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NMIMS Global Access - School for Continuing Education

## BUSINESS LAW

### CURRICULUM

**The Indian Contract Act-Part I:** Indian Contract Act 1872: Meaning and Evolution, Standard Forms of Contract, Privity of Contract, Consent and Free Consent, Consideration

**The Indian Contract Act-Part II:** Capacity to Contract, Quasi Contracts, Performance of Contract, Discharge by Contract, Breach of Contract, Indemnity and Guarantee, Bailment, Pledge and Finder of Goods

**The Indian Sale of Goods Act, 1930:** Definition and Essentials of a Contract of Sale

**Partnership Act, 1932:** Introduction to Partnership, Legality of the partnership firm, Overview of the Limited Liability Partnership Act, 2008.

**Consumer Protection Act, 1986:** Objective and Scope of the Consumer Protection Act 1986, Rights of the Consumer, Consumer Protection Councils

**Competition Commission Act, 2002-Part I:** Definitions, Anti-Competitive Agreements, Prohibition of Abuse of Dominant Position, Competition Commission of India (CCI)

**Competition Commission Act, 2002-Part II:** Rectification of Orders, Other Important Provisions, MRTP and Restrictive Trade Practices

**Right to Information Act, 2005:** Salient Features of the Right to Information Act, 2005, Objective, Public Authorities & their obligations, Designation of Public Information Authority, Public Information Officers and their Duties, Procedure for Requests for Obtaining Information, Exemption from Disclosure, Central and State Information Commission, Appellate Authorities

**Arbitration, Mediation and Negotiation (Settlement of Disputes):** Alternate Dispute Resolution, Conciliation, Mediation, Negotiation, Arbitration and Conciliation Act, 1996

**Miscellaneous Laws:** Workmen Compensation Act, 1923, Payment of Bonus Act, 1965, Employees Provident Funds Act, 1952, Payment of Gratuity Act, 1972, Minimum wages Act, 1948, Companies Act, 2013, Information Technology Act, 2000

# 1

### CHAPTER

## THE INDIAN CONTRACT ACT, 1872-PART I

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## © LEARNING OBJECTIVES

After studying the chapter, you will be able to:

- Describe the Indian Contract Act
- Explain the standard forms of contract
- Discuss the privity of contract
- Discuss concept of consent and free consent
- Explain the concept of consideration

### 1.1 INTRODUCTION

The word **contract** is derived from the Latin term **contractum**, which means drawing together. According to Section 2(h) of the Contract Act, “*An Agreement enforceable by law is a Contract*”. As per Sir William Anson, “A contract is an agreement enforceable at law made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others”.

Explaining the object of the law of contract, Sir William Anson observes, “The law of contract determines the circumstances in which promises made by the parties to a contract shall be legally binding on them. It is intended to ensure that what a man has been led to expect shall come to pass, and that what has been promised to him shall be performed”.

A mutual understanding is required between two individuals for any activity. This understanding is sometimes made in writing. A formal writing is known as a contract if it meets certain criteria. Contracts are often carried out in an informal manner, but sometimes due to legal obligations and responsibilities, they are made in a formal manner.

These agreements that fulfil the conditions of a contract have been codified by the Indian Contract Act, 1872. The Act identifies the basic terms and conditions that are mandatory to make a valid contract. It identifies the key ingredients of a contract along with certain special types of contracts.

The chapter begins by explaining the concept of the Indian Contract Act, 1872. It provides information about the standard forms of contract and privity of contract. At the end, the chapter discusses consent and consideration.

### 1.2 INDIAN CONTRACT ACT 1872: MEANING AND EVOLUTION

In order to understand the meaning of a contract, we must first understand a few related terms. The contract is nothing but an agree-

ment that is enforceable by law. Now, what is the term agreement? An agreement is a promise or a set of related promises made by a party to another for performing a task.

There must be an offer or proposal for an agreement to be entered. If the offer or proposal is accepted, an agreement can be entered. However, a promise cannot be termed as an agreement until and unless it includes a consideration. Thus, an agreement is completed when it includes a consideration. However, all agreements cannot be regarded as contracts.

According to Section 2(e) of the Indian Contract Act, an agreement means “*every promise or a set of promises that forms a consideration for each other*”. Thus, the essential element for an agreement is a promise and consideration.

The Indian Contract Act defines a contract as “*An agreement enforceable by law*”. Thus, in short, it can be summarised that a promise that involves a consideration is an agreement, and the agreement that is legally enforceable by law is a contract. Figure 1.1 explains how a contract is formed:

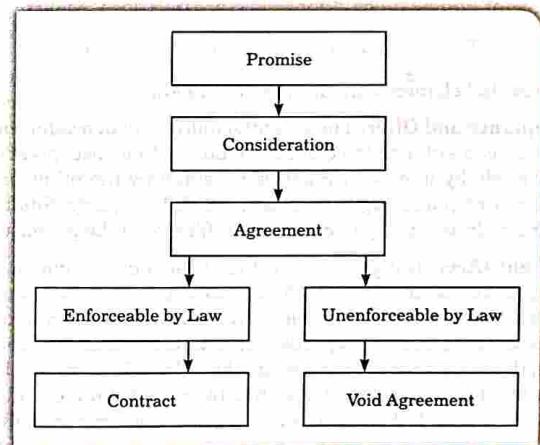


Figure 1.1: Formation of a Contract

#### 1.2.1 ESSENTIALS OF A VALID CONTRACT

Section 10 of the Act says, “all agreements are contracts that are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void”. Essentials of a valid contract are shown in Figure 1.2:

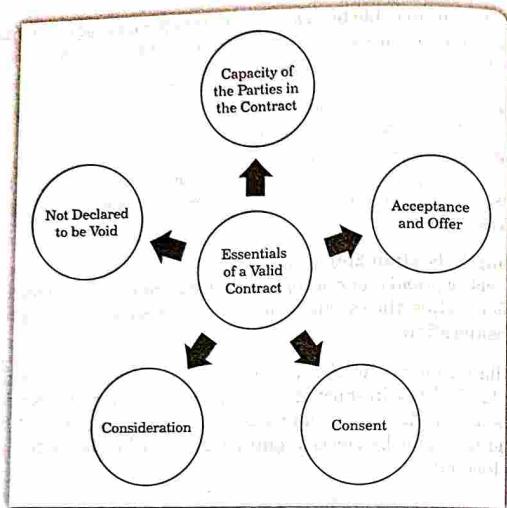


Figure 1.2: Essentials of a Valid Contract

These essential elements are discussed as follows:

- **Acceptance and Offer:** The essential ingredient of a valid contract is an agreement, i.e., the element of offer and its acceptance. The offer made by one party must be accepted by the other party. It creates a responsibility to perform a task by a party. Similarly, it gives a right to a party to claim the fulfilment of the promise.
- **Consent (Acceptance):** Consent means acknowledgement of the party to whom an offer is made without any adverse circumstances like coercion, fraud, undue influence, misrepresentation and mistake. It signifies the approval of both the parties to a contract. Also, the consent of the parties should be free. This means that the consent of any party is not obtained by coercion, under influence, mistake or fraud. When the consent of a party is not free, the contract is voidable. The party whose consent is not freely obtained can either accept the contract or reject it.
- **Capacity of the Parties in the Contract:** The parties involved in the contract must be capable of entering into it. Section 11 of the Contract Act, 1872 provides certain factors that help in deciding the capacity of a party. These factors are as follows:
  - ◆ The party has attained the age of majority.
  - ◆ The party is not of unsound mind.

- ◆ The party is not disqualified to enter into a contract by any law to which the party is subject.

Thus, if all of the above factors are present, it is assumed that the party is capable to enter into the contract.

- **Consideration:** Consideration means compensation to be paid by a party to another party for performing the promised task. The consideration should be lawful and should not be against the law or illegal in nature.

- **Not Declared to be Void:** The last element of a contract is that the act performed under the contract must not be illegal and must not be such that the law has declared it to be void. For example, a contract to kill someone is void and illegal. This agreement cannot be enforced by the law and is not a contract.

### 1.2.2 NATURE OF CONTRACT

A contract creates a legal obligation on the party that accepts the proposal or had agreed to perform the valid task. It also creates a right with the other party to ensure that the task accepted must be performed. Hence, each party is placed with an obligation to perform as per the terms of the agreement.

A contract not just lays down responsibilities and duties that are enforceable by the law.

There are many instances when two parties enter into a formal or informal agreement. These agreements may be commercial or social. If the agreements are enforceable by the law, they are regarded as a contracta. As an agreement forms the basis of a contract, agreements of social, illegal or prohibited nature may not be legally enforced. Thus, it can be said that "all contracts are agreements but all agreements are not contracts." A contract must have the following two elements:

- An agreement
- Its enforceability (legal obligation)

In the form of an equation, it can be shown as follows:

$$\text{Contract} = \text{An agreement} + \text{its enforceability}$$

According to the Act, "Every promise and every set of promises forming the consideration for each other is an agreement." (Section 2(e))

According to the Act, "A proposal when accepted becomes a promise." For example,

Ram offers to sell his car to Shyam for ₹2,00,000. Shyam accepts the offer. This offer after acceptance becomes promise, and this promise is treated as an agreement between Ram and Shyam.

Thus, an agreement consists of a proposal (offer) by one party and its acceptance by the other. In the form of an equation, it can be shown as follows:

**Agreement = Proposal (or Offer) + Acceptance of Proposal (or Offer)**

The term agreement shows the following two characteristics:

- **Plurality:** It implies that there must be two or more persons to make an agreement.
- **Consensus-ad-idem:** It implies that both the parties to an agreement must agree about the subject matter of the agreement in the same sense and at the same time.

### 1.2.3 DISTINCTION BETWEEN CONTRACTUAL OBLIGATION AND LEGAL OBLIGATION

An obligation is a requirement to some task or a course of action, whether legal or contractual. We all have some obligations to our society, family, nation and environment. But, we are not forced to perform these obligations.

Contractual obligations are those obligations that are enforced to be carried out under a contract. For example, for constructing a building, the builder is under contractual obligation to construct as he is bound to do so in the contract entered with the administration or purchaser of the flats of the building.

On the other hand, legal obligation refers to those obligations that are enforceable by the law. For example obligation for safety at the workplace.

Obligations may arise out of different sources, such as torts, civil wrong, judicial decisions and decree of a court. The subject matter of the law of obligations may also include obligations that do not necessarily arise out of an agreement.

### 1.2.4 AGREEMENT TO SELL

A contract is called an agreement to sell when something is to be done in the future period. It can be made for the transfer of property or for the performance of an act. But, it will be done in the future. In this case, it is regarded as an agreement to sell.

Here, only an agreement is made for the transfer of some consideration in the future. The actual transfer is not executed. The ownership of the property does not get transferred at the time of an agreement to sale. Thus, in the agreement to sale, the party in the contract has a right to revoke the contract or refuse to cancel the contract.

### 1.2.5 OFFER AND INVITATION TO OFFER

As we have already discussed that in order to execute a contract, there must be an offer. The terms "Offer" and "Proposal" are used interchangeably. As per the Indian Contract Act, Section 2(a) an offer is defined as:

#### DEFINITION

"A person is said to make an offer when he signifies to the other person his willingness to do or to abstain from doing anything with a view to obtain the assent of the other person".

Thus, in case of an offer, two important facts are:

- A person signifying to do something or to abstain from doing something.
- An expression is made to obtain the assent of the other person.

Mere offering does not mean offer. When A shows to B his badminton racket, it is not an offer. But, when A shows the racket to B and asks him to buy it for a specific amount, it is an offer.

But, offer and invitation to offer do not mean the same. The difference between the two can be understood from the fact that an invitation to offer is the preceding step to offer. An offer leads to an agreement, but an invitation to offer does not lead to an agreement, rather it leads to an offer after due negotiation.

In an invitation to offer, there is no willingness on the part of the offeror, and he is not bound by his offer. When a shopkeeper makes a display of the items in the wardrobe, it is an invitation to offer by him to the public or his customers. There is no offer in it. But, when he shows his willingness to sell it to a particular customer, he gives an offer. In such a case, when a consideration price is fixed between them, the offer leads to the contract.

Offer, in other words, is in the nature of "Personam" (addressed to a specific individual or a group of individuals), whereas an Invitation to Offer is in the nature of "Rem" (addressed to the world at large).

### 1.2.6 COMMUNICATION OF OFFER

According to the Section 4 of the Act, "Communication of offer is complete when it comes to the knowledge of the person to whom the offer is made".

Communication of an offer is done when knowledge is being passed to the party either in writing, by mouth or by any other mode of communication. For example, suppose A wants to sell his building to B. A writes a letter on 25th July and the same reaches B on 30th July. In such a case, the communication of the offer is completed on 30th July as the knowledge of the offer comes to B on 30th July only and not on 25th July.

#### 1.2.7 ACCEPTANCE AND MODES OF ACCEPTANCE

Acceptance means giving an assent to the offer or proposal. As per Section 2(b) of the Act, acceptance is defined as:

##### DEFINITION

*"A proposal is said to have been accepted when the person to whom the proposal is made gives his assent of acceptance to that proposal or offer".*

A proposal is of no value until and unless it has been accepted. A contract is entered only when the offer is accepted and consideration is fixed.

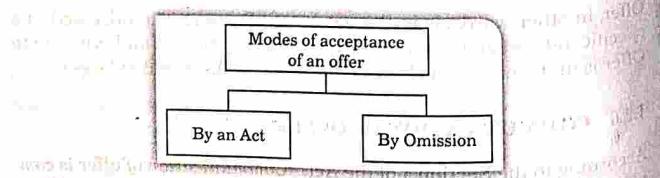
#### RULES GOVERNING ACCEPTANCE

The rules governing acceptance are as follows:

- The acceptance must be absolute and unqualified. If there are any clauses or conditions in the acceptance, it cannot be said to be the acceptance of the offer.
- The acceptance must be communicated to the desired person offering such acceptance. If the acceptance is not communicated, it has no value.
- The acceptance must be made in the prescribed time. A late acceptance may be void. If there is a time clause in the offer, the acceptance must be given in that time frame only and not later than that time.

#### MODES OF ACCEPTANCE

Generally, there are two ways of acceptance, which are shown in Figure 1.3:



These modes of acceptance of an offer are as follows:

- **By an Act (express):** Acceptance by act means to communicate the assent either by written or oral means or by some other act. Written acceptance includes a letter, fax or e-mail. Oral acceptance is through verbal conversation, including telephonic conversion.
- **By Omission (implied):** Acceptance by omission is done by the conduct from the person who is giving his assent or willingness to accept the offer. However, keeping silence does not mean acceptance. For example, A offers some fruits to B and sends them to his house and B receives them but does not tell A about it. This silence does not mean acceptance as A does not get the information about the acceptance of fruits from B.

For the purpose of acceptance, as per Section 4 of the Contract Act, 1872, the communication of acceptance is:

- as against the proposer, when it is put in the course of transmission to him so as to be out of the power of the acceptor
- as against the acceptor, when it comes to the knowledge of the proposer

#### 1.2.8 EXPRESS AND IMPLIED TERMS

A contract can be an express contract or an implied contract. An express contract is the one in which the terms of the contract are expressed verbally or in a written form. On the other hand, an implied contract is a type of contract in which the terms are not expressed in words.

An express contract is completed when acceptance is made to the offer and the terms and conditions are accepted by both the parties. For example, when A asks B to perform some accounting work under some terms and conditions and then B accepts the offer by accepting all the conditions, the contract is known as an express contract.

In case of an implied contract, it is not necessary to declare the acceptance. It is implied that the contract has to be accepted. For example, when a patient visits a doctor, it is implied that he will pay fees to the doctor. If he does not give the fees, he has caused a breach of contract.

##### SELF ASSESSMENT QUESTIONS

1. Which of the following is an essential element of a contract?
  - a. Consideration
  - b. Proposal and Acceptance
  - c. Consent
  - d. All of the above

2. A contract is said to be an express contract if:
- Terms and conditions are open
  - Terms and conditions are written on a paper
  - Acceptance is made to the offer and the terms and conditions are accepted by both the parties
  - None of the above
3. An express contract is completed when acceptance is made to the offer and the terms and conditions are accepted by both the parties. (True/False)
4. Written acceptance includes a letter, fax or e-mail. (True/False)
5. \_\_\_\_\_ means to communicate the assent either by written or oral means or by some other act.

#### ACTIVITY

Find out the main essentials of a contract and describe them in brief. Also, try to create a contract with your partner and consult the technical issues related to the contract.

### 1.3 STANDARD FORMS OF CONTRACT

"Model or standard forms of contract are Conditions of Contract, which have been prepared for general use in a particular industrial sector by an appropriate or representative authority".

-- Smith (1995)

A standard form of contract is the most popular and widely used contract. It is also referred to as an "Adhesion" or "Boiler Plate Contract". An example of a standard form of contract is insurance policies, where the insurer decides the items to insure and the language of the contract. Contracts with government agencies or standard service providers like the electricity or telephone service provider are another example, where certain clauses must be included by the law or regulation.

We come across standard forms of contracts regularly while making any legal purchase of products or services. These contracts cannot be customised or modified regularly. Thus, when planning to launch a new product or service, the following challenges are faced while forming the standard form of a contract:

- The first challenge is deciding the type of clauses or conditions required to be included in the contract, considering all the aspects of the products/services and preservation of each party's rights.

- The second challenge that arises is the design of the contract. The contract design should be final because it cannot be altered frequently with demand or objection.

Standard forms of contracts need not always be inflexible. While each party having its own "standard" agreement form could insist that this standard form should be the basis for the negotiation (for the simple reason that it is always easier that way to have the advantage of playing on "home grounds"), an agreement is invariably found on the basic (seller's or buyer's - more often than not, the latter's) document the final agreement would be based on (with due deference to the modifications suggested by the other party and mutually agreed upon.)

#### 1.3.1 EXCLUSION CLAUSES

Exclusion clauses are the clauses that are generally written in the contract to limit the scope. These clauses say that one party to the contract cannot be held responsible for a certain mishappening. For example, if a person attends a gym and while exercising, he broke his joints, the gym owner cannot be held responsible for that accident or incident.

These clauses are valid on the basis of two important conditions:

- The clauses have been properly expressed in the contract and explicitly carve out the exclusion.
- The clauses that are named as exclusion clauses are not conflicting to any law. The clauses must be valid in terms of the law.

#### 1.3.2 KINDS OF AGREEMENTS

An agreement is a promise or a set of related promises made by a party to another to perform some task. For an agreement to be entered, there must be an offer or proposal. If the offer or proposal is accepted, an agreement can be entered. However, a promise cannot be termed as an agreement until and unless it includes a consideration. All agreements cannot be regarded as a contract. However, all contracts are agreements. Generally, there are three types of agreements, as shown in Figure 1.4:

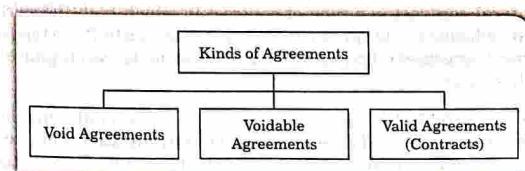


Figure 1.4: Kinds of Agreements

These types of agreements are discussed as follows:

- Void Agreements:** An agreement that is not enforceable by law is known as a void agreement. A void agreement does not have any legal consequences and cannot be enforced by the law. It does not bring any legal obligation to any party to the contract.

An example of a void agreement is an agreement made with a minor or as it is expressly declared void in the Act. An agreement where there is no consideration is also a void agreement. Similarly, an agreement to kill any person is a void agreement as it is bad in the eyes of the law and prohibited. Thus, an agreement that has no validity in the law is termed as a void agreement.

- Voidable Agreements:** An agreement that is valid in terms of the law at the option of one or more party is termed as a voidable agreement. A voidable agreement is a valid agreement until it is revoked by any of the party.

A voidable agreement can be rescinded at the option of one party. The agreement made through mistake, coercion, fraud, undue influence and misrepresentation is an example of a voidable contract. These are voidable at the option of the aggrieved party.

- Valid Agreements:** All agreements that satisfy all the basic essentials of a valid contract are known as valid agreements. These agreements are enforceable by the law as well and are valid in any court. These agreements are known as contracts.

### 1.3.3 UNILATERAL, BILATERAL AND INTERNATIONAL CONTRACTS

In **unilateral contracts**, only one party is obligated to perform the duty. If the duty is fulfilled by the party, it will be eligible to the required consideration. It is a one-side agreement in which one party performs the contract for the other party.

For example, if a person puts an advertisement in the newspaper for his lost watch and admitted to pay the prize to find it. Then, in such case, the person will be obliged to pay the prize to the party who finds the watch.

A **bilateral contract** is a type of contract in which both the parties have an obligation to perform a task for the other party. It is a type of a reciprocal agreement. Each party has to perform its own promise for the other party.

When a contract is made between two parties of two different countries, the contract is said to be an **international contract**. These contracts are also like normal contracts but the laws of both the nations must be satisfied in order to sustain the contract.

### SELF ASSESSMENT QUESTIONS

6. A standard form of contract is also known as a \_\_\_\_\_.
7. The standard forms of contracts need not always be inflexible. (True/False)
8. A/an \_\_\_\_\_ is a promise or a set of related promises made by a party to another to perform a task.

### ACTIVITY

Give examples of a void agreement and a valid agreement.

## 1.4 PRIVITY OF CONTRACT

The doctrine of privity says that a contract cannot create any legal obligations or right in the hands of persons or parties other than the parties involved in it. The rules and the terms and conditions of the contract are applicable only to the parties who have entered the contract. Under the Roman Law, a third party was neither liable nor entitled under a contract. Similarly, under the French Civil Code, contracts bind only contracting parties.

Only the parties who are there in the contract can sue or can be sued by the party in the agreement. However, there exists some problems in the doctrine of privity when the contract is entered, for the benefit of any third party who is unable to enforce any obligation on the parties involved in such a contract.

### 1.4.1 EXCEPTIONS TO THE PRIVITY OF CONTRACT

There are certain exceptions to the doctrine of privity of contract. These are as follows:

- The Beneficiary of a Contract can enforce the contract on the behalf of the parties who had contracted, for the benefit of such beneficiary or a third party.
- In case of a trust, the beneficiary of the trust can sue the parties for his rights even though he is not a party to the contract.
- In case of a family settlement or partitions, when the terms of settlement are made in writing, the members of families who are not a part of the settlement can also enforce their rights.
- In case of a marriage contract or settlement, a female can enforce her right of claiming for the marriage expense based on the petition made by the Hindu Undivided Family.

- In case of a relationship between the principal and agent, the agent can sue the third party on behalf of the principal.
- An assignee of a debt can sue the original debtor without the consent of the creditor.
- A person who purchases land with a notice that the seller is bound by certain restrictive covenants, affecting the land is bound by those covenants even though he was not a party to the original contract.
- Third-party insurance, where a stranger to the contract may recover from the insurance company where third-party risks are covered under the insurance policy.
- If a person by his words or conduct (Estoppel) creates a privity between himself or the stranger, he cannot be permitted to plead the action.



#### SELF ASSESSMENT QUESTIONS

9. A contract in which one party has an option to revoke the contract is known as:
  - a. Void contract
  - b. Voidable contract
  - c. Valid contract
  - d. None of the above
10. An agreement entered between two parties of different nations, which is enforceable by the laws of both the actions, is known as:
  - a. Unilateral contracts
  - b. Bilateral contracts
  - c. International contracts
  - d. None of the above



#### ACTIVITY

Which agreements cannot be treated as valid contracts? Also, list the various types of agreements that can be made between two parties.

### 1.5 CONSENT AND FREE CONSENT

It is essential to the creation of every contract that there must be a free and genuine consent of the parties to the agreement. The consent of the parties is said to be free when they are of the same mind on all the material terms of the conduct. The parties are said to be of the same mind when they agree on the subject and matter of the contract in the same sense and at the same time. Consent is said to be free when it is not caused by (i) coercion, (ii) undue influence, (iii) fraud, (iv) misrepresentation or (v) mistake.

#### 1.5.1 MEANING OF COERCION (SECTION 15)

Coercion means committing or threatening to commit any act that is forbidden by the Indian Penal Code 1860 or any other law in force. Coercion includes unlawful detaining or threatening to detain any property with the intention of entering into a contract with a person.

These contracts are voidable contracts. It means that they can be enforced by the person coerced if he thinks that he will be benefitted by this act. However, it is immaterial that whether the Indian Penal Code 1860 is applicable at that time or not.

For example, when a husband asks his wife to write down the property in his name by threatening that he will commit suicide, it is a matter of coercion. In this case, it is the legal right of the wife to take back the property that she has given under coercion.

#### 1.5.2 MEANING OF UNDUE INFLUENCE (SECTION 16)

A contract is said to be induced by undue influence when a party is in a position to dominate the other party and takes the advantage of such position in an unfair manner. A party is said to be of dominating nature when it holds some authority over the other party.

The essential ingredients of undue influence are as follows:

- One of the parties is having real or fiduciary authority over the other party.
- Such party is in a position to dominate the other party.
- The dominating party takes the advantage of the other party by unfair means.

#### 1.5.3 MEANING OF FRAUD (SECTION 17)

A fraud includes the activities done by a party with the other party in the contract with its connivance or with the help of an agent with an intention to deceive. The activities are as follows:

- To promise something with the intention of not performing that
- Any act fitted to deceive the other party
- Any such act that the law declares as fraudulent
- Concealment of the facts that are material to the contract
- To provide some suggestions that are not true or that are given to cause some loss to the other party

#### 1.5.4 MEANING OF MISREPRESENTATION (SECTION 18)

This does not involve any deception, rather it is obtained by providing wrong information to the other party. It means the assertion of something by a person that is not true, though the other party believes it to be true. A contract led by misrepresentation can be avoided by the person who is misled by the other party.

#### 1.5.5 MEANING OF MISTAKE (SECTION 20)

Mistake is different from all the above wrongful activities. A mistake in a contract arises due to the matter of fact and not because of the matter of the law. When the parties to the contract are under a mistake as to the matter of fact and not to the matter of the law, the contract is said to be a void contract. As we also know that all void contracts are not enforceable, the contract that is entered by mistake will not be enforceable by the law.

#### 1.5.6 REMEDIES AVAILABLE IN CASE OF ABSENCE OF FREE CONSENT

For a contract that is entered under coercion, misrepresentation or fraud, the aggrieved party has some remedies available. There will be no value of the contract that has no remedy. Generally, the most common and simple remedy against the absence of free consent is to claim compensation. Different types of remedies are shown in Figure 1.5:

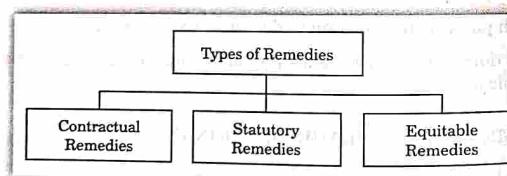


Figure 1.5: Types of Remedies

These types of remedies are discussed as follows:

- **Contractual Remedies** are the remedies that are written in the contract itself. These remedies are applicable in case any party is not able to complete its obligation. In case there is no free consent, contractual remedies are the best.
- **Statutory Remedies** are those remedies that are provided by the law. If any fraud or misrepresentation is done in the contract, the aggrieved party can sue the other party in the court.
- **Equitable Remedies** are those remedies that are available under the Special Relief Act, 1963. It is a remedy available through a civil

court. It aims at the exact fulfilment of legal obligations through a civil court. The equitable mortgage available under the Special Relief Act includes:

- ◆ Recovery of the possession of property
- ◆ Specific performance of a contract
- ◆ Rectification of a contract
- ◆ Rescission of a contract
- ◆ Cancellation of a contract
- ◆ Injunction

#### SELF ASSESSMENT QUESTIONS

11. \_\_\_\_\_ are those remedies that are available under the Special Relief Act, 1963.
12. Which of the following is not a remedy in case there is no free consent?
  - a. Contractual remedy
  - b. Statutory remedy
  - c. Equitable remedy
  - d. Technical remedy

#### ACTIVITY

Mrs. X has been coerced by her husband to enter into a property contract. Now, she wants to cancel the contract. Can she do so? What are the remedial provisions available with Mrs. X against her husband?

#### 1.6 CONSIDERATION

According to Section 2(d) of the Indian Contract Act "When at the desire of the promisor, the promisee or any other person has done or has abstained from doing or does or abstains from doing promises to do or to abstain from doing something, such an act, abstinence or promise is called as a Consideration for the promise".

For example: If A agrees to pay B ₹5,000 on the promise that B will wash and paint his car, then the amount of ₹5,000 is the consideration for the work that B will do for A. Consideration means the compensation to be paid by a party to another party for performing the promise. It means something in return for doing anything or even abstaining from doing anything. The consideration should be lawful and should not be against the law.

### FEATURES OF CONSIDERATION

Consideration must be paid at the desire of the promisor. It has the following features:

- It may move from one person to another person.
- It may be paid on the past, present or future.

#### 1.6.1 PAST, PRESENT AND FUTURE OF CONSIDERATION

In simple terms, the consideration are of three types. Past consideration is the consideration that is paid before the formation of the contract. Present consideration is the consideration that is paid at the time of the formation of the contract. Future consideration is to be paid in the future period after the contract is executed. As per the Indian Contract Act, all the three types of the contracts are valid but as per the English law, past consideration is not valid.

