in traditional paper based methods.
- 8. To modify prevailing acts including The Indian Evidence Act 1872, the Indian Penal Code, The Reserve Bank of India Act 1934 and the bankers Book Evidence Act 1891.

❖ **Subjects covered by the Information Technology ACT 2000**

- 1. Providing acknowledgment to electronic messages.
- 2. Assigning legal status to the E–Signature as well as E–Records.
- 3. Appointing Controller for certifying authority
- 4. Confidentiality and privacy of information
- 5. Binding by regulatory framework
- 6. Formation of Cyber Regulations and Appellate Tribunal.
- 7. Formation of Cyber Regulatory Advisory Committee.
- 8. Liability of Network service providers is excluded in context of the internet content.
- 9. Provisions for trial of offences under the Code of Criminal procedure in case of :
  - a. Tampering of documents that means "manipulating any computer, computer system or computer network".
  - b. Hacking
  - c. Creating obscenity by breaking rules of privacy and confidentiality
  - d. Publish of false digital signatures certificates

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**4.3 Important Elements of The IT Act 2000 :**

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The IT Act 2000 is an important milestone in the encouragement to e– commerce and IT revolution in India. The important elements like extent of Coverage, details about important actions and important terms are discussed hereunder :

❖ **The Scope or Coverage of the act :**

The Information Technology bill was presented in both the houses in the month of May from where it was sent to the president of India and on receiving his consent the Information Technology Act 2000 was passed in August 2000.

The IT Act2000 of India is applicable in whole of India and saves as otherwise provided in the act, it also takes into its purview any offence

committed outside The Indian territory by any person. The Act also contains the cyber laws but does not apply in following cases :

1. In case related to a negotiable Instrument as defined under the negotiable instrument act.
2. In the case related to power of attorney.
3. In case of a Trust as defined under Indian Trust Act,
4. In case of a Will with regard to succession.
5. In case of sale contract for a immovable property
6. In case of any transactions documents that are published in official Gazette.

❖ **Main Points of the Act :**

The main points covered under various sections of the Information Technology Act 2000 are :

1. Section 1 covers the jurisdictions details, the act will extend to whole India.
2. Section 2 covers a detailed list of definition of terms that come in the act's purview.
3. In Section 3 details regarding use of digital signature for authenticating digital records are explained.

Digital signature refers to "authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of sec 3". It is a means to bind the signer's identity with the e-message. To generate this e-signature a public key crypto system is used.

4. Section 4 of the act covers the Electronic Governance like Giving legal recognition to electronics record under sec 4, Recognition of digital signatures u/s 5, Using e-signatures and records in government and its agencies u/s 6, retention of electronic records u/s 7, etc.
5. Section 7 elaborates on provisions of Retaining e-records. This is up to sec 16.
6. Section 17 to 42 covers provisions regarding appointments of certifying authorities, control of private key and subscriber of e-signatures or digital signatures.
7. Section 43 to 47 describes provisions regarding penalties and adjudication like, damaging the computer, failing to provide information or report or any returns to controller.
8. Sec 48 to sec 64 covers establishment of regulatory bodies like Cyber Appellate Tribunals that includes their administration and jurisdiction details like :
  - a. Notification by Central Government.
  - b. Composition of members that is usually only 1 known as presiding officer.

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- c. Qualifications, term of office that is usually five years, salary and allowances
- d. Cases of resignation, vacancy, penalty etc.
9. Section 65 to 78 covers provisions regarding offences including
  - a. Tampering
  - b. Hacking refers to as per sec 66, "Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking."
  - c. Publish of obscene information electronically
  - d. Facilities for subscriber to decrypt information.
  - e. Protected system
  - f. Breach of confidentiality and privacy
  - g. Fraudulent activities like using digital signatures for unlawful activities.
  - h. Confiscation etc
10. Section 77 covers details regarding the Network Service Providers (the intermediary), it state that they shall not be held liable in certain cases.
11. Section 80 to section 94 covers other Miscellaneous provisions related to power of police officers, overriding effect, power of central and state governments, amendments in previous laws like penal code at etc.