#### 1.6.2 ESSENTIALS OF VALID CONSIDERATION

The essentials of valid considerations can be defined as follows:

- The consideration must be paid at the request of the offeror by the offeree. In case the offeror received an unwanted consideration, it will be treated as void.
- The consideration may move from the promisor or from any other person. It is not necessary that the promisor is only authorised to pay it. However, the English law does not allow it, as the consideration should only flow from the promisor.
- The consideration may be past, present or future. Past consideration is paid before the contract is entered. Present consideration is paid at the time of the execution of the contract. Future consideration is paid in the future, i.e., after entering into the contract.
- The consideration paid must be lawful and should not include anything that is prohibited by the law.
- The consideration may be inadequate. It must be fully paid as per the terms to the promisor and must not be less than the decided one.
- The consideration must not be a virtual one. It must be real.

#### 1.6.3 SUFFICIENCY OF CONSIDERATION

As discussed above, the consideration may not be adequate. It must be discharged as per the terms of the contract and not be less than what is decided in the contract.

#### 1.6.4 CONSIDERATION AND PROMISSORY ESTOPPELS

According to the legal principle of the Contract Act, the promisor must have to fulfil the promise made by him to the promisee. In case the promisor denies the fact of the promise, the concept of promissory estoppel comes into force.

Promissory estoppel is used to stop the promisor from denying the fact, statement, words and conduct. It allows the party to recover on a promise. In order to invoke the provision of the promissory estoppel, the following three elements must be present:

- The promisee must be present.
- The promisor must be present.
- An economic loss has occurred on the part of the promisee.

#### SELF ASSESSMENT QUESTIONS

13. Which of the following is not true for a valid consideration?
  - a. Consideration may be made in past, present or future.
  - b. It must be lawful.
  - c. It may be inadequate.
  - d. It must be paid by the promisor to the promisee only and not anyone else.
14. \_\_\_\_\_ is used to stop the promisor from denying the fact, statement, words and conduct.

#### ACTIVITY

ABC Company entered into a contract with the Government of India in order to build a highway in two years. After one year of the contract, it refuses to make the highway and goes back on the statements made by it during the formation of the contract. Discuss in detail about the doctrine of the law applicable to the contract and the remedy available to the Government of India.

#### 1.7 SUMMARY

- Agreement means "Every promise or a set of promises that forms a consideration for each other". A promise that involves a consideration is an agreement, and the agreement that is legally enforceable is termed as a contract.
- The essential ingredient of a valid contract is the element of the offer and its valid acceptance. The offer made by one party must

be accepted by the other party. It creates a legal responsibility to perform a task by a party. An important element of a contract is consideration. Consideration means the compensation to be paid by a party to the other party for performing the promise.

- Contractual obligations are those obligations that are forced to be done under a contract. Legal obligations refer to those obligations that are enforceable by the law.
- In an invitation to offer, there is no willingness on the part of the offeror and he is not bound by his offer. Communication of offer is done when knowledge is being passed to the party either in writing, by mouth or by any other mode of communication.
- Acceptance means giving an assent to the offer or proposal. As per section 2 (b) of the Act, "A proposal is said to have been accepted when the person to whom the proposal is made gives his assent of acceptance to that proposal or offer". Acceptance by act means to communicate the assent either by written or oral or by some other act. Acceptance by omission is done by the conduct of the person who is giving his assent or willingness to accept the offer. However, keeping silence does not mean acceptance.
- An agreement that is not enforceable by the law is known as a void agreement. A void agreement has no legal effect. An agreement that is valid in terms of the law at the option of one or more parties is termed as a voidable agreement. A voidable agreement is a valid agreement until it is revoked by the concerned party.
- The doctrine of privity says that a contract cannot create any legal obligations or right in the hands of persons or parties other than the parties involved in it.
- Coercion means committing or threatening to commit an act that is forbidden by the Indian Penal Code 1860.
- Undue influence is when a party is in a position to dominate the other party and takes the advantage of such a position in an unfair manner.
- Fraud includes activities done by a party with the other party in the contract with its connivance or with the help of an agent with an intention to deceive.
- Misrepresentation is an assertion of something by a person that is not true, though the other party believes it to be true.
- A mistake in a contract arises due to the matter of fact and not because of the matter of the law.
- According to the section 2(d) of the Indian Contract Act 1872, "consideration means when at the desire of the promisor, the promis-

see or any other person has done or abstained from doing or does or abstains from doing something, or promises to do or to abstain from doing something such an act or abstinence is known as consideration".

#### KEY WORDS

- Agreement:** As per section 2(e) of the Indian Contract Act, 1872, an agreement means "every promise or a set of promises that forms a consideration for each other".
- Coercion:** Coercion means committing or threatening to commit any act that is forbidden by the Indian Penal Code.
- Undue Influence:** A contract is said to be made under undue influence if a party is in a position to dominate the other party and takes the advantage of its position in an unfair manner.

### 1.8 DESCRIPTIVE QUESTIONS

1. Explain the essentials of a valid contract.
2. Explain the difference between an offer and an invitation to offer.
3. Describe the concept of acceptance and its modes.
4. What do you understand by the doctrine of privity? Explain its exceptions.
5. When is consent said to be free?
6. What are the remedies available in case the consent is not free?

### 1.9 ANSWERS AND HINTS

#### ANSWERS FOR SELF ASSESSMENT QUESTIONS

Topic	Q. No.	Answers
Indian Contract Act 1872: Meaning and Evolution	1.	d. All of the above
	2.	c. Acceptance is made to the offer and the terms and conditions are accepted by both the parties
	3.	True
	4.	True
	5.	Acceptance by act

Topic	Q. No.	Answers
Standard Forms of Contract	6.	Adhesion or True boiler plate contract
	7.	True
	8.	Agreement
Privity of Contract	9.	b. Voidable contract
	10.	c. International contracts
Consent and Free Consent	11.	Equitable remedies
	12.	a. Contractual remedy
Consideration	13.	d. It must be paid by the promisor to the promisee only and not anyone else.
	14.	Promissory estoppel

#### HINTS FOR DESCRIPTIVE QUESTIONS

1. The essentials of the valid contract are the capacity of the parties, acceptance and offer, consent, consideration and not declared to be void. Refer to Section 1.2 **Indian Contract Act 1872: Meaning and Evolution**.
2. An invitation to offer is the preceding step to the offer. Refer to Section 1.2 **Indian Contract Act 1872: Meaning and Evolution**.
3. Acceptance means giving an assent to the offer or proposal. Refer to Section 1.2 **Indian Contract Act 1872: Meaning and Evolution**.
4. The doctrine of privity says that a contract cannot create any legal obligations or right in the hands of persons or parties other than the parties to it. Refer to Section 1.4 **Privity of Contract**.
5. The consent of the parties is said to be free when they are of the same mind on all the material terms of the contract. Refer to Section 1.5 **Consent and Free Consent**.
6. The types of remedies available are contractual remedies, statutory remedies and equitable remedies. Refer to Section 1.5 **Consent and Free Consent**.

#### 1.10 SUGGESTED READING FOR REFERENCE

##### SUGGESTED READINGS

- Clarkson, K., Miller, R., Jentz, G., & Cross, F. (2014). *Business Law: Text and Cases* (11th ed.).
- Keenan, D., & Riches, S. (2007). *Business law*. Harlow: Pearson Longman.

##### E-REFERENCES

- Businesslaw.calbar.ca.gov,. (2014). *Business Law*. Retrieved 8 November 2014, from <http://businesslaw.calbar.ca.gov/>
- Encyclopedia Britannica,. (2014). *business law*. Retrieved 8 November 2014, from <http://www.britannica.com/EBchecked/topic/86266/business-law>

# 2

## C H A P T E R

### THE INDIAN CONTRACT ACT, 1872-PART II

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## INTRODUCTORY CASELET

### BREACH OF CONTRACT AND DAMAGES COMPENSATION

ABC enters into an agreement with the XYZ to perform an event. But, unfortunately at the performance of the event, ABC refuses to perform the event. Due to this, XYZ has to pay heavy damages for the breach of the contract by ABC. Thus, XYZ applies for the compensation, both special and the general. The special compensation is expressly written in the contract itself and the general compensation is sought during the enforcement of the contract in the court of law by XYZ.

As per the Indian contract Act, *damages are monetary compensation allowed for loss suffered by the aggrieved party due to the breach of contract*. Damages are of five kinds:

- Ordinary or General or Compensatory Damages:** Damages arising naturally or are incidental from the breach of the contract.
- Special Damages:** Damages contemplated by the parties at the time of contract.
- Exemplary, Punitive or Vindictive damages:** Damages that are in the nature of punishment to the party who causes the breach of the contract.
- Nominal Damages:** Awarded only for the namesake and are not substantial in nature.
- Liquidated Damages:** Means a sum fixed up in advance, which is a fair and genuine pre-estimate of the probable loss that is likely to result from the breach.

Thus, as per the Act, XYZ can claim for ordinary and special compensation.

2.6.4	Types of Damages and the Claims Self Assessment Questions Activity
2.7	Indemnity and Guarantee Definition and Meaning of Contract of Guarantee and Contract of Indemnity Parties to Contract of Indemnity and Guarantee Difference between Contract of Indemnity and Contract of Guarantee Kinds of Guarantee Rights and Obligations of the Creditor Rights of Surety against Principle Debtor and Creditor Discharge of Surety Rights of the Indemnified Rights of the Indemnifier Commencement of Indemnifier's Liability Self Assessment Questions Activity
2.8	Bailment, Pledge and Finder of Goods Nature and Essential Features of Bailment and Pledge Kinds of Bailment Bailment for Reward and Gratuitous Bailment Duties and Rights of a Bailor Duties and Rights of a Bailee Termination of Bailment Pledge as a Special Kind of Bailment Rights and Duties of Pledgee (Pawnee) and Pledgor (Pawnor) Finder of Lost Goods Self Assessment Questions Activity
2.9	Summary
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2.11	Answers and Hints
2.12	Suggested Reading for Reference

### LEARNING OBJECTIVES

After studying the chapter, you will be able to:

- Explain the concept of capacity to contract
- Define a quasi contract
- Discuss the performance of the contract
- Explain the discharge of the contract
- Discuss the breach of the contract
- Explain indemnity and guarantee
- Explain the concepts of bailment, pledge and finder of goods

### 2.1 INTRODUCTION

A law of contract acts as a foundation based on which rules and regulations in many areas such as corporation, agency, employment, partnership and individuals are formed. A contract is referred to as a rule of society. After a contract is made, it is binding upon the parties as any statute or any other law. Most individuals enter into many contracts everyday. For example appointment with a doctor, purchase of raw materials, and a ride on a cab involve a contractual relationship.

According to Section 10 of the Contract Act, all agreements are contracts if they are made:

- By competent parties;
- With their free consent;
- For a lawful consideration and object; and
- Are not expressly declared to be void.

The above are the four essential elements of a contract.

A contract is a legally enforceable through mutual assent or agreement. A mutual assent may be lacking in case of mistake, fraud, innocent misrepresentation, undue influence and coercion. A contract is legally enforceable when the level of mental ability is sufficient to reach an agreement. A minor, under the age of 18, lacks capacity to make a contract. A breach of contract occurs if any party refuses or fails to perform his part of the contract or makes it impossible to perform his obligation under the contract. The competency to contract is an important factor that decides the validity of the contract. The parties to the contract must be capable to understand the contract and their obligations to the contract. Thus, only then, they can fulfil promises made by them in the contract.

This chapter is designed to frame the understanding about the different factors that define the responsibilities of the parties to the contract and their duties and rights against the other parties to the contract. In case of breach of contract, various remedial measures has been granted by the Act. In this chapter, various special damages are also discussed that are included in the contract. Also, topics relating to the bailment and pledge are discussed along with the duties and the rights of the parties related to these types of contracts. These are special types of contracts that are discussed in detail.

### 2.2 CAPACITY TO CONTRACT

One of the major issues that arise in the contract is the capacity to contract. Who is said to be competent to enter into contract? The answer to the question is expressly provided by the Act.

According to Section 11 of the Contract Act, "every person is competent to contract, who:

- Is of the age of majority, according to the law to which he is subject,
- Is of sound mind, and
- Is not disqualified from contracting by any law to which he is subject.

#### 2.2.1 MINOR, LUNATIC AND ALIEN ENEMY

##### MINOR

As per the Indian Majority Act, 1875, every resident of India attains majority at the age of 18 years. However, when a guardian is appointed for a minor and the court takes charge of the property before the age of 18 years, he or she would attain the majority at the age of 21 years.

The law regarding minor's agreements may be summed up as under:

- An agreement with a minor is void as the law cannot impose any legal obligation on the minor.
- A minor can be a beneficiary though he cannot be bound by any legal liability. A minor cannot become a partner in the partnership firm but he can be admitted to the benefits of the partnership.
- Any money due to a minor cannot be recovered. Even any false statement by him, he cannot be held liable.
- Any minor entering into an agreement and subsequently on attaining the age of majority cannot validate or ratify the agreement.

An agreement entered with the minor is void *ab initio* and cannot be validated after that minor becomes major.

- Though an agreement with the minor is void an agreement entered with the guardians of the minor for the benefit of the minor, is valid. But, the guardian must be competent to contract along with fulfilling all the required conditions associated with it and the contract should be entered only with intention of benefiting the minor.

#### LUNATIC (INSANITY)

The next important issue that arises in the capacity to contract is the person entering into a contract should be of sound mind. A person with an unsound mind is called lunatic or insane. A person is said to be of sound mind if at the time of making the agreement he or she is capable of understanding the terms and conditions of the contract and form a rational judgement of entering into the contract. If a person is generally of sound mind, but at the time of making the contract, he is of unsound mind, he is not eligible for entering into the contract. For example, a person entering into the contract under the influence of alcohol. Thus, the periodicity of lucidity is important. When the person is lunatic at the time of entering into the agreement, he cannot make a valid contract.

As per the Section 12 of the Contract Act, "A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effects upon his interests."

A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind. A person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind."

#### DISQUALIFIED PERSONS/ ALIEN ENEMY

An alien enemy, during the time of war, cannot enter into an agreement with any person in the country unless he or she is permitted by the government to do so.

Secondly, some of the body corporates or persons like sovereign states, ambassadors and other diplomats are allowed to enter into the contract and they cannot be prosecuted against any court in India.

The third type of incompetent persons is those who are 'disqualified from contracting by any law to which they are subject'. They are as follows:

- **Alien Enemies:** An alien (citizen of a foreign state) is a person who is not the citizen of India. When there is a war between India and another country, that country's citizen becomes an alien enemy and cannot enter into the contract.
- **Foreign Sovereigns and Ambassadors:** They can enter into contracts and enforce those contracts in the court but they cannot be sued in the court without the sanction of the Central Government unless they choose to submit themselves to the jurisdiction of the court.
- **Convict:** A convict is one who is found guilty by a court and is undergoing sentence of imprisonment. During the period of his imprisonment, he is incompetent to contract and sues on the contract made before conviction.
- **Company or Corporation:** A company/corporation is an artificial person created by the law. It cannot enter into the contract outside power, conferred upon it by its Memorandum of Association (object clause) or by the provisions of its Special Act.
- **Insolvents:** When a person's debts exceed his assets, he is adjudged insolvent and his property stands vested in the Official Receiver or Official Assignee appointed by the court. Such a person cannot enter into contracts relating to his property.

#### 2.2.2 UNLAWFUL AND ILLEGAL AGREEMENTS

Unlawful agreements are those agreements that cannot be enforced through a contract due to unlawful object or unlawful consideration. Unlawful object is said when the objective of the agreement is forbidden by the law. If an agreement is made to effect injury to any person, then the object of the agreement is unlawful. For example, if A and B entered into an agreement to kill B's wife, the agreement entered between them is unlawful as it involves an illegal and unlawful object.

An agreement in which the consideration is unlawful, the agreement is considered as unlawful agreement. Any agreement that is against the law of the country and is not in the interest of the public welfare is said to be illegal. The agreement to theft is an example of illegal agreement. An agreement entered to supply the guns and bombs is also an illegal agreement.

The agreements that are void *ab initio* come under the agreements that are void under the statute. An agreement made with a minor, an agreement made under mutual mistake of fact or agreement made without consideration are the examples of agreement void under the statute.



### SELF ASSESSMENT QUESTIONS

1. An agreement with the minor is void. (True/False)

2. A person with an unsound mind is called \_\_\_\_\_

3. An \_\_\_\_\_ is a person who is not the citizen of India.

4. An agreement is said to be void if party:

- a. Is minor.
- b. Is of unsound mind.
- c. Is not competent to contract by law.
- d. All of the above.



### ACTIVITY

Find out the essentials of a contract. Also, provide the basis on which capacity of the party to the contract is defined.

## 2.3 QUASI CONTRACTS

There are certain social relationships that give rise to various obligations to be performed by individuals which bring about existence of a contract. Such obligations so arisen are called quasi contracts as they create some obligations resembling those created as per normal contracts. It is an obligation imposed by law upon a person for the benefit of another even in the absence of an express contract. It is based on the principle of equity, (i.e., fairness, moral justice or ethics) which means no person shall be allowed to unjustly enrich himself at the expense of another. Such obligations are called quasi-contracts or implied contracts because the outcomes of such obligations resemble those created by a contract.

Quasi-contracts are contracts that are implied in law. Such implied contracts are not contracts in a pure sense. However, quasi contracts are remedies devised by a court. A court applies when the legal requirements of the Contract Act, 1872 do not exist but it would be grossly unjust to permit one party to benefit at the cost of the other.

Salient features of a quasi contract are as follows:

- ◻ Quasi contracts are not created through an agreement but these are imposed by the law.
- ◻ These contracts do not create any obligation against the whole world, but they provide obligation to a particular person or group of persons only, in whose regards the contractual obligation arises.

There are various types of quasi contracts that can be explained as below:

- ◻ **Claim for necessities supplied by a person incompetent to contracts:** When a person who is providing the necessities of life to another person who is incapable of entering into a contract, the person providing the necessities is entitled for the claim of that person's property.
- ◻ **Reimbursement of money paid which was done by another:** A person who has given some amount to another person then he is fully entitled to claim that reimbursement from that person provided that the payment has to be made for the protection of his own interest.
- ◻ **Obligations of persons enjoying benefit of non-gratuitous acts:** When a person does anything that is lawful non-gratuitous and the person for whom it was done has enjoyed some benefits against it, then the person is bound to pay the compensation to that person for the things which he has delivered.
- ◻ **Finder of lost goods:** When any person has found something that is related to any other person then it is the legal obligation of the person to:
  - ◆ Take care of the property as if it was his property.
  - ◆ Take an appropriate action for its care.
  - ◆ Restore the good to its original owner if the original owner is found.
- ◻ **Return of goods obtained through mistake or coercion:** It is the legal liability of the person to return the thing which has been delivered to him by mistake or under coercion. Every kind of payment in such cases must be returned back.



### EXHIBIT

#### Distinction between a Contract and Quasi-Contract

The differences between contract and quasi-contract are given in the following table:

Points of Distinction	Contract	Quasi-Contract
Purpose	A contract results from the will of the parties expressed with a view to create an obligation.	A quasi-contract is an obligation resembling that created by a contract.
Agreement	A contract is an agreement.	There is no agreement at all.
Essential Elements	The contract has certain essential elements.	Essentials for the formation of a contract are absent.

Points of Distinction	Contract	Quasi-Contract
Nature	It is a full-fledged contract and is binding.	A quasi-contract resembles a contract. It is not a full-fledged contract. It is an implied contract, but its results resemble those created by a contract.

#### SELF ASSESSMENT QUESTIONS

5. Quasi contracts are not created through an agreement but these are imposed by the law. (True/False)
6. Quasi contracts are not created through an \_\_\_\_\_.

#### ACTIVITY

From the Internet, learn about quasi contracts and find out various examples in support of quasi Contracts.

## 2.4 PERFORMANCE OF CONTRACT

The performance of contract implies completion of the contract as per the terms and conditions created by the promisor and the promisee. When both the parties perform the contract properly, the contract comes to an end. Performance is demanded by the promisee from the promisor.

### 2.4.1 JOINT PERFORMANCE OF CONTRACT

Joint performance of contract is the contract in which more than one person or party has taken the obligation for the performance of the contract. According to Section 42 of the Indian Contract Act, "when two or more persons have made a joint promise, then all such persons during their lives and after their lives their representatives are jointly liable to perform the promise."

For example, when 'A' 'B' 'C' jointly made a promise to 'Z' to pay a sum of money than they are jointly liable to pay the amount to Z. If one of the joint promisors has died, his legal heirs are equally responsible for the promise made by the deceased promisor.

### 2.4.2 RULES REGARDING TIME, PLACE AND MANNER OF PERFORMANCE OF CONTRACT

#### Performance according to the time:

- When there is no time specified in the contract in which the work can be performed, the promise must be done within a reasonable time. The reasonable time would be dependent on the circumstances of the promise. (Section 46)
- When a promise is to be performed on a specific date but the time for the completion is not mentioned, the promise must be completed on that date but only in business hours. The promisee after the business hours may refuse to accept the delivery. (Section 47)

#### Performance according to the place:

- When a promise is to be performed on a certain day, and the promisee has to apply to the promisor to apply for the performance of the contract at a proper place and within usual business hours. (Section 48)
- When a promise is to be performed without application by the promisee and no place is fixed for performance, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for such performance of the promise (Section 49).

It is the duty of the promisor to ask about the place at which the money has to be paid or the place at which the delivery of the goods have to be made. If no place is defined in the agreement then it is the duty of the promisor to do so. But, generally the promise is executed at the usual place of business.

But, if the promisor has not asked for the place of performance of the promise, then the promisee must accept it at the normal place of business and at the normal business hours.

### 2.4.3 APPROPRIATION OF PAYMENTS (CLAYTON'S RULE OF APPROPRIATION)

When a debtor owes distinct debts to a creditor and make a partial payment, the question of appropriation of payments arises. In this case, the Latin maxim of *quicquid sovit, sovit sectionundum modum solventis* applies. This means that whatever has to be paid must be paid according to the intention of the payer.

In furtherance thereof, the Contract Act has prescribed for certain rules of appropriation, which are known as Clayton's Rule of Appropriation.

## NOTES

If the performance consists of payment of money and there are several debts to be paid, the following three rules shall apply:

- Application of payment where debt to be discharged is indicated by the debtor, then the creditor shall upon the receipt of repayment in such case shall be only appropriated in the manner so indicated by the debtor;
- Where the debtor has not indicated the manner in which the debt is to be discharged then the creditor shall apply the debt at his discretion to any lawfully debt actually due and payable to him from the debtor whether its recovery is time-barred or not;
- When neither the debtor nor the creditor makes any appropriation, the payment shall be applied in discharge of the debts in order of time (chronologically), whether they are or are not barred by the law of limitation. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.



### SELF ASSESSMENT QUESTIONS

7. When a debtor owes distinct debts to a creditor and makes a partial payment, in this case question of \_\_\_\_\_ arises.



### ACTIVITY

Meet any lawyer and learn about the performance of contract.

## 2.5 DISCHARGE OF A CONTRACT

Discharge of a contract means discontinuation of the contractual relations between the parties. When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated.

A contract can be discharged in various ways described as follows:

- Discharge by Performance:** This type of discharge is made when the parties to the contract have fulfilled their obligations in the contract. In this type, actual performance and attempted performance has been done by the respective party. In attempted performance, the promisor offer to fulfil his part but the promisee rejects the offer to perform.
- Discharge by Mutual Agreement:** When discharge is made by recession, novation, alteration and remission, it is called discharge by mutual agreement.
- Discharge by Impossibility of Performance:** A condition of impossibility may arise during the performance of the contract. In

this case, the contract is discharged by both the parties. The cases where this can be done are:

- ◆ Change in
- ◆ Destruction of the subject matter
- ◆ Personal incapacity of the promisor

War is declared between two countries in which the parties exist.

- Discharge by Lapse of Time:** Sometimes the promise is not completed within the appropriate time frame as written in the agreement. In such case, it is on the promisee either to reject the legal obligation or to accept it. In case it is rejected, it is called as discharge by lapse of time.
- Discharge by Operation of Law:** When the promisor gets insolvent, insane or dies then the contract is said to be discharge by law.
- Discharge by Breach of Contract:** When at the part of one party a default has been done then it is said to be the breach of contract. In this case, it is said that the contract is discharged by breach of contract. The breach of contract may be anticipated breach or actual breach.

### 2.5.1 DISCHARGE BY AGREEMENT

When discharge is made by recession, novation, alteration and remission, then it is called discharge by mutual agreement.

### 2.5.2 NOVATION AND ASSIGNMENT

Novation means substitution. When an old contract is replaced by another contract then it is said to be novation. In such case, the old contract will cease to exist and a new contract is binding between the parties.

Assignment means any specific work under the contract has been granted to a person to be performed under a contract.

### 2.5.3 REMISSION OF PERFORMANCE

Remission of the contract means dispensing with the Contract. Section 63 of the Contract Act deals with remission. It is made by the promisee. It means that the promisee can waive or dispense of the legal obligation of the promisor as per his convenience wholly or partially. It may also extend the time limit for the performance of the contract.

### 2.5.4 WAIVER

Dispensing or remitting the performance may take the form of Waiver. Waiver amounts to release or surrender of contractual right. Waiver

is as much as similar to the Remission. It also includes winding up of the performance liability of the promisor as per the convenience of the promisee.

#### 2.5.5 DISCHARGE BY FRUSTRATION

When the object of a contract can no longer be performed due to change in circumstances that makes performance impossible such as:

- Change in law
- Destruction of the subject matter
- Personal incapacity of the promisor
- War is declared between the two countries in which the parties exist

Therefore, the contract is said to be frustrated and the parties to the contract are discharged. The term frustration is used in English Law for the impossibility of performance.



#### SELF ASSESSMENT QUESTIONS

8. When discharge is made by recession, novation, alteration and remission, it is called \_\_\_\_\_
9. Waiver is as much as similar to the remission. (True/False)



#### ACTIVITY

What are the different ways in which the contracts can be discharged? Find out any recent case where a contract is discharged by any method other than performance.

### 2.6 BREACH OF CONTRACT

Breach of contract means refusal of performance under a contract by a party to the contract. When one party refuses to perform, the other party is discharged from its obligations under the contract. The breach may be anticipatory or actual. In case of breach, the aggrieved party (i.e., the party not at fault) is relieved from performing his obligation and gets a right to proceed against the party at fault. A breach of contract may either be anticipatory or actual.

#### 2.6.1 ANTICIPATORY BREACH

When the promisor refuses or rejects to perform his legal obligations of the contract before the specified time of the performance, then it is

called anticipatory breach. It can be inferred from an act of the party that can render the performance under the contract impossible.

#### 2.6.2 ACTUAL BREACH

When one party to the contract refuses to perform his duty or promise specified in the contract on the due date of the contract, then it is known as actual breach. In the case of actual breach the party with whom the breach has been done can obtain a right of action against the party who has done the breach of contract.

#### 2.6.3 DAMAGES AND SPECIFIC RELIEF

In case, when the breach of contract has been done, the promisee that has been breached is eligible to claim the compensation. The compensation can be primarily of two types:

- Compensation for the damages that arises due to the normal breach of the contract.
- Specific damages that are already decided while entering the agreement between the parties. These are predefined damages that are payable by the promisor. However, these damages can only be claimed by providing prior notice.

Contract law has prescribed certain rules governing the measure of damages:

- The party in breach must make compensations in respect of the direct consequences flowing from the breach
- The aggrieved party is not entitled to any compensation for remote or indirect loss or damage sustained by the reason of the breach.
- The means that existed for mitigating the loss shall be taken into account while assessing the damage

#### 2.6.4 TYPES OF DAMAGES AND THE CLAIMS

When assessing damage, the rule used can be found in the Latin maxim "Non Remote Causa Sed Proxima Spectatur" which means that in case of damages only the proximate cause shall be taken into consideration and not the remote cause.

The different types of damages with claims are as follows:

- Liability for Special Damages:** When it was predecided by the parties that at the time of breach of contract special damages along with the normal damages has to be paid by the party at default then the special damages are payable.

- Liability for Exemplary Damages:** Exemplary damages are awarded to punish the wrong party with an intention to set an example. These types of damages are generally awarded in cases like the breach of promise to marry or when the cheque is dishonoured by the issuing party.
- Liability to Pay Nominal Damages:** These types of damages are payable when no damage has been caused due to the breach of contract.
- Damage for Deterioration Caused by Delay:** It arises when there is also a loss of opportunity. In this case, compensation can be claimed without giving prior notices. It is caused to the goods that are delivered late through carrier. In this case, loss for reputation can also be considered.

#### SELF ASSESSMENT QUESTIONS

10. \_\_\_\_\_ types of damages are payable when no damage has been caused due to the breach of contract.

#### ACTIVITY

Identify a contract which includes a specified date of performance on part of one of the party to the contract. Describe in brief the anticipatory breach of contract and the actual breach of contract in the context of this contract.

## 2.7 INDEMNITY AND GUARANTEE

As per the Contract Act, "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity". For example: A and B go to a shop. B says to the shopkeeper "Let A have the goods, I will promise that you are paid if you sustain any loss due to the transaction". The person who promises to make good the loss is called the 'Indemnifier' (promisor), and the person whose loss is to be made good is called the 'Indemnified' or Indemnity.

"A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default". For example: A and B go to a shop. A says to the shopkeeper, C, "Let B have the goods, and if he does not pay, I will". This is called a contract of guarantee.

### 2.7.1 DEFINITION AND MEANING OF CONTRACT OF GUARANTEE AND CONTRACT OF INDEMNITY

Section 124 of the Act applies to the contract of indemnity. The section says that a contract of indemnity is a type of contract in which a party promises the other party to save the other party from the breach caused by the promisor himself or from the conduct of any other person. This is a type of typical contingent contract.

There are two parties in this contract. The party that provides the promise to safeguard the other party is known as the indemnifier. The party to whom the security is given is known as indemnified.

#### CONTRACT OF GUARANTEE

It is a contract in which one party promises to perform the promise or to discharge the liability incurred by the third party in case of his default. In this case there are three parties. The person who gives the guarantee is known as surety. The person in default of whose the guarantee is given is known as the principle debtor. The person to whom the guarantee is given is known as creditor.

#### CONTRACT OF INDEMNITY

It is a contract wherein one party (promisor) assures and promises to indemnify or make good the losses caused to the promisor due to the act or omission or conduct of the promisor or any third party acting on behalf of the promisor. The contract of indemnity arises either by the operation of law or by express promises.

### 2.7.2 PARTIES TO CONTRACT OF INDEMNITY AND GUARANTEE

There are basically two parties in the contract of indemnity. The person who promises is referred to as the indemnifier and the other party is said to be indemnified.

In case of contract of guarantee, there are three parties. The person who provides the guarantee is known as surety. The person for whom the guarantee is given is known as the principal debtor. The third party is known as the creditor.

### 2.7.3 DIFFERENCE BETWEEN CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE

The main difference and between the contract of indemnity and the contract of guarantee are as follows:

- Number of Parties:** In the case of a contract, there are only two parties. However, in the case of contract of guarantee, there are three parties. The surety in this case is an additional party as compared to the contract of indemnity.

- Extent of Liability:** In the contract of indemnity, the liability of the promisor or the indemnifier is unlimited. However, in the case of guarantee, the liability of the surety arises only when the principal debtor is at default.
- Time of Liability:** The liability of the indemnifier arises only at the time of default. However, in the case of guarantee the liability is already in existence but is applicable only when the principal debtor is at default.
- Time to Act:** The indemnifier need not act at the request of the indemnifier. But, in the case of guarantee, the surety must act at the request of the principal debtor.

Table 2.1 distinguishes between the contract of indemnity and the contract of guarantee:

TABLE 2.1: DIFFERENCES BETWEEN THE CONTRACT OF INDEMNITY AND THE CONTRACT OF GUARANTEE	
Contract of Indemnity	Contract of Guarantee
A contract of indemnity is a contract by which one party promises to save the other from the loss caused to him by the conduct of the promisor or any other person.	A contract of guarantee is a contract to perform the promise or discharge the liability of the third person in case of his default.
The liability of promisor is primary, there is no secondary liability.	The liability of principal debtor is primary and the liability of the surety is secondary.
The contract is express and specific.	The contract between principal debtor and debtor and creditor is specific and the contract between principal debtor and surety is implied.
There are two parties involved and only one agreement.	There are three parties involved and three agreements.
The promisor cannot file suit against the third person until and unless the promisor subrogates his rights for filing of suit.	The surety does not require any subrogation for filing the suit.

#### 2.7.4 KINDS OF GUARANTEE

The different kinds of guarantee are discussed as follows:

- Oral or Written Guarantee:** A contract of guarantee can be verbal or in a written form. Although a creditor always prefers a written contract of guarantee in order to avoid any dispute in the future. In case of an oral agreement, the existence of the agreement itself is very difficult to prove and thereby enforce.

- Specific and Continuing Guarantee:** The scope of a contract of guarantee can be specific or continuing. A specific guarantee is intended to be applicable to a particular debt and thus it ceases with the repayment of the debt. For example, A guarantees the repayment of a loan of ₹10,000 to B by C (banker). The guarantee in this case is for a specific purpose or debt.

On the other hand, a guarantee that extends to a series of transactions is called a continuing guarantee.

For example, A guarantees payment to B, a tea-dealer, to the amount of ₹10,000 for any tea he may supply to C. B supplies C with tea of the value above ₹10,000 and C pays B for it. Afterwards B supplies C with tea to the value of ₹15,000 and C fails to pay. The guarantee given by A was a continuing guarantee and he is accordingly liable to B to the extent of ₹10,000.

A guarantee regarding the conduct of another person is a continuing guarantee. Unlike a specific guarantee which is irrevocable, a continuing guarantee can be revoked regarding further transactions. However, continuing guarantee cannot be retrospectively revoked regarding transactions that have already taken place. For example, X guarantees the repayment of advances made to A within 6 months subject to a maximum of ₹20,000. If ₹10,000 has been advanced by the end of 2 months, guarantee is irrevocable as far as this advance of ₹10,000 is concerned.

#### 2.7.5 RIGHTS AND OBLIGATIONS OF THE CREDITOR

The rights of creditors are as follows:

- The creditor is entitled to demand payment from the surety as soon as the principal debtor refuses to pay or makes default in payment. The liability of the surety cannot be postponed till all other remedies against the principal debtor have been exhausted. In other words, the creditor cannot be asked to exhaust all other remedies against principal debtor before proceeding against surety. The creditor also has a right of general lien on the securities of the surety in his possession. This right, however, arises only when the principal debtor has made default and not before that.
- Where surety is insolvent, the creditor is entitled to proceed in the surety's insolvency and claim the pro rata dividend.

The obligations of a creditor in a contract of guarantee are:

- Not to change any terms of the original contract:** The creditor should not change any terms of the original contract without seeking the consent of the surety. According to Section 133 of Companies Act, "any variance made, without the surety's consent, in the terms of the contract between the principal debtor and the credi-

tor, discharges the surety as to the transactions subsequent to the variance".

For example, a banker contracts to lend X ₹5,000 on March 4. A guarantees the repayment of the amount. The banker pays X ₹5,000 on January 1. A in this case is discharged from his liability as the contract has been varied as much as the banker might sue X before March 4, but it cannot sue A as the guarantee is from March 4.

- **Not to release or discharge the principal debtor:** The creditor is under an obligation not to release or discharge the principal debtor. According to Section 134 of the Companies Act, "The surety is discharged by a contract between the creditor and principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor".

For example, A gives a guarantee to banker C for the repayment of the debt granted to B. B later contracts with his creditors (including C, the banker) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C and A is discharged from his suretyship.

- **Not to compound, or give time to, or agree not to sue the principal debtor:** According to Section 135 of Companies Act, "A contract between the creditor and the principal debtor, by which the creditor makes a composition with or promises to give time to, or not to use the principal debtor, discharges the surety, unless the surety assents to such contract". If the time for repayment is extended, the debtor may die or become insane or insolvent or his financial position may become weaker in the meanwhile, with one effect that the surety's remedy to recover the money in case the principal debtor defaults, may be impaired. However, there are certain exceptions to this obligation. These are:

- ◆ Section 136 states that if the creditor makes an agreement with a third party, but not with the principal debtor, to give extension of time to the principal debtor, surety is not discharged even if his consent has not been sought.

For example, C the holder of an overdue bill of exchange, drawn by A as surety for B and accepted by B, contracts with M to give time to B. A is not discharged.

- ◆ According to Section 137 of Companies Act, mere forbearance on the part of creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of a provision to the contrary, discharge the surety (Section 137).

For example, B owes C (a banker) a debt guaranteed by A and the debt becomes payable, but C does not sue B for a year after debt becomes payable. A is not discharged from his suretyship.

- ◆ If the creditor releases one of the co-sureties, the other co-surety (or co-sureties) thereby is not discharged. The co-surety released by the creditor is also not released from his liability to the other sureties (Sec.138).

- **Not to do any act inconsistent with the rights of the surety. (Section 139):** Where C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which give power to C to sell the furniture and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but owing to his misconduct and wilful negligence, only a small price is realised, then A is discharged from the liability on the note.

## 2.7.6 RIGHTS OF SURETY AGAINST PRINCIPAL DEBTOR AND CREDITOR

Rights of a surety is classified under three heads:

- **Rights Against the Creditor:** In case of fidelity guarantee, the surety can direct creditor to dismiss the employee whose honesty he has guaranteed, in the event of proved dishonesty of the employee. The creditor's failure to do so will exonerate the surety from his liability.

- **Rights Against the Principal Debtor:** It includes the following:

- ◆ **Right of Subrogation:** Section 140 lays down that where a surety has paid the guaranteed debt on its becoming due or has performed the guaranteed duty on the default of the principal debtor, he is invested with all the rights which the creditor has against the debtor. In other words, the surety is subrogated to all the rights which the creditor had against the principal debtor. So, if the creditor loses, or without the consent of the surety parts with any securities (whether known to the surety or not) the surety is discharged to the extent of the value of such securities (Section 141). Further, the creditor must hand over to the surety, the securities in the same condition as they formerly stood in his hands.

- ◆ **Right to be Indemnified:** The surety has a right to recover from the principal debtor the amounts which he has rightfully paid under the contract of guarantee.

- **Rights Against Co-Sureties:** Where a debt has been guaranteed by more than one person, they are called co-sureties. S.146 provides for a right of contribution between them. When a surety has

paid more than his share or a decree has been passed against him for more than his share, he has a right of contribution from the other sureties who are equally bound to pay with him. For example, A, B and C are sureties to D for the sum of ₹3,000 lent to E. E defaults in making payment. A, B and C are liable, as between themselves to pay ₹1,000 each and if any one of them has to pay more than his share, i.e., ₹1,000 he can claim contribution from the others, for the amount paid in excess of ₹1,000. If one of the sureties becomes insolvent, the solvent co-sureties shall have to contribute the whole amount equally.

Where, the co-sureties have guaranteed different sums, they are bound under Section 147 to contribute equally, subject to the limit fixed by their guarantee and not proportionately to the liability undertaken. For example, A, B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of ₹10,000, B in that of ₹20,000, C in that of ₹40,000, conditioned for D's duly accounting to E. E makes default to the extent of ₹30,000. A, B and C are each liable to pay ₹10,000.

#### LIABILITY OF SURETY

According to section 128 of the Companies Act, "unless the contract provides otherwise, the liability of the surety is co-extensive with that of the principal debtor." In other words, the surety is liable for all those amounts the principal debtor is liable for. It is also called secondary or contingent, as his liability arises only on default by the principal debtor. But as soon as the principal debtor defaults, the liability of the surety begins and runs co-extensive with the liability of the principal debtor, in the sense that the surety will be liable for all those sums for which the principal debtor is liable. The creditor may file a suit against the surety without suing the principal debtor. Further, where the creditor holds securities from the principal debtor for his debt, the creditor need not first exhaust his remedies against the securities before suing the surety, unless the contract specifically so provides. The creditor is even not bound to give notice of the default to the surety, unless it is expressly provided for.

For example, A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonored by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

#### 2.7.7 DISCHARGE OF SURETY

The liability of surety can be discharged under any of the conditions shown in Table 2.2:

**TABLE 2.2: CONDITIONS UNDER WHICH THE LIABILITY OF SURETY CAN BE DISCHARGED**

Condition	Explanation
Notice of revocation (Section 130)	A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor. For example, A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of ₹5,000. B discounts bill for C to the extent of ₹2,000. Afterwards, at the end of the three months, A revokes the guarantee. The revocation discharges A from liability to B for any subsequent discount. But A is liable to B for ₹2,000 on default of C.
Death of surety (Section 131)	The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.
Variance in terms of the contract (Section 133)	Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance. For example, A becomes surety to C for B's conduct as a manager in C's bank. Afterwards B and C contract, without A's consent, that B's salary shall be raised and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent and is not liable to make good this loss.
Release or discharge of principal debtor (Section 134)	The surety is discharged by any contract between the creditor and principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. For example, A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here A is released from his debt by the contract with C and A is discharged from his suretyship.
Compounding with, or giving time to, or agreeing not to sue, principal debtor (Section 135)	A contract between the creditor and the principal debtor by which the creditor makes a composition with, or promises to give time to, or not to sue the principal debtor, discharges the surety. The surety shall, however, be not discharged if (a) he assents to such contract, (b) the contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor. For example, C, the holder of an overdue bill of exchange drawn by A as surety for B and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's act or omission impairing surety's eventual remedy (Section 139)

If the creditor does any act which is inconsistent with the right of the surety, or omits to do any act which his duty to the surety requires him to do and the eventual remedy of surety himself against the principal debtor is thereby impaired, the surety is discharged. For example, B contracts to build a ship for C for a given sum to be paid by

instalments as the work reaches certain stages. A becomes surety of B's due performance of the contract. C, without the knowledge of A, repays to B the last two instalments. A is discharged by this prepayment.

Loss of security (Section 141)

If the creditor loses or parts with any security given to him by the principal debtor at the time the contract of guarantee was made, the surety is discharged to the extent of the value of the security, unless the surety consented to the release of such security. For example, C advances to B, his tenant ₹2,000 on the guarantee of A. C has also a further security for the ₹2,000 by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent and C sues A on his guarantee. A is discharged from liability to the amount of value of the furniture.

#### 2.7.8 RIGHTS OF THE INDEMNIFIED

According to Sections 124, "a contract of indemnity is a contract whereby one party promises to save the other from loss caused to him (the promisee) by the conduct of the promisor himself or by the conduct of any other person." An example of contract of indemnity is insurance contract.

A contract of indemnity may arise either by (i) an express promise or (ii) operation of law, e.g., the duty of a principal to indemnify an agent from consequences of all lawful acts done by him as an agent. The contract of indemnity, like any other contract, must have all the essentials of a valid contract. These are two parties in a contraction of identity indemnifier and indemnified. The indemnifier promises to make good the loss of the indemnified (i.e., the promisee). For example, A contracts to indemnify B against the consequences of any proceeding which C may take against B in respect of a certain sum of ₹200. This is a contract of indemnity.

An indemnified person is entitled to recover following from the promisor:

- All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
- All costs of suit which he may have to pay to such third party, provided in bringing or defending the suit (a) he acted under the authority of the indemnifier or (b) if he did not act in contravention of orders of the indemnifier and in such a way as a prudent man would act in his own case.
- All sums which may have been paid under the terms of any compromise of any such suit, if the compromise was not contrary to

the orders of the indemnifier and was one which it would have been prudent for the promisee to make.

#### 2.7.9 RIGHTS OF THE INDEMNIFIER

The Act makes no mention of the rights of the indemnifier. However, his rights, in such cases, are similar to the rights of a surety under Section 141, viz., he becomes entitled to the benefit of all the securities which the creditor has against the principal debtor whether he was aware of them or not.

#### 2.7.10 COMMENCEMENT OF INDEMNIFIER'S LIABILITY

Indemnity requires that the party to be indemnified shall never be called upon to pay. Indemnity is not necessarily given by repayment after payment. The indemnified may compel the indemnifier to place him in a position to meet liability that may be cast upon him without waiting until the promisee (indemnified) has actually discharged it.



#### SELF ASSESSMENT QUESTIONS

11. The person who promises to make good the loss is called the \_\_\_\_\_.



#### ACTIVITY

Explain in brief the rights and duties of surety against the principle debtor and the creditor?

#### 2.8

#### BAILMENT, PLEDGE AND FINDER OF GOODS

Section 148 of the Act covers the term bailment. It states that bailment is the act under which goods are transferred or delivered from one party to another party for some purpose and after that purpose is completed, they are returned back to the party or disposed of as per the directions laid down by the party who delivered the goods. The party that delivers the goods is known as a bailor and the party to whom the goods have been delivered is known as a bailee.

Pledge is one of the varieties of bailment only. In this case, bailment of goods has been made as a security for payment for the debts or the performances of the promise. The person who bails is known as pledger or pawnor and the person who receives the goods is known as the pawnee.

### **2.8.1 NATURE AND ESSENTIAL FEATURES OF BAILMENT AND PLEDGE**

Characteristics of bailment are as follows:

- It is a type of contract only. Sometimes it may be done according to the law or it is sometimes implied by the law.
- It is applicable only on movable goods and not on immovable goods.
- In this case, the possession of the goods changes by physical delivery of goods.
- However, the ownership does not transfer in the case of bailment. The bailee is obliged to return the goods back to the bailor or disposed of as per his directions.
- The bailee cannot deliver other goods in place of those goods. If it is done it will be a breach of contract.

Characteristics of the pledge are as follows:

- There must be a debt which is payable or a promise that has to be performed.
- Goods must be the subject matter for the contract of the pledge.
- The goods must be sent to the pawnee by physical delivery.
- Only possession is transferred in this case.

### **2.8.2 KINDS OF BAILMENT**

Bailments can be classified into the kinds, which are as follows:

- **Deposit:** Delivery of Goods by one person to another for the use of the former i.e. the bailor.
- **Commodatum:** Goods lent to a friend gratis to be used by him.
- **Hire:** Goods lent to the bailee for hire, i.e., in return for the payment of money.
- **Pawn or Pledge:** Deposit of goods with another by the way of security for money borrowed.
- **Delivery:** of goods for being transported, or something to be done about them, by the bailee for reward.

### **2.8.3 BAILMENT FOR REWARD AND GRATUITOUS BAILMENT**

When the bailor in case of a bailment charges something in reward for entering into the contract, then it is known as a bailment for reward.

When the bailor does not charge anything for the contract the bailment is known as the gratuitous bailment.

### **2.8.4 DUTIES AND RIGHTS OF BAILOR**

The duties of a bailor are:

- **To disclose faults in the goods:** Under Section 150, the bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware and which materially interfere with the use of them or expose the bailee to extraordinary risks. If he does not make such disclosure, he is responsible for the damage arising to the bailee directly from such faults. If the goods are bailed for hire or reward, the bailor is responsible for such damage whether he was or was not aware of the existence of such faults in goods bailed. For example, A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.
- **Liability for the breach of warranty as to title:** Under Section 164, the bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them. For example: A gives B's car to C without B's knowledge and permission. B sues C and receives compensation. A, the bailor, is responsible to make good this loss to C, the bailee.
- **To bear expenses in case of gratuitous bailments:** Under Section 158, with respect to bailments under which a bailee is to receive no remuneration, Section 158 provides that in the absence of a contract to the contrary, the bailor must repay to the bailee all necessary expenses incurred by him for the purpose of the bailment. In case of non-gratuitous bailments, the bailor is held responsible to bear only extraordinary expenses. For example, a car is lent for a journey. The ordinary expenses like petrol, etc., shall be borne by the bailee but in case the car goes out of order, the money spent in its repair will be regarded as an extraordinary expenditure and borne by the bailor.

There are a number of rights of a bailor. These are:

- The bailor can enforce, by suit, all duties or liabilities of the bailee.
- In case of gratuitous bailment (i.e., bailment without reward), the bailor can demand their return whenever he pleases, even though he lent it for a specified time or purpose. But if, on the faith of such bailment, the borrower has acted in such a manner that the return of the thing before the specified time would cause him (i.e., the bailee) loss exceeding the benefit derived by him from the bailment.

ment, the bailor must indemnify the borrower for the loss if he compels an immediate return.

#### 2.8.5 DUTIES AND RIGHTS OF A BAILEE

Duties of a bailee are as follows:

- To take care of the goods bailed (Section 151):** In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. In case, the bailee has taken the amount of care as described above, he shall not be responsible, in the absence of any special contract, for the loss, destruction or deterioration of the thing bailed.
- Not to make unauthorised use of goods (Section 154):** In case the bailee makes unauthorised use of goods, i.e., uses them in a way not warranted by the terms of bailment, he is liable to make compensation to the bailor for any damages arising to the goods from or during such use of them. For example, A lends a car to B for his own driving only. B allows C, his wife, to drive the car. C drives with care, but the car is damaged in an accident. A is liable to make compensation to B for the damage done to the car.
- Not to mix bailor's goods with his own (Section 155-157):** If the bailee without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the bailee shall be bound to bear the expense of separation or division and any damages arising from the mixture. For example: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own bearing a different mark. A is entitled to have his 100 bales returned and B is bound to bear all expenses incurred in the separation of the bales and any other incidental damage. But in case goods are mixed in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. For example, A bails a barrel of flour worth ₹450 to B. B without A's consent mixes the flour with flour of his own, worth only ₹250 a barrel. B must compensate A for the loss of his flour.
- To return the goods bailed without demand (Section 160):** It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose, for which they were bailed has been accomplished.

If bailee fails to return the goods at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

**To return any accretion to the goods bailed (Section 163):** In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed. For example, A leaves a cow in the custody of B to be taken care of. The cow gives birth to a calf. B is bound to deliver the cow as well as the calf to A.

**Not to question the title of bailor (Section 167):** In cases of conflicting claims as to title to the goods are to be decided by the court and unless the court grants an injunction against the delivery of goods to the bailor, the bailee is under duty to return it to bailor at proper time or within the reasonable time.

The rights of a bailee are as follows:

- The duties of the bailor are, in fact, if looked from the point of view of the bailee, the bailee's rights. Thus, a bailee can sue the bailor for:
  - ♦ Claiming compensation for damages resulting from non-disclosure of faults in the goods
  - ♦ The breach of warranty as to the title and the damage resulting therefrom
  - ♦ Extraordinary expenses

Thus, in the case of wrongful deprivation, the bailee has a right to use the same remedies which the owner might have used in the like case.

**Another right of bailee is the right of lien:** Lien is a right in one person to retain which is in his possession, belonging to another, until some debt or claim is paid. Lien, thus presupposes two things:

- ♦ The person vested with the right of lien is in possession of the goods or securities in the ordinary course of business.
- ♦ The owner (bailor in this case) has a lawful debt due or obligation to discharge to the person in possession of the said goods or securities (bailee in this case).

Since lien is available only until the debt or claim is satisfied, once the debt is satisfied or obligation discharged, the right of lien is extinguished. The property so retained has, then, to be returned to or kept at the disposal of the owner (i.e., bailor). Lien may be of two types:

- ♦ **General Lien:** It means the right to retain goods not only for demands arising out of the goods retained but for a general balance of account in favour of certain persons.

♦ **Particular Lien:** It means the right to retain the particular goods in respect of which the claim is due. Bailee's right of lien is particular in certain cases whereas general in other cases. Particular lien is conferred upon a bailee by virtue of the provisions of Section 170. It reads: "Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the service he has rendered in respect of them".

□ **Right against wrongful deprivation of or injury to goods:** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or causes them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made and either the bailor or the bailee may bring a suit against the third person for such deprivation or injury. Now, whatever is obtained by the way of relief or compensation in such a suit shall, as between the bailor and the bailee, be dealt with according to their respective interest.

#### 2.8.6 TERMINATION OF BAILEMENT

A contract of bailment terminates or comes to an end under the following circumstances:

- **On the expiry of the stipulated period:** Where bailment is for a specific period, it comes to an end on the expiry of the specified period. For example, a room cooler is hired by X from Y for a period of 6 months. On the expiry of 6 months, X must return the cooler.
- **On the accomplishment of the specified purpose:** In case, bailment is for specific purpose, it terminates as soon as the purpose is accomplished. For example, a suit length is given to a tailor to be stitched into a suit. The tailor is bound to return it as soon as the cloth is stitched into suit.
- **By bailee's act inconsistent with conditions of bailment:** If the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment, the bailor may terminate the bailment. For example, A lets to B for hire, a horse for his own riding. B drives the horse in his carriage. A shall have the option to terminate the bailment.
- **A gratuitous bailment may be terminated at any time:** However, if premature termination causes any loss to the bailee exceeding the benefit derived from the bailment, the bailor must indemnify. Further, a gratuitous bailment terminates by the death of either the bailor or the bailee.

#### 2.8.7 PLEDGE AS A SPECIAL KIND OF BAILEMENT

According to Section 172, "a pledge as the bailment of goods as security for payment of a debt or performance of a promise. The person, who delivers the goods as security, is called the 'pledgor' and the person to whom the goods are so delivered is called the 'pledgee'." The ownership remains with the pledgor. It is only a qualified property that passes to the pledgee. He acquires a special property and lien which is not of ordinary nature and so long as his loan is not repaid, no other creditor or 'authority' can take away the goods or its price. Thus, in *Bank of Bihar v. State of Bihar and Ors. (1971)*

Company Cases 591, where sugar pledged with the Bank was seized by the Government of Bihar, the Court ordered the State Government of Bihar to reimburse the bank for such amount as the Bank in the ordinary course would have realised by the sale of sugar seized.

#### DELIVERY ESSENTIAL

A pledge is created only when the goods are delivered by the borrower to the lender or to someone on his behalf with the intention of their being treated as security against the advance. Delivery of goods may, however, be actual or constructive. It is constructive delivery where the key of a godown (in which the goods are kept) or documents of title to the goods are delivered. The owner of the goods can create a valid pledge by transferring to the creditor the documents of title relating to the goods.

**Example:** A businessman pledged a railway receipt to a bank, duly endorsed. Later he was declared bankrupt. The official assignee contended that the pledge of the railway receipt was not valid. Held, that the railway receipts in India are title to goods, and that the pledge of the railway receipt to the bank, duly endorsed, constituted a valid pledge of the goods.

Similarly, where the goods continue to remain in the borrower's possession but are agreed to be held as a 'bailee' on behalf of the pledgee and subject to the pledgee's order, it amounts to constructive delivery, and is a valid pledge.

#### ADVANTAGES OF PLEDGE

To a creditor, pledge is perhaps the most satisfactory mode of creating a charge on goods. It offers the following advantages:

- The goods are in the possession of the creditor and therefore, in case the borrower makes a default in payment, they can be disposed of after a reasonable notice.
- Stocks cannot be manipulated as they are under the lender's possession and control.

- In the case of insolvency of the borrower, lender can sell the goods and prove for the balance of the debt, if any.
- There is hardly any possibility of the same goods being charged with some other party if actual possession of the goods is taken by the lender.

#### PLEDGE BY NON-OWNERS

The general rule is that it is the owner of the goods who can ordinarily create a valid pledge. However, in the following cases, even a pledge by non-owners shall be valid in the following cases:

- Pledge by a mercantile agent:** Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same. Such a pledge shall, however, be valid only if the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge (Section 178).

A 'mercantile agent' as per Section 2(9) of the Sale of Goods Act 1930, means a mercantile agent having, in the customary course of business as such agent, authority either to sell goods or to consign goods for the purpose of sale or to buy goods or to raise money on the security of goods. For a pledge by a mercantile agent to be valid the following conditions must be satisfied:

- ◆ **Good faith:** The pledgee must have acted in good faith and must not have at the time of the pledge notice that the pawnor had no authority to pledge the goods. The onus of proving both these facts rests upon the person disputing the validity of the pledge.
  - ◆ **Acting in the ordinary course of business:** The mercantile agent must have acted in the ordinary course of his business. Therefore, if he does the business outside his business premises or out of business hours, such a transaction would fall outside this section.
- Pledge by seller or buyer in possession after sale:** Under Section 30 of the Sale of Goods Act, a seller left in possession of goods after sale, and a buyer, who obtains possession of goods with the consent of the seller, before sale, can create a valid pledge. Once again, for the pledge to be valid the pledgee should have acted in good faith and without notice of previous sale of goods to the buyer or of the lien of the seller over the goods.

- Pledge by a person in possession under a voidable contract (Section 178-A):** Where a person obtains possession of goods under a voidable contract the pledge created by him is valid provided: (a) the contract has not been rescinded before the contract of pledge and (b) the pawnee acts in good faith and without notice of the pawnor's defect of title.

- Pledge by co-owner in possession:** One of several joint owners of goods in sole possession thereof with the consent of the rest may make a valid pledge of the goods.

- Pledge by a person having limited interest (Section 179):** Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of the interest. Thus, a pledgee may further pledge goods to the extent of the amount advanced thereon.

#### 2.8.8 RIGHTS AND DUTIES OF PLEDGEE (PAWNEE) AND PLEDGOR (PAWNOR)

##### PLEDGEE

According to Section 176 in case the pledgor fails to pay his debt or complete the performance of obligation at the stipulated time, the pledgee can exercise any of the following right:

- Bring a suit against the pledgor upon the default in redemption of the debt or performance of promise and retain possession of goods pledged as a collateral security; or
- Sell the goods pledged on giving the pledgor a reasonable notice of sale. In case the goods pledged when sold do not fully meet the amount of the debt, the pledgee can proceed for the balance. If, on the other hand, there is any surplus, that has to be accounted for to the pledgor. Before sale can be executed, a reasonable notice must be given to the pledgor so that:
- ◆ The pledgor may meet his obligation as a last chance;
  - ◆ He can supervise the sale to see that it fetches the right price.