❖ **Other related Acts in India and Worldwide :**

The Information Technology Ministry has framed certain rules under the IT Act 2000 like

- The Information Technology (certifying Authorities) rules 2000.
- The Cyber Regulations Appellate Tribunal (procedure) rules 2000 for provisions regarding filing applications, hearings etc.
- Internet Corporation for assigned names and numbers (ICANN). It's a non profit and private corporation for handling domain name systems.
- World Intellectual Property Organisation (WIPO).

**Check Your Progress – 1 :**

1. Information Technology Act 2000 (IT Act) is also based on the \_\_\_\_\_ Law.
  - a. Moral
  - b. Model
  - c. Intellectual
  - d. Penal Code

2. Which of the following cases are covered by the IT Act ?
  - a. Case regarding will of property.
  - b. Case related to power of attorney.
  - c. case of sale contract for a immovable property
  - d. none of these
3. Which section/s of the IT Act 2000 covers provisions for offences ?
  - a. Sec 43–47    b. Sec 55–68    c. Sec 65–78    d. Sec 88
4. What does EDI stands for ?
  - a. Electronic Data over Internet    b. Easy Data Interchange.
  - c. Electronic Data Interpreter    d. Electronic Data Interchange.

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#### **4.4 What does IT Act Enable ?**

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The passing of the Information Technology act has opened a lot of new avenue for different segments of society. It helps in bringing a shift from using outdated systems to modern and effective technology by keeping a close vigil on the cyber world. The act has offered the long awaited legal framework to ensure acceptance of information shared over the Internet and the computers. The act is specifically helpful to :

- **The Government :** There will be an m major shift in the working of the government department. Across its functions, departments and activities leading to simple, speedy, accountable, transparent and responsive e–governance by implementing E–Governance. As per CSR Prabhu, "e–governance is a form of e–business, which involves delivery of electronic services to the public. It also involves collaborating with business partners of the government by conducting electronic transactions with them. It enables general public to interact with the government, through electronic means, for getting the desired services".

Following initiatives can now be taken by the government :

- Various government notifications can be issued on the web as a part of e–governance.
- Enabling e–services that offers interaction of government with corporate on one on one basis. His will reduce the time taken in visiting government departments for completing trivial formalities.
- Enabling E–Administration that refers to using technology for internal working of the government.
- E–society that is enabling government’s interaction with external people.
- Putting government legislations and laws online
- Updating general public with key decision related to environment, society, female security, etc
- Inviting public ideas for building of nation

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- Providing online contact details of national and international government officials.

### **To the Corporate World :**

- Making Email a valid and legal form of communication. This means that any kind of interaction over email can be presented in the court as an evidence
- E-Commerce will be easy due to security of legal infrastructure provided under the act. This will regulate any sort of commercial transaction thereby helping companies in expanding their operations and profit making.
- Since digital signatures are being sanctioned as valid, companies can use it during online transactions.
- The IT act has offered corporate for business of becoming Certifying Authorities for the issue of Digital Signatures Certificates.
- Online filing of returns, applications, or issue of sanctions, permits, license etc by the appropriate government under E-Governance.
- One very significant development for the corporate is they are now allowed to save the important corporate information in electronic form
- Corporate can now sue and demand statutory damages in case anyone damages or copies their data. The penalty can be up to Rs 100000000.
- The act has enabled corporate for legal redressal in case of thefts, hacking, phishing, and like crimes. This is so because now such types of crimes are defined under the act as cyber crimes termed a penal offence punishable under the law along with imprisonment.