**Example:** A trader pledged certain goods in favour of a bank. On default to return the loan, the bank sold the goods without giving a notice of sale to the trader as the loan agreement specifically excluded it. Held, that such an exclusion clause is inconsistent with the provisions of the Act and as such void and unenforceable.

However, the sale made by the pledgee without giving a reasonable notice to the pledgor is not void, i.e., cannot be set aside. The pledgee will be liable to the pledgor for the damages.

In addition to the rights mentioned in Section 176, a pledgee has the following rights:

- It is the duty of the pledgor to disclose any defects or faults in the goods pledged which are within his knowledge. Similarly, if the goods are of an abnormal character says, explosives or fragile, the pledgee must be informed. In case the pledgor fails to inform such faults or abnormal character of the goods pledged, any damage as a result of non-disclosure shall have to be compensated by the pledgor.
- The pledgee has a right to claim any damages suffered because of the defective title of the pledgor.
- A pledgee's rights are not limited to his interests in the pledged goods. In case of injury to the goods or their deprivation by a third party, he would have all such remedies that the owner of the goods would have against them. In Morvi Mercantile Bank Ltd v. Union of India, the Supreme Court held that the bank (pledgee) was entitled to recover not only ₹20,000 – the amount due to it, but the full value of the consignment, i.e., ₹35,000. However, the amount over and above his interest is to be held by him in trust for the pledgor.
- Pawnee's right of retainer [Section.173]: The Pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. However, Section 174 provides that the Pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the Pawnee.
- A pledgee has a right to recover any extraordinary expenditure incurred for preservation of the goods pledged ( Section 175).

The duties of pledgee are as follows:

- The pledgee is required to take as much care of the goods pledged to him as a person of ordinary prudence would, under similar circumstances, take of his own goods, of a similar nature.
- The pledgee must not put the goods to an unauthorised use.
- The pledgee is bound to return the goods on payment of the debt.
- Any accruals to the goods pledged belong to the pledgor and should be delivered accordingly. Thus, if the security consists of equity shares and the company issues bonus shares to the equity

shareholders, the bonus shares are the property of the pledgor and not the pledgee.

#### PLEDGOR

There are a number of duties of a pledgor. These are:

- He must disclose to the pledgee any material faults or extraordinary risks in the goods to which the pledgee may be exposed.
- He is responsible to meet any extraordinary expenditure incurred by the pledgee for the preservation of the goods.
- Where the pledgee has exercised his right of sale of goods, any shortfall has to be made good by the pledgor.
- He is liable for any loss caused to the pledgee because of defects in his (pledgor's) title to the goods.

There are a number of rights of a pledgor. These are:

- The pledgor has a right to claim back the security pledged on repayment of the debt with interest and other charges.
- He has a right to receive a reasonable notice in case the pledgee intends to sell the goods, and in case he does not receive the notice he has a right to claim any damages that may result.
- In case of sale, the pledgor is entitled to receive from the pledgee any surplus that may remain with him after the debt is completely paid off.
- The pledgor has a right to claim any accruals to the goods pledged.
- If any loss is caused to the goods because of the mishandling or negligence on the part of the pledgee, the pledgor has a right to claim the same.

#### 2.8.9 FINDER OF LOST GOODS

Finding is not owning. A finder of lost goods is treated as the bailee of the goods found as such and is charged with the responsibilities of a bailee, besides the responsibility of exercising reasonable efforts in finding the real owner. However, he enjoys certain rights also. His rights are summed up here under.

- Right to Retain the Goods :** A finder of lost goods may retain the goods until he receives the compensation for money spent in preserving the goods and/or amount spent in finding the true owner. A finder, however, cannot sue for such compensation. But where, a

- specific reward has been offered by the owner for the return of the goods lost, the finder may sue for such reward and may retain the goods until he receives it.
- Right to Sell:** When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it, (i) when the thing is in danger of perishing or of losing the greater part of its value; (ii) when the lawful charges of the finder in respect of the thing found, amount to two-third of its value.

#### SELF ASSESSMENT QUESTIONS

12. When the bailor does not charge anything for the contract then the bailment is known as \_\_\_\_\_.
13. Pledge is one of the varieties of bailment only. (True/False)
14. The party that delivers the goods is known as \_\_\_\_\_.

#### ACTIVITY

Find out the difference between a pledge and bailment.

#### 2.9 SUMMARY

- As per the Indian Majority Act, 1875, every resident of India attains majority at the age of 18 years in normal circumstances. An agreement with the minor is although void. Since the law cannot impose any legal obligation on a minor and in a contract, legal obligation arises, agreement with minor is void.
- A person is said to be of sound mind if at the time of making the agreement he or she is capable of understanding the terms and conditions of the contract and make form a rational judgement for it.
- An unlawful object is said when the objective of the agreement is forbidden by the law. These are those agreements that are against the law. Any agreement which is against the law of the country and is not in the interest of the public welfare then the agreement is said to be illegal.
- When the promisor refuses or rejected to perform his legal obligations of the contract before the time specified in the contract, then it is called anticipatory breach.

- Contract of guarantee is a contract in which one party promises to perform the promise or to discharge the liability incurred by the third party in case of his default.
- Bailment is the act under which goods are transferred or delivered from one party to another party for some purpose and after that purpose is completed they are returned back to the party or disposed of as per the directions laid down by the party who delivered the goods.
- A finder of goods is a person who finds something that belongs to another person. The finder of goods is as competent as a bailee and he enjoys all the rights and responsibilities as enjoyed by the bailee.

#### KEY WORDS

- Unlawful Agreements:** Unlawful agreements are those agreements that cannot be modified into a contract due to unlawful object or unlawful consideration.
- Illegal Agreements:** These are those agreements that are against the law.
- Novation:** Novation means substitution. When a contract is replaced by another contract then it is said to as novation. In such a case, the old contract will ceases.
- General Lien:** The right to retain goods not only for demands arising out of the goods retained but for a general balance of account in favour of certain persons.
- Particular Lien:** The right to retain the particular goods in respect of which the claim is due.

#### 2.10 DESCRIPTIVE QUESTIONS

1. Explain the capacity to contract in detail.
2. Discuss the concept of quasi contract.
3. Describe the discharge of contract.
4. Explain the breach of contract.
5. What do you mean by indemnity? Explain.
6. Explain the duties and rights of the bailor and the bailee.

## 2.11 ANSWERS AND HINTS

### ANSWERS FOR SELF ASSESSMENT QUESTIONS

Topic	Q. No.	Answers
Capacity to Contract	1.	True
	2.	Lunatic
	3.	Alien
	4.	d. All of the above
Quasi Contracts	5.	True
	6.	Agreement
Performance of Contract	7.	Appropriation of payments
Discharge of a Contract	8.	Discharge by mutual agreement
Breach of Contract	9.	True
	10.	Nominal
	11.	Indemnifier
Bailment, Pledge and Finder of Goods	12.	Gratuitous bailment
	13.	True
	14.	Bailor

### HINTS FOR DESCRIPTIVE QUESTIONS

- According to the Contract Act, "every person is competent to contract, who: is of the age of majority, according to the law to which he is subject, is of sound mind, and is not disqualified from contracting by any law to which he is subject. Refer to Section 2.2 Capacity to Contract.
- Quasi contract is an obligation imposed by law upon a person for the benefit of another even in the absence of a contract. Refer to Section 2.3 Quasi Contracts.
- Discharge of a contract means discontinuation of contractual relations between the parties. Refer to Section 2.5 Discharge of a Contract.
- Breach of contract means refusal of performance under a contract by a party to the contract. Refer to Section 2.6 Breach of Contract.

- As per the contract act, "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity". Refer to Section 2.7 Indemnity and Guarantee.
- The party that deliver the goods is known as bailor and the party to whom the goods have been delivered is known as bailee. Refer to Section 2.8 Bailment, Pledge and Finder of Goods.

## 2.12 SUGGESTED READING FOR REFERENCE

### SUGGESTED READINGS

- Clarkson, K., Miller, R., Jentz, G., & Cross, F. (2014). Business Law: Text and Cases (11th ed.).
  - Keenan, D., & Riches, S. (2007). Business law. Harlow: Pearson Longman.
- ### E-REFERENCES
- Businesslaw.calbar.ca.gov,. (2014). Business Law. Retrieved 8 November 2014, from <http://businesslaw.calbar.ca.gov/>
  - Contract, I. (2014). Laws of Business: Indemnity and Guarantee Contract. Lawsofbusiness.com. Retrieved 8 November 2014, from <http://www.lawsofbusiness.com/2012/03/indemnity-and-guarantee-contract.html>
  - Legalservicesindia.com,. (2014). Position Finder of Goods under Indian Contract Act. Retrieved 8 November 2014, from <http://www.legalservicesindia.com/article/article/position-finder-of-goods-under-indian-contract-act-1526-1.html>

# 3

## C H A P T E R

### THE INDIAN SALE OF GOODS ACT, 1930

#### CONTENTS

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3.2.3	Contract for Work and Labour
3.2.4	Hire Purchase
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3.3	Summary
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### LEARNING OBJECTIVES

After studying the chapter, you will be able to:

- Explain the concept of contract of sale
- Discuss the contract for work and labour
- Explain the hire purchase
- Discuss the doctrine of caveat emptor
- Explain the performance of contract of sale

## 3.1 INTRODUCTION

The previous chapter discussed the Indian Contract Act. In this chapter, we discuss the Sale of Goods Act, which is an important part of the Indian Contract Act. The Sale of Goods Act, 1930 came into force on 1st July, 1930 and extends to the whole of India except the state of Jammu and Kashmir. According to the Indian Contract Act, “*A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another*”.

A contract to sale is a contract in which the seller of the goods transfers or agrees to transfer the goods to the buyer for a price or consideration. A contract to sale is different from other agreements like hire purchase and contract of work and labour. The chapter also highlights these points in detail.

The chapter discusses the concept of contract of sale. It also explains the contract pertaining to work and labour as well as hire purchase. Further, the chapter describes the doctrine of caveat emptor and the performance of the contract of sale.

## 3.2 DEFINITION AND ESSENTIALS OF A CONTRACT OF SALE

According to the section 4(1) of the Sale of Goods Act, 1930, a contract to sell is a contract in which the seller of the goods transfers or agrees to transfer the goods to the buyer for a price or consideration.

In this type of contract, there are two parties. One party agrees to sell the goods and receives a price for it, and the other party receives the goods and pays the price for it.

The following are the elements that are essential to form a contract of sale:

- There must be two parties to the contract of sale. One is the buyer and the other is the seller.
- The object to sell must be movable goods. It may be either existing goods or future goods.

- A transfer of goods must be made from the seller to the buyer.
- There should be a price or consideration for the goods to be transferred.
- The contract to sale must be absolute and unconditional.
- Other essential elements of the contract must also be present in this contract of sale.

### 3.2.1 SALE AND AGREEMENT TO SELL

In a contract, when goods or any other movable property is sold by a seller to a buyer, the contract is known as a contract of sale. The sale made is called an absolute sale. In an agreement to sell, the ownership of the goods does not transfer. The goods are transferred at a future date after the fulfilment of certain conditions. Therefore, it is called a conditional sale.

Thus, the main difference between a contract of sale and an agreement to sell is the time of transfer of the ownership of the goods from the seller to the buyer. In a contract of sale, the ownership is transferred immediately, but in an agreement to sell, the ownership is transferred at some point in the future. The difference between a sale and an agreement to sell is shown in Table 3.1:

**TABLE 3.1: DIFFERENCE BETWEEN SALE AND AGREEMENT TO SELL**

Points of Distinction	Sale	Agreement to Sell
Nature of Contract	Sale is an executed contract. Under this contract, one of the parties has already performed its part of the contract.	Agreement to sell is an executor contract. Under this contract, both parties are yet to perform their mutual promises within the agreed time.
Transfer of Property	The property in the goods is transferred to the buyer with the risk.	The risk and property do not transfer to the buyer immediately.
Remedies on Breach of Contract	The seller is entitled to sue for the price of the goods.	The seller has the right only to sue for damages for non-performance of the contract.
Risk of Loss	The loss is borne by the buyer even if the possession of goods is with the seller.	The loss is borne by the seller as the ownership of the goods has not passed to the buyer.
Insolvency of Seller if the Buyer has already Paid the Price	The buyer is entitled to receive the goods from the official assignee or receiver.	The buyer has to prove the amount it has paid and can only claim a rate-able dividend. The buyer cannot compel the receiver to sell and deliver the goods.

### 3.2.2 SALE OF GOODS AND 'WORK AND LABOUR'

#### SALE OF GOODS

In a contract, when there is a delivery of goods from the seller to the buyer, the contract is termed as a contract or agreement to sell or sale. In this case, a physical object is transferred, which is movable and is tangible. Ownership gets transferred from one person to another person.

#### WORK AND LABOUR

Work and labour is a kind of service where no physical goods are involved. If gold is transferred to the goldsmith for making ornaments, then it is termed as work and labour. Similarly, if a painter is painting a picture, then what he/she is doing can be termed as work or labour. The agreement in which no physical form of goods is transferred is called Agreement of Work and Labour. It is also referred to as "Contract of Service".

### 3.2.3 CONTRACT FOR WORK AND LABOUR

In an agreement, when there is no transfer of goods, it cannot be said to be a sale or an agreement to sell. In such cases, what is included in the agreement? What is transferred between the parties in the agreement? Is there any consideration or price in that agreement?

An agreement that includes the utilisation of workforce in order to complete some work is termed as an agreement for work and labour. In this type of contract, no goods are transferred from the seller to the buyer.

A contract of work and labour relates to a service. Basically, two types of contracts exist according to the object clause available in the essentials of a contract. These are as follows:

- Contract of goods
- Contract of service

In the contract of goods, movable, physical or tangible property is transferred from the seller and the buyer. In this case, the ownership of the commodity is transferred from one party to another party. The contract of goods can be made for past, present or future transfer of goods.

However, in the case of a contract of service, a service has to be rendered by one party to the other party. It includes the facilitation of some work for the convenience of the other party for which a price or consideration is paid to that party. As no goods or commodity exist in this type of contract, it cannot be made for the past or future.

Suppose a house is being constructed by Mr. A. The material Mr. A purchased from the shopkeeper for a price may be termed as an agreement to sell. However, when the same material is given to the workers for the construction work, and the labour is utilised for the construction activity, that agreement of Mr. A with the labour (workers) is termed as a contract of work and labour.

### 3.2.4 HIRE PURCHASE

Hire purchase is an agreement in which the possession of an asset is transferred from one person to another person, but ownership of the asset is not transferred. The payment for the asset is made in installments by the buyer to the seller. The ownership gets transferred on the complete payment of the assets. Till that time, the ownership remains with the seller. However, buyer can use the assets for his own benefit till he makes the full payment for that asset.

The term hire purchase originated in the U.K., and is basically used in the hiring of vehicles for road transport.

The main features of a hire purchase agreement are as follows:

- It includes two parties, the hirer and the owner. The hirer is the person who takes the assets.
- There is no transfer of ownership. Ownership is transferred only when full payment of the value of the asset is made.
- The agreement is not a sale as in a sale, the asset is sold to the buyer and full consideration is paid at the time of transfer of goods.
- The hire purchase agreement generally includes two elements, element of bailment and element of sale.
- There is no obligation on the part of the buyer to purchase the asset. Options are available with him to either buy or decline the hire purchase agreement.

The main differences between a hire purchase agreement and a sale are as follows:

- Sale is governed by the Sale of Goods Act, 1930, while the hire purchase agreement is governed by the Hire Purchase Act, 1972.
- In the case of sale, ownership is transferred immediately upon payment while in the case of the hire purchase agreement, no ownership is transferred.
- Lump sum payment is made in the case of sale while in hire purchase agreements, payment is made in instalments.
- On the non-payment of the amount of the asset, the seller cannot take back the assets in the case of a sale. However, in the case of hire purchase, the owner can take back the asset if the instalments are overdue.

- In the case of a sale, the buyer only pays the actual price of the assets to the seller, but in case of hire purchase, some amount of interest is also paid by the hirer to the owner of the asset.
- Once a sale has been made, the assets cannot be given back to the original owner. In the case of hire purchase, the owner of the asset can take it back before the total instalments are received.

### 3.2.5 CONDITIONS AND WARRANTIES

A contract of sale of goods contains various terms or stipulations about the quality of goods, price and mode of its payment, delivery of goods and its time and place. These are also known as the conditions of the contract. A condition can be defined as a promise or statement of fact, which is an essential term of the contract. The breach of a condition gives the concerned party the right to terminate or repudiate the contract.

Formally, a condition can be defined as follows:

*"A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated".*

**Example:** Suresh is a tour manager. He asks a car dealer to suggest a car that would be suitable for touring purposes. The dealer suggests a particular car, and Suresh purchases it from him. Later, however, Suresh finds the car unsuitable for the purpose it was bought. As per the contract signed between the two parties, suitability of the car for touring purposes is one of the conditions of the contract. Therefore, Suresh is entitled to reject the car and have a refund of the price paid.

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

**Example:** Suresh asks a car dealer to suggest a good fuel-efficient car. The dealer suggests a car and claims that it runs 20 km per litre of petrol. Suresh purchases the car but later finds out it runs only 15 km per litre of petrol. In this case, the statement made by the seller was a warranty. Therefore, Suresh is not entitled to reject the car but entitled to claim damages.

There is no hard and fast rule as to which stipulation is a condition and which is a warranty. According to the **Contract Act**, "Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract"

The main differences between a condition and a warranty are shown in Table 3.2:

TABLE 3.2: DIFFERENCE BETWEEN CONDITION AND WARRANTY		
Points of Distinction	Condition	Warranty
Stipulation	A condition is an essential stipulation to the main purpose of a contract.	Warranty is a stipulation collateral to the main purpose of a contract. It is basically an assurance.
Breach	Breach of a condition gives the right to repudiate the contract and also to claim damages.	Breach of the warranty gives the right to claim damages only.
Treatment	Breach of a condition may be treated as a breach of warranty.	A breach of warranty cannot be treated as a breach of a condition.

#### EXPRESS CONDITIONS AND WARRANTIES

Conditions and warranties may either be expressed or implied. They are said to be expressed when they are inserted in a contract after taking the full consent of the associated parties.

**Example:** A buyer wants to buy a refrigerator with the model number 3999. Here, the model number is an express condition. The compressor of the refrigerator has a guarantee of 5 years, which is an express warranty.

#### IMPLIED CONDITIONS AND WARRANTIES

Conditions and warranties are said to be implied when the law automatically presumes the existence of some terms in a contract though they have not been put in express words.

The law incorporates into a contract of sale of goods the following implied conditions:

- Conditions as to title:** In every contract, there is an implied condition on the part of the seller that:
  - In the case of a sale, the seller has a right to sell the goods
  - In the case of an agreement to sell, the seller has a right to sell the goods at the time when the title of the property is to pass.

**Example:** Ram purchases some stolen goods from Suresh, who is a thief. Shyam is the true owner of the stolen goods. He demands from Ram that the goods be returned to him. In this case, Ram has to return the goods to Shyam. He cannot sue Suresh as the knowledge of the buyer has negated the implied conditions as to title.

- b. **Conditions in a sale by description:** As per the Sale of Goods Act, "Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description ....". The description may be in terms of the qualities or characteristics of the goods.

**Example:** X bought a machine from Y who claimed it to be only six months old. However, after using it, X finds out that the machine is extremely old. X has the right to reject the machine as the description of the machine does not match the one provided by the seller.

- c. **Condition in a sale by sample:** When under a contract of sale, goods are to be supplied according to a sample agreed upon, the implied conditions are:

- ◆ That the bulk shall correspond with the sample in quality
- ◆ That the buyer shall have a reasonable opportunity of comparing the bulk with the sample
- ◆ That the goods shall be free from any defect (latent)

- d. **Condition as to fitness or quality:** Under a contract of sale, there is no implied condition or warranty related to the quality or fitness of the goods supplied. In fact, in most of the agreements, this assurance is specifically disclaimed by the seller. This is expressed by the principle of *Caveat Emptor* (i.e. let the buyer beware). However, the buyer has the right to satisfy himself / herself about the quality of the goods. An implied condition is deemed to exist on the part of the seller that the goods supplied shall be reasonably fit for the purpose for which the buyer wants them, if the following conditions are satisfied:

- The particular purpose for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller
- The buyer should rely on the seller's skill or judgement
- The seller's business must be to sell such goods

**Example:** Suppose you purchase a hot-water bottle from a shopkeeper. However, the bottle breaks when you pour hot water into it. In this case, the shopkeeper is liable to refund the price because the bottle was unfit for the purpose for which it was purchased.

- e. **Condition as to merchantability:** There is an implied condition that the goods shall be of merchantable quality, unless specifically disclaimed by the seller, or the goods are specifically stated to be sold on an "as is" condition (i.e., with all their defects).

The expression merchantable quality means that the goods should be free from any hidden defects. The quality and condition of the goods must be such that an individual would accept them as the goods of that description.

**Example:** You purchased a bottle of champagne. While opening its cork, the bottle breaks, and you are injured. In this case, you are entitled to claim damages as the bottle was not of merchantable quality.

- f. **Condition as to wholesomeness:** This condition is applied in the case of eatables or provisions or food stuffs. There is an implied condition that eatables should be free from any defect and fit for human consumption.

**Example:** W bought milk from H's diary. The milk was contaminated with typhoid bacteria. As a result, when W consumed the milk, he fell ill. In this case, H is held liable to W's illness as the milk was not fit for human consumption.

#### IMPLIED WARRANTIES

Unless otherwise agreed, the law also incorporates the following implied warranties:

- a. **Warranty of quiet possession:** There is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. This is an extension of the implied condition as to title.

**Example:** X purchases a second-hand mobile phone from Y. Y spends some money on its repair. However, the mobile phone is a stolen one, and therefore X is entitled to file a suit against Y for recovery of damages, including the cost of repairs.

- b. **Warranty of freedom from encumbrances:** There is an implied warranty that the goods sold are free from any charge or encumbrance in favour of any third person if the buyer is not aware of such charge or encumbrance. This is a warranty that should be specially investigated thoroughly in the purchase of real estate.

**Example:** You borrow ₹ 500 from Y and hypothecate your phone with Y as security. Later on, you sell the phone to Z who buys it in good faith. Here, Z can claim damages from you because his possession is disturbed by Y having a charge.

- c. **Warranty of disclosing the dangerous nature of goods to the ignorant buyer:** This means that the seller must disclose the dangerous nature or danger related to the goods he is selling. It is an implied warranty on the part of the seller.

**Example:** A purchases a tin of disinfected powder from B. B knows that the lid of the tin is defective and may be dangerous if it is not opened carefully. However, B does not tell this to A. A opens the tin and the disinfectant powder flies into his eyes, causing a major injury. In this case, B is liable to pay for damages caused to A.

#### 3.2.6 TRANSFER OF TITLE BY NON-OWNERS

The transfer of title plays a crucial role in the sale of goods contract. The legal rights and duties of the buyer and the seller are decided by the ownership of the goods. Thus, the primary rules are applied to the legal rights and the transfer of the ownership of goods are described as follows:

1. In an unconditional contract, when the delivery of the goods is ready, the ownership is set to be transferred as and when the contract is made. For example, in an electronics shop, the seller sells a television to a buyer through a contract. The ownership gets transferred as and when the buyer decides to purchase the television.
2. When the goods are not in a deliverable state and the seller has to do work on it to bring it to a workable condition, the ownership does not get transferred until the seller does that work and the buyer is satisfied with it.
3. In case of sale of future goods, if the goods are in a deliverable state and the seller has agreed to sign a contract with the buyer, the ownership gets transferred only at the time of the execution of the contract.

#### TRANSFER OF TITLE

A seller cannot sell a better title than he himself has. This means that if the seller is not the real owner of the goods, then as per the general rule, the seller cannot sell the desired goods to the buyer. A seller can only sell those goods on which he has ownership.

The rule is also expressed in the Latin maxim as "Nemo dat quod non habet", which means that nobody can sell that he does not have. The buyer is not entitled to get the ownership of the goods if the seller is not the real owner of those goods.

For example, if A has stolen someone's bag and sells it to C, then C is not the real owner of the bag.

#### TRANSFER OF TITLE BY NON-OWNER

The exceptions to the above rule are defined as follows:

1. **Sale by an agent:** A sale made by an agent to the buyer for the document of title to goods will transfer a goods title to the buyer. In such cases, the following conditions must be fulfilled:
  - a. The agent must be authorised by the real owner of the goods or documents.

- b. The sale must be made in the normal course of business by an agent.
- c. The buyer must not be in receipt of any notice that the agent is not authorised to sell the goods to him.
- 2. **Sale by joint owner:** If any of the joint owners has the possession of goods with the permission of other joint holders to sell the goods, then that joint owner can sell the goods to the buyer, and the buyer will get the ownership of the goods.
- 3. **Sale by party having possession of goods under voidable contracts:** A person who acquires the possession of goods under a contract which is voidable due to factors like fraud, misrepresentation, coercion and undue influence can sell his goods and transfer a legal title to any person.
- 4. **Sale of goods already sold to another party:** When a person has sold any goods to a party but is still in possession of the goods, then he may sell them and transfer a goods title to a third person if that person obtains the goods in good faith and without obtaining the notice of the previous sale.
- 5. **Sale without getting the physical delivery of goods:** A buyer who obtains the ownership of the goods that he has bought from the seller in good faith but does not get the delivery of the goods can still sell the goods to another person and the third person gets it in good faith.
- 6. **Sale by an unpaid seller:** When an unpaid seller obtains the right of lien on goods, he can sell those goods to anyone and transfer a legal title to him.
- 7. Sale under other acts:
  - a. A pawnee can sell goods and transfer a goods title to the buyer.
  - b. When a finder of goods sells them, he can transfer a goods title to the buyer.
  - c. Sale made by a liquidator of a company can easily transfer a valid title to other persons.

### 3.2.7 DOCTRINE OF CAVEAT EMPTOR

Caveat emptor means "Let the buyer beware". When a buyer purchases goods or any commodity displayed by the seller, and some defect is found in it, the seller cannot be held responsible for it. It is the duty of the buyer to satisfy the seller about the selected product. If the goods or products are not according to his requirements or are defective, then the seller cannot be held responsible for it. The buyer has to use his own skills and judgement while selecting the product.

**Section 16 of the Sale of Goods Act, 1930** describes this doctrine. It specifies that "subject to the provisions of the Act or of any other law that is being enforced in the time, there will be available no implied warranty or condition for the quality of the goods or for the fitness as to the purpose of the buyer under the contract of sale".

The principle of caveat emptor does apply in the following conditions:

1. When the buyer tells the seller his requirement and the seller uses his own skill and judgement in choosing the product
2. When a description is written on the goods, it is implied that the goods shall correspond with the description
3. The doctrine of caveat emptor does not apply to a sample of products.
4. When the seller sells the product by misrepresenting it to the buyer or sells wrong or expired goods

### 3.2.8 PERFORMANCE OF THE CONTRACT OF SALE

The performance of the contract of sale starts with the seller who has the duty to deliver the goods to the buyer and the buyer to accept the goods delivered and to make payment accordingly as appropriate. The first component is delivery of goods. It is an integral part of a contract of sale. Delivery of goods refers to their transfer from the seller's place to the buyer's place.

Delivery is of the following three types:

1. **Actual delivery:** It refers to the actual transfer of goods from the place of the seller to the place of the buyer. An agent may be preferred by the seller to deliver the goods.
2. **Symbolic delivery:** When the goods are bulky and cannot be delivered immediately, the seller usually resorts to symbolic delivery. For example, if the goods are lying in the warehouse, then the seller may give its key to the buyer in order to complete the symbolic delivery.
3. **Constructive delivery:** In constructive delivery, the goods are delivered without any change in the actual or visible custody of the goods. In this case, the goods are with a person who holds them on behalf of the seller.

The second component in the performance of the contract is acceptance of goods by the buyer. The important points to remember here are as follows:

1. On delivery of the goods, the buyer has a right to check whether they are correct and are not broken or stolen. He has the right to examine the goods for his satisfaction.

- A buyer is deemed to have accepted the goods when:
  - He tells the seller that he has received the goods and they are appropriate.
  - He does any action on the goods which, according to the seller, is inappropriate.

Another important component in the performance of the contract of sale is the payment of the price for the goods delivered by the seller to the buyer. The following points must be kept in mind in this regard:

- The price paid must be absolute and must be paid as per the contract.
- The price paid must reach the seller on time.
- The seller must be satisfied with the price at which he has sold the goods.

### 3.2.9 RIGHTS OF UNPAID SELLER

The term 'unpaid seller' is defined under section 45(a) of the Sale of Goods Act, 1930. It states that the seller of the goods is treated as an unpaid seller in the following circumstances:

- The price for the goods is not paid in full by the buyer to the seller and the seller has an immediate right to claim the full amount.
- A cheque or bill of exchange is provided to the seller and the same has been dishonoured unless the payment was absolute and not conditional.

The person or seller in the position of an unpaid seller has some rights. These rights can be briefly explained as follows:

- Right to lien:** The seller has the right to lien the goods. The right to lien exist till the full payment has been received by the seller. However, the unpaid seller loses his right to lien in case the goods are gone from his possession. The right also stands void when the buyer lawfully obtains possession of the goods.
- Right to stop in transit:** In case the goods are in transit and are not delivered, the seller has a right to stop the goods in transit. He can also provide instructions to send the goods back during their transport.
- Right of resale:** The seller has full authority to resell the goods that were earlier provided to a party that has not paid for them. Since no payment has been received, the seller can sell the goods to another buyer. However, if some payment has been received from the party, the goods can be returned to the original buyer.

The rights of an unpaid seller against buyer are as follows:

- Suit for claiming the price:** The unpaid seller can claim or can file a suit in the court against the buyer to recover his balance payment for the goods delivered to the buyer. When the goods are delivered to the buyer, he can also demand payment for them.
- Suit for damages for non-acceptance:** In case the buyer wrongfully rejects the goods or neglects to accept them, the seller can file a suit against the buyer for the damages caused due to the non-acceptance of the contract.
- Repudiate contract before date:** When the buyer refuses to accept the contract before the date of delivery then the seller can claim damages caused for the non-delivery. This is also known as 'rule of anticipatory breach contract'.



#### SELF ASSESSMENT QUESTIONS

- \_\_\_\_\_ is an agreement in which an asset is transferred from one person to another person, but the ownership of the asset is not transferred.
- Sale is an executed contract. (True/False)
- In an agreement, when there is no transfer of goods, it is said to be a sale or an agreement to sell. (True/False)
- A condition can be defined as a \_\_\_\_\_.
- A \_\_\_\_\_ is a stipulation collateral to the main purpose of a contract. It is basically an assurance.
- Let the buyer beware means "Let the buyer beware".
- means that the goods should be free from any hidden defects.
- The warranty to disclose the dangerous nature of goods to the ignorant buyer is known as \_\_\_\_\_ warranty.
- What are the implied conditions when, under a contract of sale, goods are to be supplied according to a sample agreed upon?
- Conditions and warranties may be either expressed or implied. (True/False)
- A \_\_\_\_\_ is an essential stipulation to the main purpose of a contract.
- Breach of warranty cannot be treated as a breach of condition. (True/False)

**ACTIVITY**

A sells goods to B, for which payment is made through a cheque. However, before B could obtain the delivery of the goods, the cheque is dishonoured by the bank. A, therefore, refuses to deliver the goods until the payment is made. Is A's action justified? Make a group and discuss this scenario.

**3.3 SUMMARY**

- ❑ A contract to sell is a contract in which the seller of the goods transfer or agrees to transfer the goods to the buyer for a price or consideration. One party agrees to sell the goods and receives a price for it, and the other party receives the goods and pays the price for it.
- ❑ In an agreement to sale, the ownership of the goods does not transfer. The goods are transferred at a future date after the completion of certain conditions. This aspect is covered in section 4(3) of the Sale of Goods Act, 1930.
- ❑ An agreement that includes the utilisation of a workforce to complete some work is termed as an agreement for work and labour. In this type of contract, no goods are transferred from the seller to the buyer.
- ❑ Hire purchase is an agreement in which an asset is transferred from one person to another person but the ownership is not transferred. The payment for the asset is made in instalments by the buyer to the seller.
- ❑ A seller cannot sell a better title than he himself has. This means that if the seller is not the real owner of the goods, then as per the general rule, he cannot sell these goods to the buyer. A seller can only sell those goods on which he has his ownership.
- ❑ Caveat emptor means 'let the buyer beware'. When a buyer purchases goods or any commodity displayed by the seller, and some defect is found in it, the seller cannot be held responsible for it. It is the duty of the buyer to satisfy the seller about the selected product.
- ❑ The performance of the contract of sale starts with the seller who has the duty to deliver the goods to the buyer and the buyer to accept the goods delivered and to make payment accordingly as appropriate.
- ❑ The rights of an unpaid seller include filing of a suit against the buyer, stopping goods in transit and right to lien.

**KEY WORDS**

- ❑ **Sale:** A contract in which the seller of the goods transfers or agrees to transfer the goods to the buyer for a price or consideration
- ❑ **Hire purchase:** An agreement in which an asset is transferred from one person to another person, but the ownership of the asset is not transferred.
- ❑ **Work and labour:** An agreement that includes the use of manpower to complete some work
- ❑ **Warranty:** A stipulation collateral to the main purpose of a contract. Its breach gives rise to a claim for damages but not a right to treat the contract as repudiated.
- ❑ **Delivery:** It refers to the voluntary transfer of the possession of goods from the seller to the buyer.

**3.4 DESCRIPTIVE QUESTIONS**

1. What do you mean by the doctrine of Caveat Emptor? Explain in brief.
2. List the elements described in the performance of the contract of sale.
3. What are the rights of an unpaid seller? Explain in detail.
4. Explain the difference between an agreement to sell and a sale.
5. What are the features of a hire purchase agreement?
6. What do you mean by implied conditions and warranties?
7. Explain the transfer of title by non-owners.
8. What are the main differences between a hire purchase agreement and a sale?

**3.5 ANSWERS AND HINTS****ANSWERS FOR SELF ASSESSMENT QUESTIONS**

Topic	Q. No.	Answers
Definition and Essentials of A Contract of Sale	1.	Hire purchase
	2.	True
	3.	False

Topic	Q. No.	Answers
	4.	Promise
	5.	Warranty
	6.	Caveat emptor
	7.	Merchantable quality
	8.	Implied
	9.	When under a contract of sale, goods are to be supplied according to a sample agreed upon, the implied conditions are: i. That the bulk shall correspond with the sample in quality ii. That the buyer shall have a reasonable opportunity of comparing the bulk with the sample iii. That the goods shall be free from any defect (latent)
	10.	True
	11.	Condition
	12.	True

#### HINTS FOR DESCRIPTIVE QUESTIONS

1. "Caveat Emptor" means "Let the buyer beware". Refer to **Section 3.2 Definition and Essentials of a Contract of Sale**.
2. Delivery of goods, acceptance of the goods by the buyer and payment of the price for the goods are components of the performance of a contract of sale. Refer to **Section 3.2 Definition and Essentials of a Contract of Sale**.
3. The person or seller in the position of an unpaid seller has some rights. These rights are right of resale, right to stop in transit, and right to lien. Refer to **Section 3.2 Definition and Essentials of a Contract of Sale**.
4. In a sale, the ownership is transferred immediately but in an agreement to sale, the ownership is transferred in the future. Refer to **Section 3.2 Definition and Essentials of a Contract of Sale**.
5. Hire purchase is an agreement in which an asset is transferred from one person to another person but the ownership is not transferred. Refer to **Section 3.2 Definition and Essentials of a Contract of Sale**.

6. Conditions and warranties are said to be implied when the law presumes the existence of some terms in the contract automatically though they have not been put in express words. Refer to **Section 3.2 Definition and Essentials of a contract of sale**
7. The transfer of the title plays a crucial role in the sale of goods contract. Refer to **Section 3.2 Definition and Essentials of a Contract of Sale**.
8. In the case of a sale, ownership is transferred immediately upon payment while in case of hire purchase, no ownership is transferred. Refer to **Section 3.2 Definition and Essentials of a Contract of Sale**.

#### 3.6 SUGGESTED READING FOR REFERENCE

##### SUGGESTED READINGS

- Clarkson, K., Miller, R., Jentz, G., & Cross, F. (2014). *Business law: Text and cases* (11th ed.).
- Keenan, D., & Riches, S. (2007). *Business law*. Harlow: Pearson Longman.

##### E-REFERENCES

- India, I. (2014). *Conditions Implied and Express - Sale of Goods Act - Author - Sandeep Bordoloi - National Law University, Jodhpur. Legalservicesindia.com*. Retrieved 8 November 2014, from <http://www.legalservicesindia.com/articles/condi.htm>
- Law.cornell.edu., (2014). *Caveat emptor*. Retrieved 8 November 2014, from [http://www.law.cornell.edu/wex/caveat\\_emptor](http://www.law.cornell.edu/wex/caveat_emptor)
- Legislation.gov.uk., (2014). *Sale of Goods Act 1893*. Retrieved 8 November 2014, from <http://www.legislation.gov.uk/ukpga/1893/71/part/I/crossheading/conditions-and-warranties/enacted>

# 4

## C H A P T E R

### PARTNERSHIP ACT, 1932

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After studying the chapter, you will be able to:

- Explain the meaning of partnership, partnership deeds and types of partnerships
- Discuss the legal position of a minor partner and his rights and liabilities
- Explain the distinction between a partnership firm and co-ownership
- Discuss joint Hindu family and joint stock companies
- Describe the duration of partnership
- Explain the legality of a partnership firm, including types of partners, express and implied authority and scope of implied authority
- Discuss the rights, relations and liabilities of a partner against the third party and other partners
- Describe the rights and liabilities of newly admitted partners
- Explain the changes in a firm, such as retirement, expulsion, insolvency and death of a partner
- Explain the Limited Liability Partnership Act, 2008.

## 4.1 INTRODUCTION

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The previous chapter discussed the Indian Sales of Goods Act. In this chapter, we discuss the Partnership Act in detail. A partnership between persons can be established through an agreement which can be either written or oral. An oral agreement is however not recognised under the statutory law governing partnerships in India. Further oral agreements may lead to ambiguity and disputes in a future period. Hence, it is better to have a written agreement between partners.

The law relating to the partnership in India is governed by the Partnership Act, 1932. As human relations often raise conflicts between them, it is necessary to have a specific law relating to the agreements made between persons for partnership.

In this chapter, we will study various forms of partnerships and their durations. The general nature of partnership is discussed along with a comparison of the partnership concept with the concept of other businesses. The relationship between the partner and their rights and duties are also discussed. Various other issues are also discussed related to the changes made in partnerships.

## 4.2 MEANING OF SOLE PROPRIETORSHIP

Sole proprietorship refers to the type of business entity wherein an individual starts a business with his own capital and manages all the operations on his own. The profits and risks are also managed by the owner only. Some essential features of sole proprietorship are as follows:

- i. The business is owned singly by an individual.
- ii. The business is controlled by a single person.
- iii. The individual assumes all the risks to which the business is exposed.
- iv. The individual's liability is unlimited, i.e., his personal assets can be used for the payment of business liabilities.
- v. The business has no separate legal entity distinct from the sole proprietor.
- vi. No legal formalities are necessary to set up the business as such, but there may be legal restrictions on a particular type of business.
- vii. The individual derives all benefits as he bears the entire risk.
- viii. He enjoys almost unlimited freedom of action and decides everything for the business without fear of opposition, but at his own risk. The proprietor is his own master in this form of organisation.
- ix. Having employees makes no difference. The proprietor may instead take the help of the members of his family.

Sole proprietorship is the best option for a business in which the investment and risks associated with it are few, the nature of the business is simple, decision-making is simple, and customers are in direct contact with the business. Some examples of sole proprietorship are retail shops, professional firms, household and personal services.

### SELF ASSESSMENT QUESTIONS

1. \_\_\_\_\_ refers to the type of business entity wherein an individual starts a business with his own capital and manages all the operations on his own.

### ACTIVITY

Using the Internet, find any five types of sole proprietorship businesses that are run in India.

## 4.3 CONCEPT OF PARTNERSHIP

A partnership is a legal relation between persons who have agreed to work together to perform certain business activities. The persons in a partnership have agreed to share the profits in the desired ratio of the business carried on by all or by some of them.

A partnership is defined as, "the relationship between persons who have agreed to share profits of a business carried on by all, or by any of them acting for all". The following are some important characteristics of a partnership:

1. **Partnership is an association of two or more persons:** There should be at least two people in a partnership firm. They should join to constitute a partnership. A partnership firm cannot be the partner of another partnership firm. The maximum number of partners in a partnership firm is 10 in the case of the banking business and 20 in the case of other businesses.
2. **Partnership should be the result of an agreement between two or more persons:** In a partnership firm, there should be a legal agreement between the two parties or partners involved. A partnership can neither arise as a product of status (as in the case of the Hindu Undivided Family business) nor can it arise by operation of law (as in the case of co-ownership). In addition, it cannot arise by a simple joint acquisition of property. It can only arise by a contract.

The members of a HUF carrying on a family business cannot be regarded as a partnership firm as the members of the family get a share in the business not by virtue of an agreement but by virtue of status, i.e., by birth in the family. Of course, this does not mean that there can be no partnership between the members of a HUF to carry on a family business in partnership. But where such a fact is alleged, it will have to be established by proper evidence.

3. **The agreement must be to carry on some business:** The term 'business' includes every trade, occupation or profession. Though the word 'business' generally conveys the idea of numerous transactions, a person may become a partner with another even in a particular venture or undertaking. Unless the person joins for the purpose of carrying on a business, it will not amount to a partnership. Thus, a partnership does not exist between members of a charitable society or a religious association or a building scheme. Similarly, a club is not a partnership.
4. **The agreement must be to share the profits of the business:** The joint carrying on of a business alone is not enough; there must be an agreement to share profits arising from the business. Unless

otherwise agreed, sharing of profits also involves the sharing of losses. But whereas the sharing of profits is an essential element of a partnership, sharing of losses is not. Thus, a person may become a partner under a distinct understanding that he is not to share losses, but to share only the profits. Though sharing of profits is an essential feature of a partnership, the mere fact that a person is given a share in the profits of the business does not necessarily make him a partner.

5. **Business must be carried on by all or any of them acting for all:** A partnership is based upon the idea of mutual agency. Every partner assumes a dual role – that of a principal and of an agent. The foundation of the law of partnership is agency, and it is therefore said that “the law of partnership is a branch of the law of principal and agent”. Each partner is an agent binding the other partners who are his principals, and each partner is again a principal, who in turn, is bound by the acts of the other partners.

In addition to the above elements, there are certain other important legal characteristics of partnership firm. These are discussed as follows:

1. **Unlimited liability:** In the case of a partnership firm, the liability of each partner is unlimited with respect to firm's debts. The liability of the firm is shared by all the partners, and thus even one of the partners can be called upon to pay the debts of the firm in case the firm's assets are insufficient.
2. **No separate legal entity:** The partnership firm has no independent legal existence apart from the persons who constitute it.
3. **Utmost good faith:** A partnership agreement is based on the mutual confidence and trust of the partners. The partners must therefore be just and honest towards the other partners. They must disclose all facts and render true accounts relating to the business of the firm and not make any secret profits.
4. **Restriction on transfer of interest:** No partner can transfer his share to an outsider without the consent of all other partners.
5. **Unanimity of consent:** No change may be made in the nature of the business without the consent of all partners.

#### FORMATION OF PARTNERSHIPS

A partnership firm agreement should include all the elements of a valid contract. While forming a partnership firm, the following points must be kept in mind:

1. The Partnership Act provides that a minor may be admitted to be a beneficiary of a partnership.

2. No consideration is required to create a partnership. A partnership is an extension of an agency for which no consideration is necessary.
3. The partnership agreement may be expressed (i.e., oral or in writing) or implied, and the latter may be inferred from the conduct or course of dealings of the parties or from the circumstances of the case. However, it is always advisable to have the partnership agreement in writing.
4. An alien friend can enter into a partnership, an alien enemy cannot.
5. A person of unsound mind is not competent to enter into a partnership.
6. A company incorporated under the Companies Act, 1956 can enter into a contract of partnership.
7. According to Section 5 of the Partnership Act, the following persons cannot be treated as partners:
  - a. The members of a HUF carrying on a family business.
  - b. A Burmese Buddhist husband and wife carrying on a business.

#### RULES FOR DETERMINING THE EXISTENCE OF PARTNERSHIP

There are certain rules for determining the existence of a partnership, which are as follows:

- Partnerships arise from a contract and not from status.
- The members of a Hindu undivided family carrying on family business cannot form a partnership.
- A partnership cannot exist between a Burmese Buddhist husband and wife.
- The sharing of profits or gross returns arising from property by persons holding a joint or common interest in that property does not, in itself, make such persons partners.
- The receipt of any share of the profits or any other contingent receivables by a lender, as a servant or an agent as remuneration by a widow or child of a deceased partner or by a previous owner of the business as consideration for the sale of the goodwill does not in itself make the receiver a partner with the persons carrying on the business.

#### 4.3.1 PARTNERSHIP DEED AND TYPES OF PARTNERSHIPS

A partnership between persons can be established through an agreement, which can be written or can be oral. But an oral agreement may cause disputes in a future period. So it is better to have a written agreement between the partners.

## NOTES

A partnership deed is a written agreement made between the partners which contain all the rights and duties of the partners, the name and objective of the partnership business, address and other details. This partnership deed is then the basis of functioning of the partnership business.

### MAIN CONTENT OF PARTNERSHIP DEED

1. **Name and address of the firm:** The partnership deed consists of the name of the business and the place where it is being operated.
2. **Name and address of the partners:** The deed also includes the names of the partners in the business. It also includes their addresses and age.
3. **Nature of partnership business:** A partnership is a type of business in which two or more persons come together with their resources to invest in a common business with the purpose of sharing the profits of the business.
4. **Commencement and duration of partnership:** The deed also specifies the commencement and duration for which the partnership is valid.
5. **Partner's capital:** The next point in the deed is of capital contribution made by the partners in the firm.
6. **Interest on capital:** The deed also decides the amount of interest which should be paid on the capital invested in the firm. The tax laws a partnership firm do not recognise distribution by way of interest above 12% p.a. on the amount invested by the partner.
7. **Drawings:** The deed also consists of the maximum amount that can be withdrawn by any partner at one time.
8. **Profit and loss sharing ratio:** The utmost important point written in the deed is the sharing ratio of the profits and losses of the firm between the partners. If it is not mentioned in the agreement, then the profit and losses are to be distributed equally between the partners.
9. **Admission and retirement of partners:** Another clause that exists in the agreement is the admission and retirement of the partners. It includes the rights and duties of both the retiring partner and the admitting partner along with the responsibilities and rights of existing partners.
10. **Accounts and audit:** The deed of partnership also includes the preparation of books of accounts and the need for auditing them. The procedure of book keeping and their audit must be explained in the deed.
11. **Dissolution of the partnership:** The clause of dissolution states the method and the reason of the dissolution of the partnership.

12. Conduct and management of business
13. Arrangement in case a partner becomes insolvent
14. Dispute resolution or arbitration in matters of dispute
15. The methods of revaluation of assets and liabilities on admission or retirement or death of a partner
16. Settlement in the case of the dissolution of a partnership

### TYPES OF PARTNERSHIPS

Partnership can be of various types, as shown in Figure 4.1:

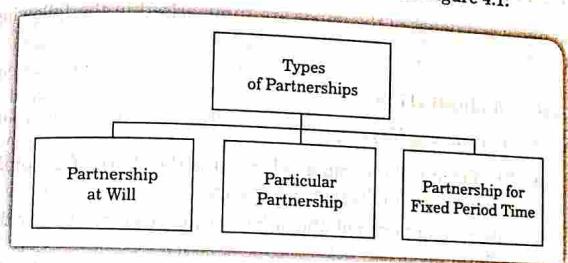


Figure 4.1: Types of Partnerships

These types are discussed here under:

1. **Partnership at will:** As per Section 7 of the Partnership Act, when there is no duration specified for a particular partnership, the partnership is made at will. Such a type of partnership can be dissolved at any time by any partner after giving prior notice in the firm. Any partner on his will can give notice and retire from the partnership. The partnership is not bound or limited by period or time.
2. **Particular partnership:** This refers to a partnership made for a particular purpose and gets dissolved on the completion of that purpose. For example, if one person gets into a partnership with another person for the construction of a bridge, then it is said to be a particular partnership. In this case, the partnership gets dissolved on the completion of the bridge.
3. **Partnership for a fixed period of time:** A partnership made for a particular period is known as partnership for a period. The period may be decided by the partners by mutual understanding. The term of this kind of partnership may be one year, two years or any fixed period.

### 4.3.2 LEGAL POSITION OF A MINOR AND HIS RIGHTS AND LIABILITIES

We shall now discuss the role of a minor in a partnership firm. The minor's role, duties and rights are not similar to these of the other partners. They are different also before the date of maturity and after the date of maturity of the contract.

You may recall in the previous chapter that a minor cannot contract. Such a contract void in the terms of law. Though a minor cannot enter into a contract in the partnership, he can be admitted to the benefits of the partnership.

The rights and duties of the minor are summarised in the following section:

#### DUTIES OR LIABILITIES

##### a. Before Attaining Majority

- ◆ The liability of the minor is limited to the share of the profit which he had in the partnership firm.
- ◆ There is no personal obligation on the partners to pay the debts of the firm.
- ◆ If the firm is insolvent, then the minor cannot be declared insolvent, although his share has to be vested to the assignee.

##### b. After Attaining Majority

- ◆ After attaining the age of maturity, the minor has to decide whether he wants to work as a partner in the firm or not. If the minor becomes a partner, then he will be liable to the debts personally just as the other partners.
- ◆ After becoming a partner, his share of remuneration and profit and the property remains the same as when he was a minor.
- ◆ If the minor does not become a partner, then his duties are fixed as that of a minor, only till he gives public notice.
- ◆ He shall not be liable for any acts done by the firm after he gives the notice.

The following are the rights of a minor:

- A minor has a right to take his share of profit from the business as agreed upon in the partnership deed.
- He has full right to inspect the books of accounts of the firm.
- He can sue the partners for the payment which he has the right to get.
- He has full right to become a partner within a period of six months of attaining the age of majority.

### 4.3.3 DISTINCTION BETWEEN PARTNERSHIP FIRM, CO-OWNERSHIP, HINDU UNDIVIDED FAMILY (HUF), JOINT STOCK COMPANIES

Table 4.1 shows the difference between a partnership and a joint stock company:

TABLE 4.1: DIFFERENCE BETWEEN PARTNERSHIP AND JOINT STOCK COMPANIES	
PARTNERSHIP	JOINT STOCK COMPANIES
A partnership is not a separate legal entity from the partners.	A joint stock company is a separate legal entity.
In a partnership firm, every individual partner is an agent of the other partner.	In a joint stock company, a member does not act as an agent of another member.
The profits are distributed as per the profit sharing ratio in the partnership deed.	In this case, profit is distributed in the form of a dividend.
In this case of a partnership, the liabilities of the partners are unlimited.	In joint stock companies, the liabilities of the members are limited to the shares held by them.
A share in a partnership cannot be changed or sold out to another person.	In the case of a joint stock company, the shares of the company are transferable.
The audit of partnership firm is not compulsory.	The audit of the joint stock company is compulsory.

Table 4.2 shows the difference between a partnership and Hindu Undivided Family (HUF):

TABLE 4.2: DIFFERENCE BETWEEN PARTNERSHIP AND HUF	
PARTNERSHIP	HUF
Partnership is created by an agreement.	HUF members get their rights from a birth itself.
Death of a partner may lead to the dissolution of the partnership deed.	The death of any member does not lead to the dissolution of the HUF.
All partners take equal participation in the partnership and its functioning.	The male members or the karta takes the charge of the HUF.
In the case of partnership, every partner can act on his own in the firm.	In the case of Hindu Undivided Family, the karta is the main person who can act on his own for the other members of the family.
In this case of a partnership, the liabilities of the partners are unlimited.	In HUF, the liabilities of the karta are unlimited but the liabilities of the other partners are limited.

Table 4.3 shows the difference between partnership and co-ownership:

TABLE 4.3: DIFFERENCE BETWEEN PARTNERSHIP AND CO-OWNERSHIP	
PARTNERSHIP	CO-OWNERSHIP
Partnership arises from an agreement, whether implied or expressed.	It can arise through an agreement or can be inherent.
In a partnership firm, every individual partner is an agent of the other partner.	In co-ownership, a member does not act as an agent of another member.

#### 4.3.4 DURATION OF PARTNERSHIP

A partnership made for a particular period is known as the partnership for a period. The period may be decided by the partners by mutual understanding. The term of this kind of partnership may be one year, two years or for a forced period.

#### SELF ASSESSMENT QUESTIONS

2. A partnership is a \_\_\_\_\_ between persons who have agreed to work together to perform certain business activities.
3. A partnership between persons can be established through an agreement which can be written or can be oral. (True/False)
4. Which of the following is not a type of partnership?
  - a. Partnership at will
  - b. Partnership of time
  - c. Particular partnership
  - d. Partnership between minors
5. A minor has a right to take his share of profit from the business as agreed upon in the \_\_\_\_\_.
6. Partnership arises from an agreement, whether implied or expressed. (True/False)

#### ACTIVITY

Using the Internet, find out the important points that should be covered in a partnership deed.

#### 4.4 LEGALITY OF THE PARTNERSHIP FIRM

Section 4 of the Partnership Act, 1932 states that "partnership is an agreement between two or more persons who agree to share the profits

it as well as the losses". Section 2 further defines the term act in the context of a partnership firm as follows:

Any act or omission by all the partners or by any partner or agent of the firm which gives rise to a right enforceable by or against him. Since the partners are allowed to carry any business, profession or occupation, the partnership can carry any business, profession or occupation which shall be undertaken through the acts of the partners or their agents which shall be enforceable by law.

#### 4.4.1 TYPES OF PARTNERS

Various types of partners exist in a partnership concept as shown in Figure 4.2:

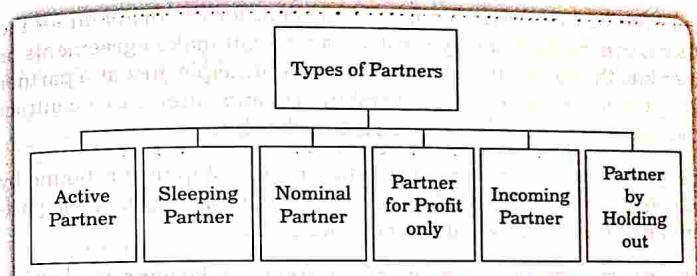


Figure 4.2: Types of Partners

Let us understand each type in detail as follows:

1. **Active Partner:** An active partner is one who is elected as a partner in the partnership firm and who takes an active participation in the functioning of the firm. He acts as an agent for the other partners and is responsible for the performance of all the functions in the ordinary course of business.
2. **Sleeping Partner:** A sleeping partner is one who is elected as a partner in the partnership firm and who does not take an active participation in the functioning of the firm. He does not act as an agent for the other partners and is not responsible for the performance of all the functions in the ordinary course of business.
3. **Nominal Partner:** A person who provides his name to the firm, but does not have any interest in the firm, is known as a nominal partner of the firm. The nominal partner is not entitled to profit sharing of the business. In addition he does not invest his capital in the functioning of the business.
4. **Partner for Profit Only:** A partner who is not liable for the losses and is entitled for a share in the profit only is known as a partner for profit only.

5. **Incoming Partners:** A person who is entering into a partnership firm that is already in existence is known as incoming partner. The rights and duties of the incoming partners are defined in the partnership deed when it was prepared.

6. **Partner by Holding Out:** This is also known as partnership by estoppel. When a partner who represents himself as a partner to the firm or who knowingly permits any other person to act himself as a partner in the firm is known as a partner by holding out. If the person himself or by his conduct induces others to believe that he is a partner, then such a partner is known as a partner by holding out or a partner by estoppel.

#### 4.4.2 EXPRESS AND IMPLIED AUTHORITY

A partner in the partnership firm is an agent for the firm and for the other partners. As you may recall an agent can make agreements or enter into the contracts on the behalf of the principle, just as a partner can act as an agent for the partnership firm and enter into a contract or an agreement on behalf of the partnership firm.

The general rule of a partnership is that partnership firm is bound by the acts or actions of the partners, who execute the work of the partnership in the ordinary course of the business.

The authority and responsibility of a partner can be expressed or implied.

Figure 4.3 shows the types of authority in a partnership:

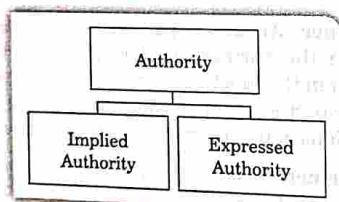


Figure 4.3: Types of Authority

Expressed authority is defined in the partnership deed itself. Every partner's liability and rights which are expressed are written into the agreement or the deed.

The implied authority of the partners of a partnership firm can be described as follows:

Every partner has an implied authority to act upon and to bind the firm. Implied authority can be defined as:

- Making sale and purchase on behalf of the firm
- Raising loans on the assets of the firm and the partners

- Receiving payment and debts of the companies from the third parties
- Accepting cheques, bills of exchange and other promissory notes for the firm
- Taking on rent or lease the land or building for the firm
- Appointing servants and other people for the firm

However a partner has no implied authority in the following cases:

- Opening a bank account on behalf of the firm in his personal name or in the name of the firm.
- Selling or transfer the immovable properties of the firm.
- Entering into the partnership with other firms on behalf of the partnership firm.

#### 4.4.3 SCOPE OF IMPLIED AUTHORITY

The scope of implied authority is discussed in the previous section. You can refer to the section for the same.