**To The Common Man :** The IT Act 2000 has not only enabled the corporate or government sectors but it has also made using of Technology and internet easy for the common man. Today when Internet and computers has become an integral part of everyone's life, The IT act has brought a relief by providing legal coverage for sharing information online by anyone. This includes sending personal emails, sharing pictures, data files, etc. The common man has been safeguarded against any sort of theft, copy or any kind of misuse of data any sort of offence in respect to privacy is also considered as a punishable offence.

Therefore, the advent of the IT Act has positively enabled the various segments giving them security and sanctity of sharing information online.

### **Check Your Progress – 2 :**

1. E-society is a platform to enable government's interaction with
  - a. Internal People
  - b. Corporate Sector
  - c. External people
  - d. International politicians

2. The IT Act has made emails as a \_\_\_\_\_ mode of transaction.  
a. Valid            b. Invalid            c. Void            d. Alternative

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#### **4.5 Why Cyber Law in India ?**

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The law related to management of cyber space is termed as cyber law. The word cyber space refers to any of the following :

- Networks
- Computers
- Data storage devices
- Software
- Hard disks
- USB Disks,
- Internet
- Websites
- Emails
- ATM Machines
- Mobile phones etc

The main aspects that the cyber law deals into are cyber crimes, protection of data and its privacy, digital signatures and intellectual property. By cyber crimes refers to any offence that is done using telecommunication technology or a computer and in which a computer is either an object or a subject of committing crime. There are basically three types of cyber crimes that include:

- Cyber Crime against Property for example, copyright issues, siphoning of funds, computer vandalism or trespassing, Transmitting harmful content or programs.
- Against the Government for examples, cyber extortion or cyber terrorism. Hacking or infusing computer viruses.
- Against a Person – for examples – cyber stalking, impersonation, harassment, transmitting obscene material or information etc.

In India, like any other country, people are using computers, internet and other electronic equipment for faster and effective communication at cheaper rates. Thus, in today's highly digitised world, it is important to keep abreast with any sort of negative development in the cyber world. One reason for this is that cyber space is an open world in which there is no restriction for any one. Considering this fact it is all the more essential that there be some legal infrastructure to keep a control over the sharing, retrieval and transmission of information without hurting anyone. This is so because it is not possible to ascertain the intentions of people using internet, whether they have good or bad intentions can be known at later stage only this anonymous nature of the users encourage misuse of data causing threat to cyber security and privacy of people, corporate and Government as well.

In India, E-commerce and E-governance is fast replacing the traditional methods of doing business and administration of government activities. More and more companies wish to opt for e-commerce as it opens wider avenues at cheaper rates. Thus there is a need for self help system for the society that comes in form of Cyber laws protecting against any offences as stated above in detail.

Cyber Law is a generic term that is used across the internet, cyber space and the World Wide Web in context of legal consequences and any related issues.

Countries like the US, Singapore, Malaysia, Japan, France have been using cyber laws to protect any misuse. India being the 12th nation to enact a law in this regard is a positive initiative though it has yet to make many more amendments.

**Check Your Progress – 3 :**

1. Cyber Terrorism is a crime that is targeted at :
  - a. A company
  - b. The government
  - c. An individual
  - d. None of these
2. Which of the following is not a part of cyber space ?
  - a. Hard Disk
  - b. ATM machines
  - c. USB disks
  - d. None of these
3. Which of the following countries do not have a cyber-law ?
  - a. India
  - b. Japan
  - c. United States
  - d. None of these

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**4.6 Let Us Sum Up :**

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This unit has explained about the need of cyber laws and their benefits to various communities like Government, corporate and an individual. Cyber law are regulations made to handle any sort of offence made over the internet, computers or and other electronic equipments. The information technology act has been passed in the year 2000 and India is the 12th country to enact such a law. Thus act is a protection shield and encourages e-commerce and e-governance thereby bringing a change in the way work used to be done. The IT Act has made Emails as a valid mode of communication that can be used as legal evidence. Similarly digital signatures, electronic storage of data etc has been made legal by this act thereby instilling confidence for online transactions. This unit has also explained different types of cyber threats like hacking, virus attacks etc that are targeted to a company, individual or even the government.