#### 4.4.4 RELATIONS, RIGHTS AND LIABILITIES OF A PARTNER AGAINST THIRD PARTY AND OTHER PARTNERS

The following are the rights and liabilities of a partner:

1. **Right to Take Part in the Working of the Firm:** Every partner has a right to enter into the firm to inspect and to see the day to day working of the firm in the ordinary course of the business. He can take part in the administration of the firm and can take part in the decision making of the firm.
2. **Right to be Informed:** Every partner of the partnership firm is authorised to be informed by the other partners about the working of the firm. When there is a conflict in the decision making of the firm, all the partners have a right to be informed.
3. **Right to Remunerate:** No partner has a right to get the remuneration except for the share of profit from the firm and the interest on capital. It is a common practice for the partners to get the remuneration without any contract with the partnership firm.
4. **Right to Share Profit:** The partner has a right to take a share of profit from the firm as per the agreement laid down by all the partners. The partners cannot take more than what is specified in the deed.
5. **Right to Retire:** Every partner of the firm has a right to retire at any time during the course of a partnership. There is no compulsion on it. However in the case of wills a prior period notice has to be given to all the partners.

## NOTES

### 4.4.5 RIGHTS AND LIABILITIES OF NEWLY ADMITTED PARTNERS

The following are the rights of newly admitted partners:

- To inspect the books of accounts of the firm before entering into the partnership firm
- To take his share of profit and to establish a true and fair relation with the other partners
- Right to get the interest on capital on the amount invested by him in the firm
- Right to use the property of the firm for the business
- Right to act as an agent for the other partners and for the partnership firm
- To take the share of the retiring partner as decided by the common understanding

The following are the duties of newly admitted partners:

- To carry out the operations and acts of the business to the utmost advantage of the partnership firm.
- To be good and justifiable to the firm and to the other partners in the firm.
- To provide a true and fair view of books of accounts to other partners in the partnership firm.
- The incoming partner should not make his own profits in the firm and should maintain true business connections for the firm and not for himself.

### 4.4.6 CHANGES IN FIRM

There are certain changes that occur in a firm when a partner retires, gets dismissed, becomes insolvent or dies.

Figure 4.4 shows the situations where changes can take place in a firm:

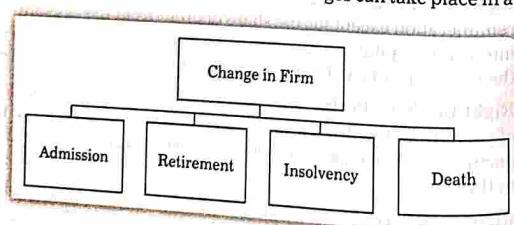


Figure 4.4: Changes in Firm

These changes are discussed below in detail:

**Retirement of Partner:** Every partner of the firm has a full right to retire at any time during the course of the partnership. There is no compulsion on it. However, in the case of wills, a prior period notice has to be given to all the partners.

**Expulsion of Partner:** In certain situations when any of the partners is found guilty of any misconduct, the other partners, with mutual consent, can expel the person from the partnership. The most common example of expulsion of a partner is unlawful practice or any other activity which is against the Partnership Act or against the partnership.

In the old act of 1890 of the Indian Partnership Act the provision of expulsion is not allowed. However in the current act the provision is allowed. However expulsion does not mean dissolution of firm.

**Insolvency of Partner:** When a partner is no more able to pay off the liabilities that are due on him, then in that case he is said to be insolvent. It can lead to legal proceedings against the partner.

When a partner has become insolvent, he ceases to be a partner of the firm. He is no more a partner from the date on which the order of adjudication has been passed, whether the firm is dissolved or not.

**Death of Partner:** When there are only two partners in a partnership firm and there happens a death of a partner, then the partnership is said to be dissolved. However in case there are more than two partners and any of the partners dies, in that case the firm will not be dissolved.

A partnership deed can also specify the provisions in case of the death of any partner.

#### SELF ASSESSMENT QUESTIONS

7. Which section of Partnership Act, 1932 states that the partnership is an agreement between two or more persons who agrees to share the profit as well as the losses?
8. Which of the following is not a type of partner?
  - a. Active partner
  - b. Sleeping partner
  - c. Nominal partner
  - d. Non-performing partner
9. A partner in the partnership firm is an \_\_\_\_\_ for the firm and for the other partners.
10. There are two types of authority, such as implied authority and expressed authority. (True/False)
11. There are four major changes occur in a firm due to retirement, insolvency, and death of a partner.

**ACTIVITY**

Using the Internet, identify the changes in a partnership firm when a partner dies or retires. Is the firm dissolved or it continues after the changes have taken place?

#### **4.5 OVERVIEW OF THE LIMITED LIABILITY PARTNERSHIP ACT, 2008**

The limited liability partnership is an innovative type of corporate structure which has the advantage and flexibility of a partnership. In addition, the cost of developing an LLP and the compliance costs of the LLP are relatively lower. Limited liability partnerships are governed by the Limited Liability Partnership Act, 2008; the salient features of the same can be summarised in following manner:

- The LLP is a corporate body which has a separate legal entity, and any two or more persons can incorporate an LLP. The partners can carry on business by subscribing their names in the incorporation document of the limited liability partnership.
- The mutual rights and liabilities of the LLP are governed by the LLP agreement entered between the partners, which are subject to the provisions of the Limited Liability Partnership Act, 2008.
- LLP is a separate legal entity and is liable to the extent of all the assets which the partners have agreed as the contribution between the partners.
- LLP shall have at least two designated partners and out of which one should be resident in India.
- LLP under the provisions of the LLP Act, 2008 will be required to maintain the annual accounts reflecting the true and fair position and statement of accounts, and solvency will be filed by every LLP with the registrar every year. The annual accounts will be audited as per the notification issued by the government in the budget.
- There are provisions in the LLP Act which allows a company or partnership to convert into an LLP, and there are also the provisions wherein LLPs can be converted into company.
- The winding up of an LLP will be either voluntary or by tribunal established under the Companies Act, 1956, and till the tribunal is not established, the powers are vested in the hands of the high court.

- The LLP Act, 2008 confers the right to the Government of India, to issue necessary notification from time to time as may be deemed fit for making changes in the Act.
- The Indian Partnership Act, 1932 is not applicable to LLPs. An LLP firm has all the features of a corporate entity, i.e. all the benefits of a private/public limited company are available to the LLP firm.

**SELF ASSESSMENT QUESTIONS**

12. Limited Liability Partnerships are governed by the \_\_\_\_\_.
13. LLPs will have at least two designated partners out of which one should be resident in India. (True/False)

**ACTIVITY**

Using sources such as law books and the Internet, identify the rights and duties of designated partners in a Limited Liability Partnership (LLP).

#### **4.6 SUMMARY**

- A partnership is a legal relation between persons who have agreed to work together to perform certain business activities.
- When there is no duration specified for a particular partnership made between the partners than the partnership is made at will.
- An active partner is the partner who is elected as a partner in the partnership firm and who takes an active participation in the functioning of the firm.
- When a partner who represents himself as a partner to the firm or who knowingly permits any other person to act himself as partner in the firm is known as a partner by holding out.
- The general rule of the partnership is that the partnership firm is bound by the acts or the actions of the partners, who executes the work of partnership in the ordinary course of the business.
- In certain situations when any of the partners is found guilty of any misconduct the other partners with the mutual consent can expel the person from the partnership.

- The Limited Liability partnership is an innovative type of corporate structure which has the advantage and flexibility of the partnership as well as of the partnership, the cost of developing an LLP and the compliance costs of the LLP are relatively lower.
- When a partner is no more able to pay off the liabilities that are due on him, then in that case he is said to be insolvent.
- Every partner has a right to enter into the firm to inspect and to see the day to day working of the firm in the ordinary course of the business.

#### KEY WORDS

- Active Partner:** It refers to the partner who is elected as a partner in the partnership firm and who takes an active participation in the functioning of the firm.
- Insolvent:** When a partner is no more able to pay off the liabilities that are due on him, then in that case he is said to be insolvent.
- Joint Stock Company:** It refers to a separate legal entity. In a joint stock company, a member does not act as an agent of another member.
- Nominal Partner:** It refers to a person who provides his name to the firm, but does not have any interest in the firm, is known as a nominal partner of the firm.
- Partnership:** It refers to a legal relation between persons who have agreed to work together to perform certain business activities.

#### 47 DESCRIPTIVE QUESTIONS

- What is partnership? Explain the partnership deed and types of partnerships.
- Describe the legal position of a minor partner, including his rights and liabilities.
- Distinguish between a partnership and a joint stock company.
- Explain the various types of partners.
- What is the Limited Liability Partnership Act, 2008? Explain.

#### 4.8 ANSWERS AND HINTS

##### ANSWERS FOR SELF ASSESSMENT QUESTIONS

Topic	Q. No.	Answers
Meaning of Sole Proprietorship	1.	Sole proprietorship
Concept of Partnership Firm	2.	Legal relation
	3.	True
	4.	d. Partnership between minors
	5.	Partnership deed
	6.	True
Legality of the Partnership Firm	7.	Section 4
	8.	d. Non-performing partner
	9.	Agent
	10.	True
	11.	Expulsion
Overview of the Limited Liability Partnership Act, 2008	12.	Limited Liability Partnership Act, 2008
	13.	True

##### HINTS FOR DESCRIPTIVE QUESTIONS

- A partnership is a legal relation between persons who have agreed to work together to perform certain business activities. There are three types of partnership, such as partnership at will, particular partnership, and partnership for time. Refer to Section 4.3 **Concept of Partnership**.
- The minor's role, duties and rights are not similar to other partners. They are different also before the date of maturity and after the date of maturity. Refer to Section 4.3 **Concept of Partnership**.
- There are several differences between a partnership and joint stock companies, such as a partnership is not a separate legal entity, while a joint stock company is a legal entity. Refer to Section 4.3 **Concept of Partnership**.

4. There are various types of partnership, such as active partner, sleeping partner, nominal partner, incoming partner, partner for profit only and partner by holding out. Refer to Section 4.4 Legality of the Partnership Firm.
5. The Limited Liability partnership is an innovative type of corporate structure which has the advantage and flexibility of partnership as well as of the partnership, the cost of developing an LLP and the compliance costs of the LLP are relatively lower. Refer to Section 4.5 Overview of Limited Liability Partnership Act, 2008.

#### 4.9 | SUGGESTED READING FOR REFERENCE

##### SUGGESTED READINGS

- Clarkson, K., Miller, R., Jentz, G., & Cross, F. (2014). *Business law: Text and cases* (11th ed.).
- Keenan, D., & Riches, S. (2007). *Business law*. Harlow: Pearson Longman.
- Bhandari, M. (2004). *Law of partnership*. New Delhi: Ashok Law House.
- Gupta, H. (1954). *The Indian partnership act, 1932 (act IX of 1932)*. Allahabad: Law Pub. House.

##### E-REFERENCES

- (2014). Retrieved 8 November 2014, from [http://www.mca.gov.in/Ministry/actsbills/pdf/Partnership\\_Act\\_1932.pdf](http://www.mca.gov.in/Ministry/actsbills/pdf/Partnership_Act_1932.pdf)
- (2014). Retrieved 8 November 2014, from <https://www.mponline.gov.in/Quick%20Links/FirmsAndSociety/IPA1932English.pdf>
- Mca.gov.in., (2014). *Ministry Of Corporate Affairs - The Limited Liability Partnership Act, 2008*. Retrieved 8 November 2014, from <http://www.mca.gov.in/MinistryV2/llpact.html>

# 5

## CHAPTER

### CONSUMER PROTECTION ACT,1986

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## COMPLAINT BY A CONSUMER

Mr. A purchased a music system from an electronic shop. When he played it at home, he found a defect in the sound quality of the music system. He approached the trader regarding the defect. The trader corrected the defect.

Again after some days, the same problem took place in the music system related to sound quality. Mr. X argued with the trader to replace the system but the trader refused to replace it. This led Mr. X to approach the district court and report his complaint. As per the rules and regulations, he filed a complaint in writing. The district commission ordered the trader to replace the product and compensate Mr. A for the damages and the losses caused.

## LEARNING OBJECTIVES

After studying the chapter, you will be able to:

- Explain objective and scope of Consumer Protection Act, 1986
- Discuss the genesis of the Act and object and applicability
- Describe complaint, consumer, contract of service, consumer disputes, restrictive trade practice, defect, deficiency and consumer protection
- Discuss the rights of the consumer
- Explain various consumer protection councils such as, State Consumer Protection Council, Jurisdiction, and District Forum
- Explain the nature and scope of remedies like filing a complaint, power of district forum, appeals and limitations

### 5.1 INTRODUCTION

The previous chapter discussed about the Partnership Act. This chapter focuses on Consumer Protection Act.

Every consumer needs to be protected from unfair trade practices or restrictive trade practices followed by traders. These malpractices are followed by traders to promote sale and earn money. The Consumer Protection Act is legislated for the purpose of appropriate protection of interest of the consumers and make necessary regulations to establish the consumer council and other authorities for settling disputes of consumers and other related issues.

This chapter discusses the objective and scope of the Consumer Protection Act, 1986. The rights of the consumer and consumer protection councils are discussed in detail. The Government of India and various other organisations have enacted certain rights in favour of consumers so that they can safeguard themselves against the unfair traders.

### 5.2 OBJECTIVE AND SCOPE OF CONSUMER PROTECTION ACT, 1986

Let us discuss the genesis, objectives, applicability and scope of Consumer Protection Act, 1986.

#### 5.2.1 GENESIS OF THE ACT

The human values were cherished and ethical practices were followed in the ancient world. In India, the increase in industrialisation and

economic development has increased the volume of consumption of goods and services. We can say that the industrial revolution and a shift in population from rural area to urban areas gave plenty of scope for malpractices. The consumers' interests were highlighted by media, social activists and various business concerns. Various legislations such as The Sale of Goods Act, 1930; the Essential Commodities Act, 1955; the Prevention of Food Adulteration Act, 1954; the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980; The Standards of Weights and Measures Act, 1956; Agricultural Products and Grading and Marketing Act (AGMARK), 1937; Indian Standards Bureau Certification Act, 1952; the MRTP Act, 1969 have failed to provide any effective protection to the consumers because of their lack of effective implementation. For instance, in spite of Food Adulteration Act in India, large-scale deaths were reported due to adulterated food. It was observed that many manufacturers were indulged in making false claims.

Various attempts have been made for guarding the interest of consumers till 1986. In 1986, Government of India enacted legislation - Consumer Protection Act to safeguard the interest of consumers. This act was designed after studying various consumer protection laws and provisions in UK, USA, Australia and New Zealand. This Act was amended in 1991, 1993 and 2002.

The main features of the Act are as follows:

- Applies to all the goods and services (unless exempted by Central Government)
- Covers all public, private or co-operative sectors
- Establishes consumer protection councils at central and state levels
- Provides many rights to consumers such as right to safety, information, choice, representation, education, etc.
- Provides safety to consumers regarding defective products, dissatisfactory services and unfair trade practices

## 5.2.2 OBJECT AND APPLICABILITY



### DEFINITION

As per the preamble to the Consumer Protection Act, "An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith."

The objectives of the Consumer Protection Act are as follows:

- Protecting the interests of consumers.
- Establishing consumer councils and other authorities

- Settling consumers' disputes and other related matters by empowering the consumer councils and other authorities
- Creating legal mechanisms that are within the easy reach of consumers
- Generating awareness among consumers about their rights and responsibilities

### APPLICABILITY

Consumer Protection Act applies to the whole of India except for the state of Jammu and Kashmir.

### 5.2.3 DEFINITION

Some of the term used in the act are explained as follows:

#### COMPLAINT

Complaint means any allegation made in writing by a complainant for following matters with a view to obtain relief against it:

- An unfair trade practice and restrictive trade practice which is adopted by a trader.
- Goods brought that are defective.
- Services hired that contains deficiency.

Figure 5.1 shows the matters against which a complaint is made:

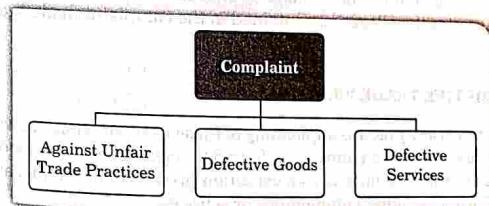


Figure 5.1 Matters of Complaints

#### CONSUMER

A consumer is a person who buys goods for a consideration which has been paid or will be payable. It also includes a user of those goods other than the buyer of such goods for a consideration which has been paid or payable by the buyer.

**Consumer** means any of the following persons:

- A person who buys any goods for a consideration which has been paid or promised partly paid and partly promised or under any system of deferred payment i.e. in respect of hire-purchase transaction. The term includes any other user of such goods when such use is made with the approval of the buyer.
- The expression "consumer", however, does not include a person who obtains such goods for re-sale or for any commercial purpose.
- A person who hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The term includes any other beneficiary of such services with the approval of the first mentioned person.

#### CONTRACT OF SERVICE

A contract of service means providing of service or making an agreement whether in writing or verbal, expressed or implied which is made available to the ultimate users and includes the provision of facilities such as banking, insurance, transport, health, entertainment, amusement, board, processing etc. but does not include any service of personal nature or any free of charge service.

#### CONSUMER DISPUTE

A consumer dispute refers to a dispute in which a person against whom a complaint has been made by another person denies or refuses or disputes the allegation contained in the complaint made against him.

#### RESTRICTIVE TRADE PRACTICES

Restrictive trade practice implies any of those trade practices in which the buyers and the consumers are forced to buy, avail or hire goods or services as the case may be as a condition precedent of buying, availing or hiring the other commodities or services.

#### DEFECT AND DEFICIENCY

- **Defect:** It means any problem, fault, shortcoming or any bad quality, potency, standard or purity of any goods which is required to be ensured under any law for the time being in force and which is stated as good, pure and appropriate by the trade in any manner.
- **Deficiency:** It means any fault, shortcoming or any poor quality, potency, standard or purity of any service which is required to be ensured under any law for the time being in force and which is stated as good, pure and appropriate by the trade in any manner.

Figure 5.2 differentiates between defect and deficiency:

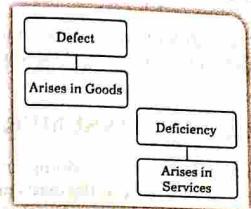


Figure 5.2 Difference between Defect and Deficiency

#### CONSUMER PROTECTION

Consumer protection refers to those laws or organisations that are designed for the safeguard of the consumers and to make provisions for the rights of the consumers as well as for the fair trade practices and competition in the market. The laws or group of laws are enacted to prevent those businesses that are engaged in fraud or specified unfair practices.

#### SELF ASSESSMENT QUESTIONS

1. Who can be called a consumer?
  - a. A person who buys goods
  - b. A person who resells the goods
  - c. A person who consumes the goods
  - d. None of the above.
2. The consumer protection act is applicable to:
  - a. Whole of India
  - b. Whole of India except Jammu and Kashmir
  - c. Whole of the world
  - d. None of the above
3. This act was enacted by the parliament in the 37th year of the \_\_\_\_\_.
4. A consumer dispute refers to a dispute in which a person against whom a complaint has been made by another person denies or refuses or disputes the allegation contained in the complaint made against. (True/False)
5. Defect arises in goods while deficiency arises in \_\_\_\_\_.
6. Consumer protection refers to those laws or organisations that are developed for the safeguard of the consumers. (True/False)

 ACTIVITY

Using the Internet, identify what privileges Jammu and Kashmir's consumers have different from the rest of the Indian consumers.

### 5.3 RIGHTS OF THE CONSUMER

In today's scenario, many businesses are doing unfair trade practices and fraud with the consumers. The uninformed consumer is tested on the grounds of quality, quantity and purity. For this, the government of India and various other organisations has enacted certain rights in the favour of consumers so that they can safeguard themselves against the unfair traders. These rights are described as follows:

- Right to Safety:** This right protects the consumers from the hazardous products that are provided by the traders. The consumer has a right to protect himself from the marketing of goods and services that are hazardous to life and property. This right is for the long term interest of the consumer. For example, if a pressure cooker company makes a defective cooker than it is dangerous for the consumer as it can lead to a serious accident.
- Right to Information:** It is the duty of the trader to inform consumer about the product. But the law has given a special and the most helpful right for the consumer namely right to information. According to this right the consumer has a full right to get the information about the quality, purity, standard and the correct price for the goods or service. It will help him to protect himself against the unfair trade practices.
- Right to Choice:** Right to choice means that the consumer has a right to buy or to hire the product or service of his own choice. It can only be possible if there is availability, ability and access in the goods and the services. It also helps the consumers to go into competitive market and pricing. The producer or the trader cannot force the consumer to buy a particular product or to hire a particular service. It is the right of the consumer to select his own liking of products and services.
- Right to be Heard:** This right gives the consumer a facility of being heard in case of any unfair practice. He can represent himself against the fraud conducted by the trader against him.
- Right to Seek Redressal:** In case the consumer is exploited or fraud has been done with the consumer due to unfair trade practices, then the consumer has a right to represent himself and to claim compensation for the loss or damage caused to him. This right to claim damage is known as right to seek redressal. In this

right, the consumer can claim the damages caused by replacing the product or by repairing the defect in the goods or service.

- Right to Consumer Education:** According to this right, the consumer must be educated about the goods or the service. If the consumer is literate he can easily identify the goods and the defects in it. Various organisations are opened in the country in order to educate the consumers so that awareness among consumers will increase.

 SELF ASSESSMENT QUESTIONS

7. The uninformed consumer is tested on the grounds of \_\_\_\_\_ quantity and purity.
8. The consumer has a right to protect himself from the marketing of goods and services that are hazardous to life, property. (True/False)
9. In case the consumer is exploited or fraud has been committed with the consumer due to unfair trade practices, then the consumer has a right to represent himself and to claim \_\_\_\_\_ for the loss or damage caused to him.

 ACTIVITY

Discuss the rights you have as a consumer with your friends.

### 5.4 CONSUMER PROTECTION COUNCILS

The central council was formed by the central government by its notification established from time to time. The central council consists of the following members:

- The Chairman, who is the minister in charge of consumer affairs in the Central Government.
- Other officials and non-official members who represent the interest and as may be prescribed.

**Objectives:** Following are the objectives of the consumer protection councils:

- To protect the consumers from the goods and services which are hazardous to the life and property
- To inform the consumers about the quality, quantity, purity and standard of the goods and service
- To provide the right to be heard and the right to seek redressal
- To educate the consumer about the products and services

#### 5.4.1 STATE CONSUMER PROTECTION COUNCIL

The state council was formed by the state government by its notification establish from time to time as may be specified. The state council consists of the following members:

- The Chairman, who is the minister in charge of consumer affairs in the State Government
- Other officials and non-official members who represent the interest and as may be prescribed

#### 5.4.2 DISTRICT CONSUMER PROTECTION COUNCIL

The state government establishes a district consumer protection council in every district from time to time by a notification. It consists of the following members:

- The Collector of the district as the chairman
- Other officials and non-official members representing the interest as may be prescribed

#### 5.4.3 REDRESSAL MACHINERY

The act provides for the redressal machinery in a three tier concept which is defined as follows:

- **National Consumer Disputes Redressal Commission:** The National Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation is greater than ₹1 crore.
- **State Consumer Disputes Redressal Commission:** The State Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation is greater than ₹20 lakh but less than ₹1 crore.
- **District Consumer Disputes Redressal Commission:** The District Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation is less than ₹20 lakh.

Figure 5.3 shows the redressal machinery:

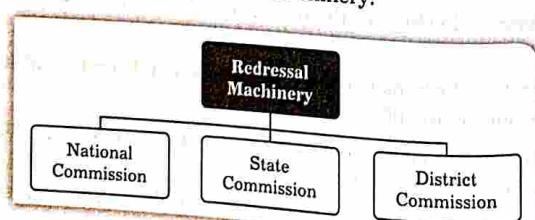


Figure 5.3: Redressal Machinery

#### 5.4.4 JURISDICTION

Jurisdiction may be defined as certain area or certain persons for which a government authority or body has regulatory or judicial authority. For example, the Nagar Palika Parishad has the jurisdiction of the city.

Jurisdiction can be on:

- Area in which the authority resides
- People on which the authority can execute the power
- Subject matter which is related to the law

Figure 5.4 shows the types of jurisdiction:

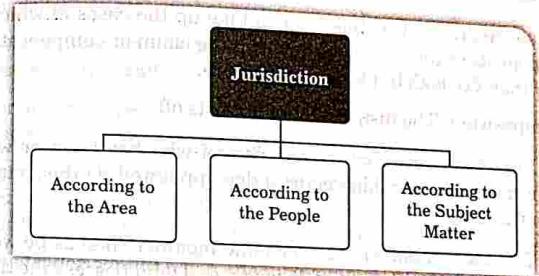


Figure 5.4: Types of Jurisdiction

#### 5.4.5 DISTRICT FORUM

The District Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation is less than ₹20 lakhs.

- **Composition:** The district forum consists of:
  - ◆ President, who shall be the person who has been or who is qualified to be a district judge appointed by the state government
  - ◆ Two more members in which one member shall be women not exceeding the age of 35 years, and who possess the degree of bachelor's from a recognised university and also have an experience of at least 10 years in dealing the problem related to accountancy, commerce, economic, public affairs etc.
- **Duration:** A member appointed for the above posts shall continue to be there for a maximum period of 5 years or till the age of 65 years whichever is earlier. However he or she can be re-elected or appointed further for a period not exceeding 5 years.

Figure 5.5 shows the composition of district forum:

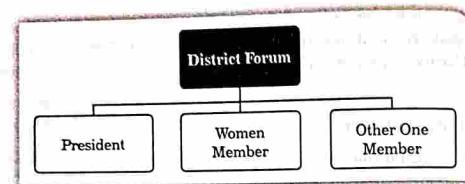


Figure 5.5: Composition of District Forum

#### 5.4.6 STATE COMMISSION

The State Redressal Commission can take up the cases in which the value of goods or the services along with the claim or compensation is greater than ₹20 lakh but less than ₹1 crore.

**Composition:** The district forum consists of:

- ◆ President, who shall be the person who has been or who is qualified to be a high court judge appointed by the state government.
  - ◆ Two more members in which one member shall be women not exceeding the age of 35 years, and who possess the degree of bachelor's from a recognised university and also has an experience of at least 10 years in dealing the problem related to accountancy, commerce, economic, public affairs etc.
- Duration:** A member appointed for the above posts shall continue to be there for a maximum period of 5 years or till the age of 67 years whichever is earlier. However he or she can be re-elected or appointed further for a period not exceeding 5 years.

#### 5.4.7 NATIONAL COMMISSION

The National Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation is greater than ₹1 crore.

**Composition:** The district forum consists of:

- ◆ President, who shall be the person who has been or who is qualified to be a supreme court judge appointed by the central government.
- ◆ Not less than four more members in which one member shall be women not exceeding the age of 35 years, and who possess the degree of bachelor's from a recognised university and also have an experience of at least 10 years in dealing the problem related to accountancy, commerce, economic, public affairs etc.

- Duration:** A member appointed for the above posts shall continue to be there for a maximum period of 5 years or till the age of 70 years, whichever is earlier. However, he or she can be re-elected or appointed further for a period not exceeding 5 years.

#### 5.4.8 NATURE AND SCOPE OF REMEDIES

The consumer has been given the power under the act to make a complaint regarding the fraud done by the trader and for any other unfair trade practice. Following is the list of remedies available to the consumer against the malpractices done by the traders:

- If there is any defect in the goods or the service which the consumer uses than he/she has a remedy of removing the defects in the goods free of cost, without paying any charge for it
- If the defect is not treatable than the defective goods must be replaced by the trader;
- For any damage caused to the consumer due to the goods they can also claim compensation against it
- If any complaint is filed against any trader and the same has been found guilty then the trader must be restricted for doing any unfair trade practice and must discontinue his practice or business;
- The trader should pay a adequate amount of compensation to the consumer for the damages caused to him

Figure 5.6 shows the different options of remedies available to the consumers:

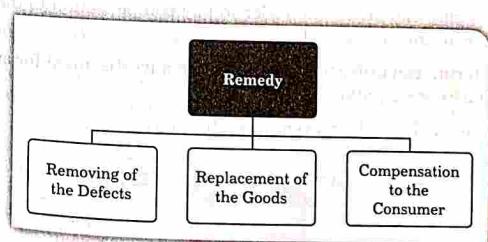


Figure 5.6: Options of Remedies Available to the Consumers

#### FILING A COMPLAINT

First of all the jurisdiction of the complaint is to be identified. If the claim or compensation is less than 20 lakh, it must be presented in the district commission. If the claim is above 20 lakh but less than 1 crore, it must be presented in the state level commission. If the claim is more than 1 crore, then the National Commission must be seen.

## NOTES

**PROCEDURE ON ADMISSION OF COMPLAINT**

A prescribed fee is there for filing the complaint which depends on the amount of compensation. These are as follows:

Upto 1 lakh	₹100/-
1 lakh to 5 lakh	₹200/-
5 lakh to 10 lakh	₹400/-
10 lakh to 20 lakh	₹500/-

Since there is no compulsory requirement of any lawyer or any legal representative, the consumer can himself file a case against the trader in the Commission. The complaint can be sent by a registered post. A minimum of 5 copies must be sent to the commission. You must keep one copy with you before sending the complaint copy to the Commission.