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**4.7 Answer for Check Your Progress :**

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**Check Your Progress – 1 :**

1. b                      2. d                      3. c                      4. d

**Check Your Progress – 2 :**

1. c                      2. a

### Check Your Progress – 3 :

1. b            2. d            3. d

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#### 4.8 Glossary :

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1. **Tampering** : interfere with (something) in order to cause damage or make unauthorized alterations.
2. **Computer Vandalism** : It is a process wherein there is a program that performs malicious functions such as extracting a user's password or other data or erasing the hard disk.
3. **Computer Trespassing** : Accessing a computer without proper authorization and gaining financial information, information from a department or agency from any protected computer.
4. **Hacking is an activity of stealing**, destroying or changing information in a computer by breaking into it. This is done by persons who are called hackers.
5. **Cyber Extortion** : when someone sends threatening email to a company for leaking its useful information in order to create threat to company security it is termed as cyber extortion
6. **E-Commerce** : Electronic commerce is conducting business of products and services by using computer networks.
7. **Cyber Stalking** : It is an activity in which a miscreant harass a user by sending continuous electronic communication.

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#### 4.9 Assignment :

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1. Discuss in detail, the objectives of the Information Technology Act 2000

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#### 4.10 Activities :

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1. Prepare a list of various cybercrimes with the help of real world examples.

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#### 4.11 Case Study :

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Study any one cyber related case and outline the reasons, parties involved and how it got solved.

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#### 4.12 Further Readings :

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1. IT Strategy and Management By Dubey, Sanjiva Shankar
2. Business Laws Second edition by S. S. Gulshan



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**BLOCK SUMMARY**

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This block covers four different laws – The Trade Union Act, 1929, Factories Act, 1948, The Payment of Gratuity Act, 1972 and Information Technology Act, 2000. First three units in this block cover the laws related to labour. They are also known as employment laws because they cover the legal rights and restrictions of people working in the organization. These laws mediate many aspects of relationship between employer and employee. The last unit covers legal recognition to the transaction done through electronic means of communication.

Unit 1 covers the Trade Union Act, 1929. This Act has bestowed many rights to trade union in return of certain obligations. It explains us the reasons for formation of trade union and the problems faced by them in India.

Unit 2 covers the Factories Act, 1848. This Act provides safeguard for workers to protect health and provides for safety and welfare of workers at workplace.

Unit 3 covers The Payment of Gratuity Act, 1972. It is a financial incentive given to an employee for being in service and his loyalty towards the company.

Unit 4 covers The Information Technology Act, 2000. It promotes the use of alternatives to paper based method of communication. The Act also gives protection against various frauds when transaction is done through electronic means of communication.

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## **BLOCK ASSIGNMENT**

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### **Short Questions :**

1. How can we say that trade union work towards overall upliftment of the society ?
2. Explain the provision for canteen facility under the Factories Act
3. Explain two clauses for right to forfeit gratuity of an employee.
4. Give an example of cyber crime against property.
5. Explain two objectives of IT Act.

### **Long Question :**

1. What are general problems faced by Trade Unions ?
2. Explain the provisions of health of workers under the Factories Act, 1948.
3. How is computation of gratuity done in an organisation ?
4. What does IT Act enable ?
5. Why are cyber laws required in India ?

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❖ **Enrolment No. :**

1. How many hours did you need for studying the units ?

Unit No.	1	2	3	4
No. of Hrs.				

2. Please give your reactions to the following items based on your reading of the block :

Items	Excellent	Very Good	Good	Poor	Give specific example if any
Presentation Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Language and Style	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Illustration used (Diagram, tables etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Conceptual Clarity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Check your progress Quest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
Feed back to CYP Question	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

3. Any other Comments

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