**POWER OF DISTRICT FORUM**

The district forum has the following powers against a trader who is at:

- The forum can give order to correct the deficiency caused in the product.
- The forum can give order to repair the defect caused in the product.
- The forum can give order to replace the product.
- The forum can order the trader to pay compensation to the consumer for the loss caused.
- The forum can order to issue corrective advertisement for an earlier misrepresentation.

Figure 5.7 shows the power of a district forum:

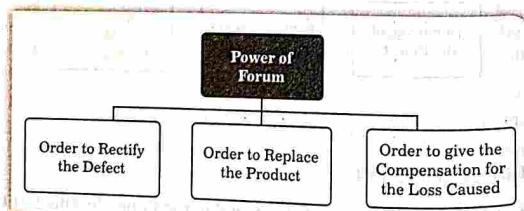


Figure 5.7: Power of a District Forum

**RELIEF AVAILABLE TO CONSUMER**

The relief available to the consumer are as follows:

- If there is any defect in the goods or the service which the consumer uses, then he has a remedy of removing the defects in the goods free of cost, without paying any charge for it
- If the defect is not treatable then the defective goods must be replaced by the trader
- For any damage caused to the consumer due to the goods, he can also claim compensation against it
- If any complaint is filed against any trader and the same has been found guilty, then the trader must be restricted for any unfair trade practice and must discontinue his practice or business
- The trader should pay adequate amount of compensation to the consumer for the damages caused to him

**5.4.9 APPEALS AND LIMITATIONS**

**Appeal:** An appeal against the order of the district forum can be filed at the state level and of the state level at the national level. The decision of the national level can also be challenged in the Supreme Court. However, the appeal against the order can only be filed within 30 days from the date of passing the order by the appropriate authority.

**Limitations:** The appeal or the complaint against the trader must be filed at the earliest by the consumer but not later than a period of two years. The complaint is not valid after two years from the time when the cause first arose.

However, in some exceptional cases, a appeal can be accepted if the complainant has a reason to satisfy the court that the delay was justified.

**5.4.10 APPLICABILITY OF THE ARBITRATION ACT**

Arbitration is a procedure in which two or more parties who are in dispute, by an agreement goes to one or more arbitrator who makes a binding decision which is applicable to all the parties on the basis of their knowledge and experience.

In the case of consumer protection, the concept of arbitration can be applied. The aggrieved party can instead of going to the court of commission can go to the arbitrator against the other party in agreement

to that party and sort out the matter on the basis of the decisions of the arbitrator. The act of arbitration is thus applicable to both the parties.

#### SELF ASSESSMENT QUESTIONS

10. The central council was formed by the Central Government. (True/False)
11. The State Government establishes a \_\_\_\_\_ in every district from time to time by a notification.
12. Who is the chairman of the district consumer protection council?
13. The National Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation is greater than ₹1 crore. (True/False)
14. There are three types of redressal machineries, such as National Commission, State Commission, and \_\_\_\_\_.

#### ACTIVITY

Using the Internet, identify the responsibilities and powers of the National, State and District Commission.

#### 5.5 SUMMARY

- The Consumer Protection Act is legislated for better protection of the interest of the consumers and to make rules and regulations to establish the consumer council and other authorities for the settlement of consumers' disputes and any other related matter.
- A consumer dispute refers to a dispute in which a person against whom a complaint has been made by another person denies or refuses or disputes the allegation contained in the complaint made against him.
- Right to choice means that the consumer has a right to buy or to hire the product or service of his own choice.
- The national redressal commission takes the cases in which the value of goods or the services along with the claim or compensation is greater than ₹1 crore.

- The State Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation is greater than ₹20 lakh but less than ₹1 crore.
- The District Redressal Commission takes the cases in which the value of goods or the services along with the claim or compensation lower than ₹20 lakh.
- If there is any defect in the goods or the service which the consumer uses than he has a remedy of removing the defects in the goods free of cost, without paying any charge for it.
- The trader should pay an adequate amount of compensation to the consumer for the damages caused to him.

#### KEY WORDS

- **Consumer:** It refers to a person who buys goods and services for the purpose of use and consumption.
- **Defect:** It means any fault, shortcoming or any imperfection in the quality, potency, standard or purity of any goods which is required to be maintained under any law for the time being in force and which is claimed as good, pure and appropriate by the trade.
- **Jurisdiction:** It may be defined as a government authority or body over a certain area or certain persons.

#### 5.6 DESCRIPTIVE QUESTIONS

1. Explain the objectives and scope of Consumer Protection Act, 1986.
2. Explain the terms consumer, complaint and contract of service.
3. Describe the rights of the consumers.
4. Explain redressal machinery.
5. Explain jurisdiction and district forum.
6. Describe the nature and scope of the remedies available to consumers.

## 5.7 ANSWERS AND HINTS

### ANSWERS FOR SELF ASSESSMENT QUESTIONS

Topic	Q.No.	Answers
Objective and Scope of the Consumer Protection Act 1986	1.	c. A person who consumes the goods
	2.	b. Whole of India except Jammu and Kashmir
	3.	Republic of India
	4.	True
	5.	Services
	6.	True
Rights of the Consumer	7.	Quality
	8.	True
	9.	Compensation
Consumer Protection Councils	10.	True
	11.	District Consumer Protection Council
	12.	Collector of the District
	13.	True
	14.	District Commission

### HINTS FOR DESCRIPTIVE QUESTIONS

1. Consumer Protection Act, 1986 was enacted by the parliament in the 37th year of the Republic of India. The act is called as Consumer Protection Act, 1986. It shall come into force with the central government notification. Refer to section 5.2 Objective and Scope of Consumer Protection Act, 1986.
2. A complaint is a legal action taken by a consumer while a consumer is the person who buys the goods for the use and consumption. Refer to section 5.2 Objective and Scope of Consumer Protection Act, 1986.
3. In today's scenario many businesses are doing unfair trade practices and fraud with the consumers. There are various rights consumers have got, such as right to safety, right to information, right to choice, and right to seek redressal. Refer to section 5.3 Rights of the Consumer.

4. The act provides for the redressal machinery in a three tier concept which includes National, State, and District disputes redressal commission. Refer to section 5.4 Consumer Protection Councils.

5. Jurisdiction may be defined as certain area or certain persons for which a government authority or body has regulatory or judicial authority while The district redressal commission takes the cases in which the value of goods or the services along with the claim or compensation is less than ₹20 Lakhs. Refer to section 5.4 Consumer Protection Councils.

6. The consumer has been given the power under the act to make a complaint regarding the fraud done by the trader and for any other unfair trade practice. Refer to section 5.4 Consumer Protection Councils.

## 5.8 SUGGESTED READING FOR REFERENCE

### SUGGESTED READINGS

- Misra, S., & Chadah, S. (2012). *Consumer protection in India*. New Delhi: Centre for Consumer Studies, Indian Institute of Public Administration.
- Rao, M. (1999). *Public utility services under the Consumer Protection Act*. New Delhi: Deep & Deep Publications.
- S. S. Gulshan, G. (2009). *Business law including company law*. [S.I.]: New Age International Pvt.

### E-REFERENCES

- (2014). Retrieved 8 November 2014, from [http://dc-siwan.bih.nic.in/Consumer\\_Act.pdf](http://dc-siwan.bih.nic.in/Consumer_Act.pdf)
- Consumeraffairs.nic.in., (2014). CHAPTER II - CONSUMER PROTECTION COUNCILS | Department of Consumer Affairs. Retrieved 8 November 2014, from <http://consumeraffairs.nic.in/consumer/?q=node/186>
- Cuts-international.org., (2014). CART, India. Retrieved 8 November 2014, from <http://www.cuts-international.org/Consumer-Rights.htm>
- Nedrc.nic.in., (2014). Consumer Protection Act-1986. Retrieved 8 November 2014, from [http://www.ncdrc.nic.in/1\\_1.html](http://www.ncdrc.nic.in/1_1.html)
- Nedrc.nic.in., (2014). DIVISION TWO. Retrieved 8 November 2014, from [http://ncdrc.nic.in/1\\_1\\_2.html](http://ncdrc.nic.in/1_1_2.html)

# 6

## CHAPTER

### COMPETITION ACT, 2002-PART I

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### LEARNING OBJECTIVES

After studying the chapter, you will be able to:

- Explain important terms such as acquisition, agreement, cartel, enterprise and goods
- Describe anti-competitive agreements
- Explain the prohibition or abuse of the dominant position
- Explain Competition Commission of India (CCI)
- Describe establishment of CCI, powers of CCI members and procedure for the enquiry of the complaints
- Explain the procedure for investigation of combination and power to grant interim relief
- Discuss power to award compensation, appearance before the Commission and power of the Commission

### 6.1 INTRODUCTION

Competition Act, 2002 is applicable in all the parts of India except Jammu and Kashmir. The Act came into the force through notification by the Central government in an official gazette. The Competition Act, 2002 was amended in 2007 and 2009. The provisions of competition laws are equally applicable on all the agreements whether these are written or oral between the parties. The Act was enacted to:

- Promote the welfare of consumers
- Implement competition policies
- Promote competition advocacy
- Promote fair and healthy competition

The Act is based on the philosophy of modern competition laws. It prohibits anti-competitive agreements and abuse of the dominant position by enterprises. The Act also regulates combinations (acquisition, acquiring of control, merger and acquisition), which may lead to appreciable adverse effects on competition in India.

The components of competition laws can be summarised in the following manner:

Any agreement which has a severe impact over the competition but not limited to:

- Any agreement which limits or makes an attempt to limit the production
- Any agreement which limits or makes an attempt to limit supply
- Any agreement which fixes the price or makes an attempt to fix price

- An agreement that attempts collusive bidding

- Refusal to deal

- The exclusive supply agreement

- Exclusive distribution agreement

To achieve the above objectives, Competition Commission undertook the following tasks:

- Create market that works for the benefit and welfare of the customers and consumers.
- Ensure fair and healthy competition for the faster growth of the economy.
- Implemented the competition policies with the aim of effective utilisation of resources.
- Carry the competition advocacy in an efficient manner and help spread the information of competition amongst all concerned persons and entities.

The objectives of the Act are to be achieved through the Competition Commission of India (CCI), which was established by the Central Government with effect from 14 October 2003. In this chapter, you will study about the Competition Act, 2002 in detail.

### 6.2 DEFINITIONS

The following terms have been defined Under Section 2 of Competition Act, 2002.

#### 6.2.1 ACQUISITION

The term acquisition means directly or indirectly acquiring or agreeing to acquire shares, voting rights, or assets of any Company or acquiring the control over the assets of the Company or acquiring control over the management of the Company.

#### 6.2.2 AGREEMENT

Agreement is an arrangement or action in a contract or understanding. It is not necessary that such an understanding should be formally written or be enforceable by the law.

#### 6.2.3 CARTEL

The term Cartel refer to an association of producers, sellers, distributors, traders or service providers. This association is called a cartel when these parties amongst themselves either limit, control or attempt to control the production, distribution, sale price or provision of goods or services.

#### 6.2.4 CHAIRPERSON

The term "Chairperson" refers to a person appointed as a Chairperson of the Commission under sub-section (1) of section 8.

#### 6.2.5 COMMISSION

The term "Commission" means a Commission established under sub-section (1) of section 7.

#### 6.2.6 CONSUMER

The word "Consumer" means:

- A person who buys any goods for a consideration which has been paid or partly paid or promised to be paid at a later date under any system including deferred payment. It is not relevant if such purchase of goods is for resale or for any commercial purpose or for personal use.
- A person who hires or avails any services for a consideration which has been paid or partly paid or promised to be paid at a later date under any system including deferred payment. It is not relevant if such purchase of goods is for resale or for any commercial purpose or for personal use.

#### 6.2.7 DIRECTOR GENERAL

Director General is the Director appointed under Sub-section (1) of section 16 and includes the Additional, Deputy or Assistant Directors appointed under this Act.

#### 6.2.8 ENTERPRISE

The word "Enterprise" means a person or department of the government, who or which is or has been engaged in any activity related to the production, supply, storage, distribution, acquisition or control of articles or goods. An enterprise makes provisions for services of any kind or is involved in the business of acquiring, holding, underwriting or dealing with shares, securities or debentures but all these activities are not limited to the activity of the government. Here, the word activity means and includes any profession or occupation.

#### 6.2.9 GOODS

The term "Goods" means goods as defined in the Sales of the Good Act, 1930 and includes:

- Products manufactured, processed or mined
- Debentures, stock and shares after the allotment is over
- Goods imported to India or distributed and controlled in India

#### 6.2.10 MEMBERS

The term "Member" means a member of the Commission who is appointed under sub-section (1) of section 8 and also includes the Chairperson.

#### 6.2.11 PRICE

In relation to the sale of any goods or to the performance of any services, price includes every valuable consideration, whether direct or indirect or deferred, it includes any consideration which in effect relates to the same of any goods or to the performance of any services although ostensibly relating to any other matter or thing.

#### SELF ASSESSMENT QUESTIONS

1. Acquisition means:
  - a. Right to acquire shares
  - b. Right to acquire voting rights
  - c. Right to control assets
  - d. All of the above
2. Cartel is an association of:
  - a. Producers
  - b. Sellers
  - c. Distributors
  - d. All of the above
3. The term "Commission" means a Commission established under sub-section (1) of section 7. (True/False)
4. The term "Cartel" includes an \_\_\_\_\_ of producers, sellers, distributors traders or service providers.

#### ACTIVITY

Explain the following terms in brief:

- a. Goods
- b. Consumer
- c. Cartel
- d. Agreement
- e. Acquisition

### 6.3 ANTI-COMPETITIVE AGREEMENTS

Anti-Competitive agreements are agreement(s) which, if entered, shall have an appreciable adverse effect on Competition within India. The relative provisions of Anti-Competitive agreements are as follows:

- No enterprise or association of enterprise is allowed to enter into an agreement related to any production, supply distribution, storage or control of goods or provisions of services which may have an appreciable adverse effect on competition within India.

Any such agreement entered shall stand void.

Anti-Competitive agreements include the elements listed in Figure 6.1:

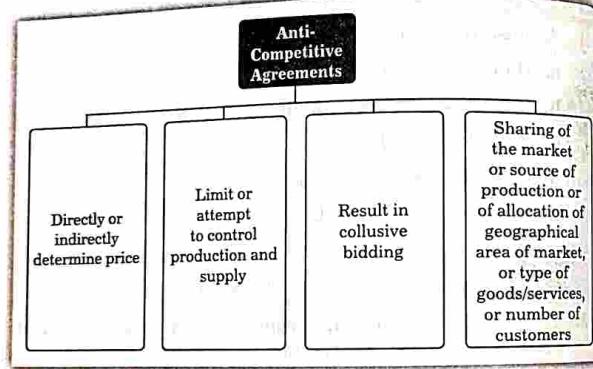


Figure 6.1: Elements of Anti-Competitive Agreements

Any agreement made between enterprises or associations of enterprises or persons may include cartels that:

- Directly or indirectly determine the purchase or sales price;
- Limit or make an attempt to control the production, supply, markets or technical development;
- Share the market or source of production or provision of services by the way of allocation of geographical area of market, or type of goods and services, or the number of customers in the market or any other similar way;
- Directly or indirectly result in collusive or bid rigging;

All of the above shall have adverse effect on competition and shall fall under Anti-Competitive agreements.

#### SELF ASSESSMENT QUESTIONS

5. Anti-competitive agreements are agreements that have an adverse impact on competition. (True/False)
6. No enterprise or association of enterprise is allowed to enter into an \_\_\_\_\_ in relation to any production, supply distribution, storage or control of goods or provisions of services which may have an appreciable adverse effect on competition within India.

#### ACTIVITY

Explain in brief anti-competitive agreements and their components. When does an agreement become anti-competitive?

### 6.4 PROHIBITION OF ABUSE OF DOMINANT POSITION

The prohibition of the dominant position states that no enterprise should use its position in a manner which directly or indirectly imposes restrictions or conditions over the purchase, sale, and supply of goods or services. The relevant provisions can be summed up as under:

Dominant position is a position wherein an enterprise:

- a. Directly or indirectly imposes unfair and discriminatory:
  - ◆ Conditions in purchase or sale or in services;
  - ◆ Prices in purchase or sale or goods or service.
- b. A dominant position is also one in which an enterprise limits or restricts:
  - ◆ Production of goods or provisions for any services or market thereof;
  - ◆ Any technical or scientific development in relation to the goods or services which may prejudice consumers.
- c. It is said to be a dominant position wherein the enterprise indulges in practice or practices which results in the denial of market access.
- d. If an enterprise uses its dominant position in one relevant market to enter and protect another relevant market.

The dominant position is used by an undertaking in the market to operate independently of the prevailing competitive environment.



### SELF ASSESSMENT QUESTIONS

7. Prohibition of the dominant position attempts to restrict or restricts:
- Purchase
  - Sale
  - Supply
  - All of the above



### ACTIVITY

Using the Internet, explain the term prohibition of the dominant position.

## 6.5 COMPETITION COMMISSION OF INDIA (CCI)

The Central Government, by notification in the official gazette, has appointed a Commission for the purpose of this Act, which is known as Competition Commission of India.

The Competition Commission of India is an organisation with the perpetual succession and common seal and shall have the powers which may be specified in the Act.

The head office of the Commission is in Delhi and has offices at many other places.

### 6.5.1 ESTABLISHMENT OF CCI

The composition of the Competition Commission of India shall be as follows:

- It shall consist of a Chairperson and not less than two (2) members and not more than ten (10) members, who shall be appointed by the Central government.
- The Chairperson and other members act as full time members of the Commission.
- The chairperson and other members shall hold the office for the term of five years and shall be eligible for the re-appointment. Further, it's important to understand that no Chairperson shall hold the office after attaining the age of 67 years and, no members shall hold the office after attaining the age of 65 years.
- The Chairperson or the other members shall be a person of ability, integrity, and standing who shall be a judge of a high court or

shall have a special knowledge and experience of not less than 15 years in international business, economics, business, commerce, law, and finance which, in the opinion of central government, may be useful for the Commission.

- If a vacancy is caused by the death of the Chairperson or by resignation, the senior-most member shall act as the Chairperson until and unless the new Chairperson is appointed.
- If there is a vacancy of Chairperson due to the removal, then a fresh appointment of Chairperson shall take place as per the method specified.
- If the Chairperson is not able to continue his/her services as may be required, the senior-most member of the CCI shall discharge his/her duties.

### 6.5.2 POWERS OF CCI MEMBERS

The Central Government may designate any member as member administration who shall exercise such financial and administrative power as may be vested with him and as prescribed in him under the rules of the Central Government.

It is further provided that the member administration has the authority to delegate the financial and administrative powers as thought appropriate by the member administration to any officer of the Commission. The officer to whom such powers are delegated still works under the supervision, direction and control of the member administration.

### 6.5.3 INQUIRY INTO CERTAIN AGREEMENT AND DOMINANT POSITION OF ENTERPRISES

The Commission has a right to inquire into alleged contraventions of the provisions contained in sub-section (1) of section 3 or sub-section (1) of sub-section 4 of the Act either on its own motion or on receipt of a complaint, accompanied by such fee as may be determined under the regulations.

The Commission while determining whether an agreement has an adverse effect on competition shall consider certain factors. These factors are shown in Figure 6.2:

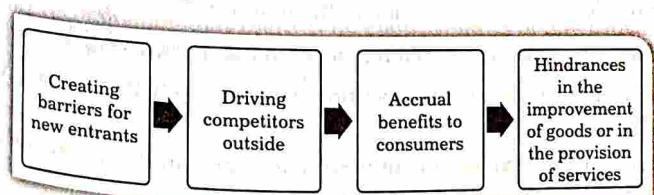


Figure 6.2: Factors in Competition

- While evaluating whether an enterprise has a dominant position or not, the following factors shall be considered:
- Market share of the enterprise
  - Size of the enterprise
  - Resources of the enterprise
  - Economic power of the enterprise
  - Dependence of consumers on the enterprise
  - Market structure
  - Market size
  - Entry barriers including regulatory barriers, financial risk, capital cost of entry, and marketing entry barriers
  - Relative advantage

Hence, these are the provisions related to the enquiry into the dominant position.

#### 6.5.4 INQUIRY INTO COMBINATION BY COMMISSION

The Commission may upon its own knowledge or any information related to the acquiring of control, or of merger or amalgamation, conduct an enquiry if it thinks it will have an appreciable adverse effect on competition in India. Further the Commission shall not start any enquiry under this section after the expiry of one year from the date when the combination has taken place.

The Commission on becoming aware or on receipt of information, may enquire whether the combination referred to in that notice has caused or it is likely to cause an appreciable adverse effect on competition in India.

For determining whether the combination would have an effect or is likely to have an effect on competition in the relevant market, the Commission shall consider the following factors:

- Real or the likely level of competition through imports;
- The extent of barriers to entry into the market;
- The level of the combination in the market;
- The degree of countervailing power in the market;
- The level of effective competition which is likely to sustain in the market;
- The extent to which substitutes are available in the market or are likely to be available in the market;

- The nature and extent of vertical integration;
- Possibility of the business failing;
- Nature and extent of innovation;
- Whether the good effects of the combination exceeds the adverse effect of the combination.

Hence, these are the relevant points of consideration for inquiry into a combination by the Commission.

#### 6.5.5 PROCEDURE FOR ENQUIRY OF THE COMPLAINTS (SECTION 19)

Once a complaint is received or when a reference is made by the state government or the Central Government, and if the Commission forms the opinion that there is a *prima facie* case, it can order the director general to start an investigation into the subject. Figure 6.3 shows the power of the CCI:

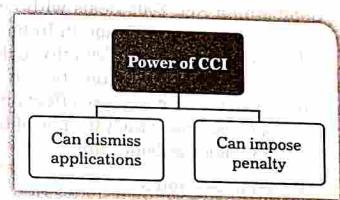


Figure 6.3: Power of CCI

The Director General, upon the receipt of direction, shall submit a report on the findings within such period as may be specified by the Commission.

If the Commission is of the opinion that there is no *prima facie* case, it may reject the application and may pass such orders as it may deem fit, including imposition of cost, if any.

#### 6.5.6 PROCEDURE FOR INVESTIGATION OF COMBINATION

If the report of the Director General relates to a complaint and if such report recommends that there is no contravention of any provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director General.

## NOTES

The CCI can carry any investigation upon:

- Receipt of a complaint
- Own reference
- Reference made by the Central Government
- Reference made by the State Government

If after the hearing the complainant, the Commission is satisfied with the recommendation of the Director General, it shall dismiss the complaint.

On entertaining the complainant, if the Commission forms the opinion that further enquiry is necessary, it directs the complainant to proceed with the complaint.

### 6.5.7 ACTS TAKING PLACE OUTSIDE INDIA BUT HAVING AN EFFECT ON COMPETITION IN INDIA

Section 32 of the Competition Act, 2002 deals with acts taking place outside India having an effect on competition in India. In such a case, the Commission shall have a right to inquire into such an agreement or abuse of the dominant position or combination, if such dominant position or combination shall have an adverse effect on competition in India. The following shall come under the purview of the Commission in respect to the acts taking place outside India:

- An agreement referred in Section 3
- Any party to such agreement outside India
- Any enterprise abusing the dominant position outside India
- Any combination that has taken place outside India
- Any party which is a part of combination outside India
- Any such agreement or dominant position arising outside India

### 6.5.8 POWER TO GRANT INTERIM RELIEF

Section 33 of the Competition Commission Act, 2002 states that if it is proved to the satisfaction of the Commission, by affidavit or otherwise that there is contravention of subsection (1) of section 3 or subsection (1) of section 4, in that case the Commission may by order grant temporary injunction restraining the party from carrying of such acts until such enquiry or further orders.

Where it is proved to the satisfaction of the Commission that the import of goods may contravene subsection (1) of section 3 or subsection (1) of section 4, by affidavit or otherwise, in that case the Commission

may by order grant temporary injunction restraining the party from carrying of such acts until such enquiry or further orders.

The provisions of the Civil Procedure Act, 1908 shall apply as far as the temporary injunction is granted by the Commission under this Act, and it shall be deemed to be applied in the same manner as given by any of the civil court.

### 6.5.9 POWER TO AWARD COMPENSATION

Section 34 of the Competition Act, 2002 deals with the powers of the Commission to award Compensation. The relevant provisions of section 34 are as follows:

- Any person under this Act may make an application to the Commission, for an order to recover compensation from any enterprise, that proves that he has suffered a loss or damage as a result of any of contravention of the provisions of the Act, which has been committed by the enterprise.
- The Commission may after making an enquiry for the reward of compensation may direct the other party to pay the applicant an amount realisable from an enterprise as a compensation for loss or damage which is caused to the applicant due to the contravention of the provisions of the Act.
- Where the loss is occurred to numerous persons having the same interest in that case with the permission of the Commission, one person may represent the interest of all the persons whose interest is affected and can make a single application on behalf of all the persons.
- The complainant or the defendant may appear in person before the Commission. It may also authorise representative or legal practitioners or any of its officers to make its case before the Commission.

### 6.5.10 POWER OF THE COMMISSION

The Commission is not bound to follow the procedure as laid down by the Code of Civil Procedure Act, 1908, but the procedure followed should be guided by the principles of natural justice, subject to the other provisions of the Act or of any rules as made or prescribed by the Central Government from time to time. The Commission can prescribe its own procedure including the places at which they shall have their own sittings, the duration of hearings, etc.

The Commission in respect of the discharge of its duties shall have the same rights as prescribed under the Code of Civil Procedure Act, 1908 in respect of trying a suit.

Figure 6.4 shows the codes of the Civil Procedure Act:

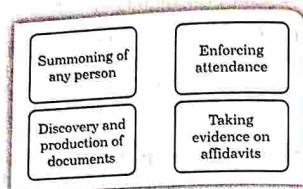


Figure 6.4: Codes of Civil Procedure Act

- The Commission can summon or enforce the attendance of any person and examine him on oath.
- Further the Commission is also authorised subject to the provisions of Section 123 and 124 of the Indian Evidence Act, 1872 for obtaining any public record or document from any of the office.
- The Commission further has the power of dismissing an application on default or deciding it *ex parte*.
- The Commission may call the experts from different fields like accountancy, economics, international trade or from any other discipline as may be deemed fit by the Commission for assisting it in carrying out the proceedings.



#### SELF ASSESSMENT QUESTIONS

8. The minimum number of members in the Competition Commission of India is:
  - a. 2
  - b. 4
  - c. 5
  - d. 3
9. The maximum number of members of the Competition Commission of India shall be:
  - a. 15
  - b. 10
  - c. 18
  - d. 20
10. The term of the chairperson of the Competition Commission of India is:
  - a. 5 years
  - b. 7 years
  - c. 10 years
  - d. None of the above

11. The maximum age up to which the chairperson can hold office is:
  - a. 70 years
  - b. 65 years
  - c. 67 years
  - d. None of the above
12. The Competition Commission of India is bound by the Code of Civil Procedure. (True/False).
13. The Competition Commission of India is authorised subject to the provisions of section 123 and 124 of the \_\_\_\_\_ for obtaining any public record or document from any of the office.



Using the Internet, explain the powers of the CCI.

#### 6.6 SUMMARY

- The Competition Act was enacted in the year 2002.
- The Competition Commission Act was further amended in the years 2007 and 2009.
- The Act was enacted to promote competition, protect the interest of consumers, and ensure the freedom of trade.
- The Competition Act, 2002 ensures that there is no anti-competitive agreement.
- An anti-competitive agreement is an agreement which directly or indirectly determines the price, attempts to control production or supply, or results in collusive bidding.
- The Competition Act, 2002 ensures that there is prohibition on the use of the dominant position, which means that an enterprise is in a position to impose restriction or conditions on sale, purchase and supply of the products.
- The Competition Commission of India was established to implement Competition Act, 2002.
- The CCI shall have not more than 10 persons. The Chairperson shall be the person with specialised knowledge in the areas of economics, finance, etc.
- The CCI shall conduct an inquiry after the receipt of a complaint or through the reference of the Central Government or State Government.
- The Commission shall have the same right as a civil court in respect to conducting enquiries but shall not be bound by the code of the Civil Procedure Act.

- If the Commission is satisfied that there is loss suffered by the concerned parties, the Commission may impose a penalty as it deems fit.

### KEY WORDS

- CCI:** The CCI is referred to as the Competition Commission of India. It is entrusted with the duty of implementing the Competition Act, 2002 in India.
- Anti-Competitive Agreements:** Anti-Competitive agreements are agreements that tend to restrict competition in India.
- Consumer:** A consumer is one who buys any good or avails any service against the payment of a consideration or on the basis of the deferred payment system.
- Enterprise:** Enterprise means any person or department that is engaged in any activity with the production, supply storage or acquisition or control of goods or services.
- Dominant Position:** It refers to the position that directly or indirectly imposes restriction or conditions over the purchase and supply of goods or services.

### 6.7 DESCRIPTIVE QUESTIONS

1. Explain an agreement and a cartel.
2. Explain anti-competitive agreements.
3. Describe the prohibition of dominant position.
4. Explain the procedure for the investigation of combination.
5. What is the procedure for the enquiry of complaints?

### 6.8 ANSWERS AND HINTS

#### ANSWERS FOR SELF ASSESSMENT QUESTIONS

Topic	Q.No.	Answers
Definitions	1.	d. All of the above
	2.	d. All of the above
	3.	True
	4.	Association
Anti-Competitive Agreements	5.	True
	6.	Agreement

Topic	Q.No.	Answers
Prohibition of Abuse of the Dominant Position	7.	d. All of the above
Competition Commission of India (CCI)	8.	a. 2
	9.	b. 10
	10.	a. 5 years
	11.	c. 67 years
	12.	False
	13.	Indian Evidence Act, 1872

#### HINTS FOR DESCRIPTIVE QUESTIONS

1. Agreement also includes the action in a contract or an understanding, and it is not necessary that such an understanding should be formally written or be enforceable by the law. Cartel is an association of producers, sellers, distributors, traders or service providers. Refer to Section 6.2 Definitions.
2. Anti-Competitive agreements are agreements which, if entered, shall have an adverse effect on competition in India. Refer to Section 6.3 Anti-Competitive Agreements.
3. The prohibition of the dominant position states that no enterprise should use its position in a manner which directly or indirectly imposes restrictions or conditions over the purchase, sale and supply of goods or services. Refer to Section 6.4 Prohibition of the Abuse of Dominant Position.
4. If the report of the Director General relates to a complaint and if such a report recommends that if there is no contravention of any provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director General. Refer to Section 6.5 Competition Commission of India.
5. Once the complaint is received or if a reference is made by the State Government or the Central Government, and if the Commission forms the opinion that there is *prima facie* case, it can order the Director General to start an investigation into the subject. Refer to Section 6.5 Competition Commission of India CCI.

### 6.9 SUGGESTED READING FOR REFERENCE

#### SUGGESTED READINGS

- Misra, S., & Chadah, S. (2012). *Consumer protection in India*. New Delhi: Centre for Consumer Studies, Indian Institute of Public Administration.

**NOTES**

- Rao, M. (1999). *Public utility services under the Consumer Protection Act*. New Delhi: Deep & Deep Publications.
- S. S. Gulshan, G. (2009). *Business law including company law*. [S.l.]: New Age International Pvt.
- Furse, M. (2003). *Competition and the Enterprise Act 2002*. Bristol: Jordans.

**E-REFERENCES**

- (2014). Retrieved 8 November 2014, from <http://cci.gov.in/images/media/Advocacy/CompetitionAct2012.pdf>
- (2014). Retrieved 8 November 2014, from [https://www.ieee.org/documents/competition\\_act\\_2002\\_india.pdf](https://www.ieee.org/documents/competition_act_2002_india.pdf)
- Cci.gov.in.. (2014). *Competition Commission of India - Competition Act*. Retrieved 8 November 2014, from [http://www.cci.gov.in/index.php?option=com\\_content&task=view&id=18](http://www.cci.gov.in/index.php?option=com_content&task=view&id=18)

**7****C H A P T E R****COMPETITION ACT, 2002-PART II**

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7.1	Introduction
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7.6	Descriptive Questions
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The Competition Commission of India conducted an enquiry on the working of the Board of Control for Cricket in India (BCCI). After the enquiry, the Competition Commission of India found that BCCI had abused its dominant market position and violated section 4(2) of the Competition Act, 2002 (Section 4 of the Act prohibits an enterprise or group from abusing its dominant position). This was in connection with irregularities in the grant of franchise rights for team ownership, grant of media rights, sponsorship rights and other local contracts related to the Indian Premier League. In their investigation, the CCI concluded that since BCCI is the organiser and regulator of cricket in India, it was in a dominant position in the relevant market. The CCI resolved to the fact that the BCCI had actually used its dominant position to sabotage the Indian Cricket League (ICL). It had deprived ICL of infrastructure and stopped players to participate in ICL's activities. CCI concluded that all this came under the abuse of dominant position as per Competition Act, 2002. CCI fined BCCI for a sum of ₹52.24 crores for abusing its dominant market position.

After studying the chapter, you will be able to:

- Explain the rectification of orders under Competition Act, 2002
- Discuss the other important provisions of the Act
- Describe the Monopolies and Restrictive Trade Practices Act

## 7.1 INTRODUCTION

Since independence, India adopted and followed various policies, command-and-control laws, rules, regulations and executive orders. One such act was the Monopolies and Restrictive Trade Practices Act (MRTP), 1969. In 1991, the widespread economic reforms led India to adopt an economy based on free market principles instead of the command-and-control economy. With economic liberalisation in India, the need for an effective competition regime was recognised. As a result, the MRTP Act, 1969 was replaced by the Competition Act, 2002. The Competition Act, 2002 got the assent of the then President of India on 14<sup>th</sup> January, 2003. The Competition Act, 2002 was enacted to prevent the practices which have an adverse effect on market competition. The other main objective of the Act is to promote competition in the interests of the consumers. The Competition Commission Act, 2002 was primarily implemented to prevent anti-competitive agreements, discourage the dominant undertakings and cartels, and use their position to prevent competition in India. The Act aims to promote competition in India for the economic development of the country. It also protects the interest of the consumers so that they shall have an advantage of the best pricing. The Competition Act, 2002 allows other market participants to carry on their business and ensure freedom to them for carrying their business. Under the Competition Act, 2002, the Competition Commission of India is established, the role of which is to monitor the undertakings and ensure that they are not entering into any agreement or are not in a position to exert any adverse effect over competitions in India.

## 7.2 RECTIFICATION OF ORDERS

The Competition Act, 2002 provides the framework for the economic development of the country. The Act prevents those practices that could have an adverse effect on competition in India. The main ob-

Objectives of the Act can be broadly divided in three parts, as shown in Figure 7.1:

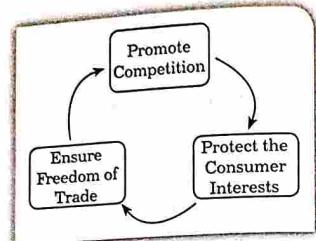


Figure 7.1: Objectives of the Competition Act, 2002

To implement these objectives, the Central Government has created Competition Commission of India with whom various powers are vested in relation to conducting enquiries, taking evidences, summoning the parties, which the Commission feels are undertaking any activities that could have an adverse effect over competition. The Commission is further empowered to impose the penalty that it feels reasonable. The Commission has a right to inquire into alleged contraventions of the provisions contained in sub-section (1) of section 3 or sub-section (1) of sub-section 4 either on its own motion or on:

- the receipt of complaint, accompanied by such fee as may be determined under the regulations.
- the reference made by the central government, the state government or any statutory body.

Section 34 of the Competition Act, 2002 empowers the Competition Commission to pass orders as it may think fit. Once the Commission has passed an order and later on finds any apparent mistake from the record, it has a right to amend that order. The rectification of the order can take place because of the reasons shown in Figure 7.2:

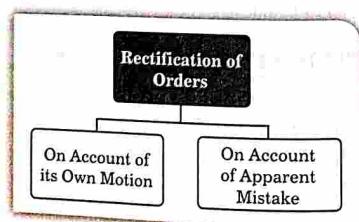


Figure 7.2: Reasons for Rectification of Orders

It should also be taken care that the Commission can only amend the mistake, which is observed apparently but cannot make changes in the substantive part of the order.

### 7.2.1 EXECUTION OF ORDERS BY THE COMMISSION

The effect of the order of the Commission is executed in the same manner as a decree of a high court or a decree of the principal civil court pending therein. If the Commission finds it difficult to execute an order, it can refer it to the high court or to the principal court in whose local jurisdiction the Commission order falls.

The jurisdiction is decided on the fact where the person carries its business, has a registered or a subordinate office. The jurisdiction may also be decided on to the fact where the person concerned resides, conducts business or personally works for the gains.

### 7.2.2 COMPENSATION IN CASE OF CONTRAVENTION

The Commission, under Section 34 of the Competition Act, 2002 upon the request of affected person(s) may make enquiry into any of the matters. The Commission after making enquiry into the allegation made by the applicant may pass an order directing the enterprise on whom the allegation is made to make a payment to the applicant of the amount determined by the Commission. If the damage is affecting numerous people, after seeking permission from the Commission, one person acting on the behalf of the affected people may make an application before the Commission.

### 7.2.3 COMPETITION APPELLATE TRIBUNAL PROCEDURE AND POWERS

The Competition Appellate Tribunal is a statutory organisation established under the provisions of the Competition Act, 2002 to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Competition Act, 2002. The Appellate Tribunal shall also adjudicate on claim for compensation that may arise from the findings of the Competition Commission of India or the orders of the Appellate Tribunal in an appeal against any findings of the Competition Commission of India or under section 42A or under sub-section (2) of section 53Q of the Act and pass orders for the recovery of compensation under section 53N of the Act. There is no requirement that the Commission should follow the procedure as laid down

by the Code of Civil Procedure Act, 1908 or any other relevant act. However, the procedure followed should be guided by the principles of natural justice, subject to other provisions of the Act or of any rules made or prescribed by the Central Government from time to time. The Commission can prescribe its own procedure including the places of sittings, the duration of hearings, etc. Some of the important features of the Competition Tribunal Procedure and laws are as follows:

- It can prescribe its own procedure.
  - It is not bound by any other laws.
  - It has a right to summon and enforce the attendance.
  - It is guided by the principles of natural justice.
- The Commission is vested with the following powers, which are in line with the Code of Civil Procedures, 1908:
- Summoning or enforcing the attendance of any person.
  - Requiring the parties in dispute for the discovery and production of documents.
  - Receiving the evidences on affidavits.

The Commission may also direct any person or the party, to produce such books of accounts, records or other documents in custody of the person, which may be deemed necessary while conducting enquiry under this Act. If the Commission is of the opinion that any agreement or the combination is likely to have an adverse effect on competition in the relevant market, in that case, in the interest of the consumers, it may conduct any enquiry or adjudicate upon any matter under this Act after giving the reasonable opportunity to the parties.

#### 7.2.4 LIABILITY ON CONTRAVENTION OF ORDERS

If any party or the undertaking is found to be contravening the orders issued by the Competition Commission of India, the Commission may impose two kinds of penalties as shown in Figure 7.3:

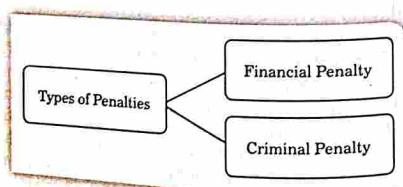


Figure 7.3: Types of Penalties

Let us discuss these penalties in detail:

- Financial Penalty:** It is imposed for the infringement of the competition laws where the benefits are gained by the enterprise or the cartels by entering into anti-competitive agreements or due to the misuse of dominant undertakings.
- Criminal Penalty:** It is imposed only when the parties against whom the orders are passed have not acted upon.

#### 7.2.5 APPEAL TO THE SUPREME COURT

Pursuant to Section 40 of the Competition Commission Act, 2002, any person who is aggrieved by the order of the Commission may file an appeal with the Supreme Court. The appeal shall be filed within 60 days from the date of the receipt of the communication of the order. The grounds of the appeal should be as mentioned in Section 100 of the Code of Civil Procedure, 1908. The grounds of appeal are as follows:

- a. If the Supreme Court is satisfied that the case involves the substantial question of law.
- b. An appeal may also arise from an appellate decree ex parte.

It is further provided that no appeal shall lie with the Supreme Court of India, if the order is passed with the mutual consent of all the parties in dispute. Further, if the Supreme Court feels that there are sufficient reasons that prevented the party to file an appeal beyond 60 days, it may allow filing of an appeal even after that period.

#### 7.2.6 POWER OF THE CENTRAL GOVERNMENT

The main powers of the Central Government are as follows:

- The Central Government may provide financial aid to the Commission:** The funds provided by the government shall be constituted as "Competition Fund" and following amounts shall be credited to it:
  - ♦ The grants received by the Commission from the Government.
  - ♦ The amount received by the various parties towards the cost.
  - ♦ The fee received under this Act.
- The Central Government can provide exemption to certain classes of undertakings:** Further, the Central Government of India by issuing the notification may exempt from the application of this Act, or any provisions thereof, for such period as may be deemed necessary, the exemption can be granted in any of the following manner or in combination:

- ◆ Exemption can be granted to any class of company, if it is necessary in public interest.
- ◆ Exemption can be granted to any enterprise in performing a sovereign function as a representative of the Central Government or any state government.
- ◆ Exemption can be granted to any arrangement or any agreement that is entered against any treaty made between two or more countries.

**The Central Government can issue directions to the Commission:** The Central Government has power to issue directions to the Commission from time-to-time and the Commission shall in exercise of powers or the performance of its function shall be bound by such directions on the question of the policy as given by the Central government in writing to the Commission from time-to-time.

**The Central Government may supersede the Commission:** The decision of the Central Government shall be the final decision. There are certain conditions when the Central Government may supersede the Commission. These circumstances are as follows:

- ◆ There are circumstances that are beyond the control of the Commission and due to which the Commission is unable to discharge its functions or perform the duties imposed on it.
- ◆ The Commission has continuously made default in complying with the directions given by the Central Government under this Act, due to which the financial position or the administration position have suffered.
- ◆ There are such circumstances that are necessary in the opinion of the Central Government to supersede the Commission.

The Central Government may supersede the Commission for a maximum period of six months. It can be done after publishing the necessary notification in the official gazette. Before giving the notification of supersession, the Central Government shall give proper notice to the Commission and shall hear the representation of the Commission and shall consider it.

#### 7.2.7 PENALTIES

With reference to the relevant provisions of the Competition Act, 2002, "if any person is found contravening any of the orders of the Commission, or contravenes any of the conditions or restrictions subject to which any approval, sanction direction has been made or awarded by the Commission, fails to pay penalty imposed under this Act, shall be liable to

*pay penalty imposed under this Act and shall also be liable for the civil imprisonment which may extend to the period of 1 year and penalty can also be imposed not exceeding ₹10 lakhs."*

Section 43 of the Competition Commission Act, 2002 provides for the imposition of the penalty of ₹1 lakh for each day, if any of the persons fails to comply with the directions of the Commission.

Section 44 of Competition Commission Act, 2002 states that if any person being a party of the Commission makes a statement, which is false or omits to state any material fact, in such case, the Commission can impose a penalty of up to ₹1 crore and penalty shall not be less than ₹50 Lakhs.

Section 45 further states that a person without prejudice to provisions of Section 44 can:

- Make any statement which he/she knows to be false
- Omit to state material facts
- Willfully destroy or suppress any document

In the above case, the Commission shall impose the penalty which may extend to ₹10 lakhs. Section 46 empowers the Competition Commission of India that if it is satisfied that any seller, buyer, or cartel who has violated the relevant provisions under this act, the Commission may impose lesser penalty on to those sellers, distributors, cartels as may be deemed fit by the Commission. It is further provided that the lesser penalty shall be imposed only to those cartels, buyers, sellers who made the full and vital disclosures as required under this Act.

#### 7.2.8 DIRECTOR GENERAL TO INVESTIGATE CONTRAVENTION

The Commission may direct the Director General to investigate in the matters, in that the Director shall be required to assist the Commission in investigation proceedings. If the Director General is appointed to carry the proceedings, he/she shall have the same rights as the Commission under this Act.

#### 7.2.9 COMPETITION ADVOCACY

The term competition advocacy provides that while making any law on the Competition, the Central Government may make a reference to the Commission for obtaining its comments. On receipt of the reference, the Commission shall within 60 days of the receipt give its opinion to the Central Government. The Central Government is not bound to accept the opinion expressed by the Commission, but if the Government deems it fit, it may consider that opinion while formulating the policy.

The Commission shall take proper actions and suitable measures as may be prescribed for the promotion of the competition advocacy and create awareness among the public on the competition-related issues.

#### SELF ASSESSMENT QUESTIONS

1. \_\_\_\_\_ provides the framework for the economic development of the country.
2. Section 34 of the Competition Act, 2002 empowers the Competition Commission to pass the orders as it may think fit. (True/False)
3. The Commission, under Section \_\_\_\_\_ of the Competition Act, 2002 upon the request of affected person(s) may make enquiry into any of the matters.
4. \_\_\_\_\_ is a statutory organisation established under the provisions of the Competition Act, 2002 to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India.
5. \_\_\_\_\_ penalty is imposed only when the parties against whom the orders are passed have not acted upon.
6. Any person who is aggrieved by the order of the Commission may file an appeal with the Supreme Court within 20 days from the date of receipt of the order. (True/False)
7. The Central Government may supersede the Commission. (True/False)
8. \_\_\_\_\_ of the Competition Commission Act, 2002 provides for imposition of the penalty of ₹1 lakh for each day, if any of the persons fails to comply with the directions of the Commission.
9. The term \_\_\_\_\_ provides that while making any law on the Commission, the Central Government may make a reference to the competition for obtaining their comments.

#### ACTIVITY

Coal India Limited filed a complaint against suppliers of explosives alleging the formation of a cartel and subsequently won the case with Commission in 2012. Using the Internet, draft the details of the case and orders of the Commission.

### 7.3 OTHER IMPORTANT PROVISIONS

Some other important provisions of Competition Act, 2002 can be summed up as under:

- **Section 27: Orders by the Commission after the enquiry into agreements or abuse of the dominant position:** If the Commission is satisfied after conducting an enquiry that there is an existence of the dominant position or the scenario is such that the dominant position is abused, or there is a condition wherein the Commission has found some anti-competitive agreement, the Commission may pass the following orders:
  - ◆ Direct such enterprise or association involved in such agreement or responsible for creating the dominant position not to re-enter such agreement or to discontinue such agreement as the case may be.
  - ◆ Impose the penalty not exceeding three times of average turnover of the preceding three financial years.
- **Section 37:** Any person aggrieved by the order of the Commission may apply for its review. Such application should be made within 30 days of the order. The Commission may even accept the review application even after 30 days if the Commission is satisfied that there was sufficient reason that prevented to make an application with the Commission.
- **Section 52:** This section deals with the accounts and audit of the Commission. As per section 52 of the Act, the Commission shall prepare the statement of annual accounts as prescribed by the Central Government. Generally, the format for the annual accounts is prepared in consultation with the Comptroller and Auditor-General of India. The accounts of the Commission are subject to audit by the Comptroller and Auditor-General of India. The Central Government can specify the interval of such audit. All the expenditure incurred is paid by the Commission.
- **Section 53:** The Commission shall furnish the returns to the Central Government in the format prescribed by the Central Government with respect to the proposed or the existing measures about the Competition advocacy measures. The report furnished by the Commission shall be placed before the parliament.
- **Section 57:** Section 57 states that no information relating to any enterprise shall be disclosed with any other enterprise in compliance with or for the purpose of this Act or for the time being in force.
- **Section 59:** Section 59 of the Act specifies that no legal proceedings shall lie against the Commission or any officer of the Cen-

**OTES**

entral Government or the Chairperson or any other officer including the Director General, Registrars or the officers for any act done in good faith under the regulations mentioned under this Act.

- Section 61:** Section 61 specifies that no civil court shall have a jurisdiction to entertain the proceedings in regard with any of the matter which the Commission is empowered under this Act.

**SELF ASSESSMENT QUESTIONS**

10. Which of these sections deals with the accounts and audit of the Commission?
  - a. Section 52
  - b. Section 61
  - c. Section 37
  - d. Section 53
11. Section \_\_\_\_\_ specifies that no civil court shall have a jurisdiction to entertain the proceedings in regard with any of the matter which the Commission is empowered under the Competition Act.

**ACTIVITY**

List the eligibility criteria and functions of the Comptroller and Auditor-General of India.

#### 7.4 MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

The Monopolies and Restrictive Trade Practices Act, 1969 is repealed with the enactment of the Competition Act, 2002. On the dissolution of the Monopolies and Restrictive Trade Practices Commission, the person appointed as a Chairman of the MRTP Commission and every other person appointed as member and Director General of the MRTP Commission, other employees including Additional, Joint, Deputy, Directors General of Investigation and Registration holding office as such immediately before the dissolution of the Commission vacated their respective offices with the compensation for premature termination.

It was further provided that on the premature termination of the Director General of the Investigation and Registration, Additional, Joint Deputy or Assistant Directors or any other employee appointed on a deputation basis and whose services were being terminated reverted to parent cadre, Ministry or Department, as the case may be. Also,

the Director General of Investigation and Registration, and as many Additional, Joint, Deputy or Assistant Director or any other employee whose services were terminated and the employee appointed by Central Government, were retained by the Central Government on the same cadre.

All the cases pertaining to the restrictive trade practices under MRTP Act on commencement of the Competition Act, 2002 were adjudicated by the Competition Commission. The investigation and proceedings that were pending before the Director General of Investigation and Registration at the time of commencement of the Act were transferred to the Competition Commission of India.

**SELF ASSESSMENT QUESTIONS**

12. The Monopolistic and Restrictive Trade Practices Act was enacted in the year:
  - a. 1969
  - b. 1975
  - c. 1978
  - d. 1997
13. Cases pertaining to the restrictive trade practices under MRTP Act on commencement of the Competition Act, 2002 were adjudicated by the Competition Commission. (True/False)

**ACTIVITY**

Discuss the reasons for replacing the MRTP Act, 1969 with Competition Act, 2002.

#### 7.5 SUMMARY

- Competition Act, 2002 was enacted to prevent the practices which have an adverse effect on market competition.
- The Competition Act provides the framework for the economic development of the country.
- Section 34 of the Competition Act, 2002 empowers the Competition Commission to pass the orders as it may think fit. Once the Commission has passed an order and later on it finds any apparent mistake from the record, the Commission has a right to amend the order.
- The rectification of the order can take place because of the following reasons:

- ◆ On account of its own motion
- ◆ On account of apparent mistake
- The effect of the order of the Commission is executed in the same manner as a decree of a high court or a decree of the principal civil court pending therein.
- The Commission under Section 34 of the Competition Act, 2002 upon request may make enquiry into any of the matters.
- The Competition Appellate Tribunal is a statutory organisation established under the provisions of the Competition Act, 2002.
- The Competition Appellate Tribunal hears and disposes appeals against any direction issued or decision made or order passed by the Competition Commission of India under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Competition Act, 2002.
- If any party or the undertaking is found to be contravening the orders issued by the Competition Commission of India, the Commission may impose two kinds of penalties:
  - ◆ Financial penalty
  - ◆ Criminal penalty
- Pursuant to Section 40 of the Competition Commission Act, 2002, any person who is aggrieved by the order of the Commission may file an appeal with the Supreme Court.
- The Central Government may provide financial aid to the Commission.
- The Central Government can provide exemption to certain classes of undertakings.
- The Central Government can issue directions to the Commission.
- The Central Government may supersede the Commission.
- With reference to the relevant provisions of the Competition Act, 2002, if any person is found contravening any of the orders of the Commission, or fails to pay penalty imposed under this Act, shall be liable to pay penalty imposed under this Act and shall also be liable for the civil imprisonment which may extend to a period of 1 year and penalty can also be imposed not exceeding ₹10 lakhs.
- The Monopolies and Restrictive Trade Practices Act, 1969 is repealed with the enactment of the Competition Act, 2002.
- The investigation and proceedings that were pending before the Director General of Investigation and Registration (MRTP Act, 1969) at the time of commencement of the Act were transferred to the Competition Commission of India.

#### KEY WORDS

- Appellate Courts:** These are courts concerned with or dealing with applications for decisions to be reversed.
- Competition Advocacy:** These are activities aimed at creating, expanding and strengthening awareness of competition in the market.
- Comptroller:** It is a person responsible for supervising the quality of accounting and financial reporting of an organisation.
- Monopoly:** It is the exclusive possession or control of the supply or trade in a commodity or service market.
- Restrictive Trade Practices:** These are unfair trade practices, which tend to bring about manipulation of price, delivery or supplies of goods or services in a market.

#### 7.6 DESCRIPTIVE QUESTIONS

1. Explain in detail the aims and objectives of the Competition Act, 2002.
2. Discuss how the Competition Commission rectifies the orders passed under the Competition Act, 2002.
3. What are the procedures followed by the Competition Appellate Tribunal?
4. Explain various kinds of penalties that can be imposed by the Competition Commission of India.
5. List the powers of the Central Government over the Competition that supersede those of Competition Commission of India.

#### 7.7 ANSWERS AND HINTS

##### ANSWERS FOR SELF ASSESSMENT QUESTIONS

Topic	Q.No.	Answers
Rectification of Orders	1.	Competition Act, 2002
	2.	True
	3.	Section 34
	4.	The Competition Appellate Tribunal
	5.	Criminal
	6.	False

Topic	Q.No.	Answers
	7.	True
	8.	Section 43
	9.	Competition advocacy
Other Important Provisions	10.	a. Section 52
	11.	Section 61
Monopolies and Restrictive Trade Practices Act, 1969	12.	a. 1969
	13.	True

#### HINTS FOR DESCRIPTIVE QUESTIONS

1. The Competition Act, 2002 was enacted to prevent the practices which have an adverse effect on market competition. Refer to Section 7.2 Rectification of Orders.
2. The rectification of the order can take place because of the following reasons on account of its own motion, and on account of apparent mistake. Refer to Section 7.2 Rectification of Orders.
3. The Competition Appellate Tribunal hears and disposes appeals against any direction issued or decision made or order passed by the Competition Commission of India. Refer to Section 7.2 Rectification of Orders.
4. The Commission may impose two kinds of penalties: Financial Penalty or Criminal Penalty. Refer to Section 7.2 Rectification of Orders.
5. The Central Government may provide financial aid to the Commission, provide exemption to certain classes of undertakings, issue directions to the Commission, and may supersede the Commission. Refer to Section 7.2 Rectification of Orders.

#### 7.8 SUGGESTED READING FOR REFERENCE

##### SUGGESTED READINGS

- Clarkson, K., Miller, R., Jentz, G., & Cross, F. (2014). *Business Law: Text and Cases* (11th ed.).
- Keenan, D., & Riches, S. (2007). *Business law*. Harlow: Pearson Longman.

#### E. REFERENCES

- Compat.nic.in,. (2014). Welcome to Competition Appellate Tribunal. Retrieved 8 November 2014, from <http://compat.nic.in/>
- Kumar, V.(2009). Main Provisions of Competition Act 2002.Business.svtuition.org. Retrieved 8 November 2014, from <http://business.svtuition.org/2009/11/main-provisions-of-competition-act-2002.html>
- Mca.gov.in,. (2014). Ministry Of Corporate Affairs - The Competition Act, 2002. Retrieved 8 November 2014, from <http://www.mca.gov.in/MinistryV2/competitionact.html>

# 8

## CHAPTER

### RIGHT TO INFORMATION ACT, 2005

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### LEARNING OBJECTIVES

- After studying the chapter, you will be able to:
- Discuss the salient features of the Right to Information Act, 2005
  - Explain the objectives of public authorities and their obligations
  - Discuss the designation of Public Information Authority
  - Explain the duties of a public information officer
  - Describe the procedure for requests for obtaining information
  - Describe the Central and State Information Commission

### 8.1 INTRODUCTION

#### RIGHT TO INFORMATION ACT, 2005

The previous chapter discussed the Competition Act. This chapter focuses on Right to Information Act. The right to information was a right indirectly guaranteed by the Constitution. However, in order to set out a practical regime for securing information and transparency, the Indian Parliament enacted the Right to Information Act, 2005, which gave a powerful tool to the Indian citizens to get information from the government as a matter of right. RTI Act, 2005 is a comprehensive Act that covers almost all matters of governance and has the widest possible reach, being applicable to the government at all levels: Central, State and Local as well as recipients of government grants.

As per the Act, an information is any material form and includes records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models and data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force.

The Right to Information Act, 2005 is issued by Ministry of Law and Justice (Legislative Department). This Act of Parliament was introduced in the Lok Sabha on 23rd December, 2004 and passed on 11th May, 2005 and 12th May 2005 by the Lok Sabha and the Rajya Sabha respectively. The President gave his assent on 15th June, 2005 and few provisions of the Act were brought into force on 21st June, 2005 and the full Act was brought into force on 12th October, 2005, by publication in the official Gazette. The Right to Information Act, 2005 has marked in a new dawn in the era of the Indian History. RTI Act, 2005 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. In this chapter, you will study about the Right to Information Act, 2005 in detail.

### 8.2 SALIENT FEATURES OF THE RIGHT TO INFORMATION ACT, 2005

Right to Information act was passed "to provide for setting out the practical regime of right to information for citizens." The main aim of the Act is to provide a secure access to information for promoting transparency and accountability.

As per the preamble, the RTI Act helps in:

- Securing the access to information under the control of public authorities
- Promoting transparency and accountability in the work place
- Constituting a Central Information Commission and State Information Commissions

The salient features of the RTI Act are as follows:

- A citizen has the right to seek information from any public authority.
- This right includes the inspection of documents, records, notes and other certified samples held by the public authority.
- Public information authorities and assistant public information officers are enacted within 100 days of the enactment.
- The Act makes it obligatory for every public authority to make suo-motu disclosure in respect of the particulars of its organisation, functions, duties etc. as provided in section 4 of the Act.
- To seek information, an application is to be made to the State public information officer who deals with requests of information.
- The application should be accompanied by demand draft/banker cheque/ Indian Postal Order of ₹10 payable to the Accounts Officer of public authority.
- There is no fee for making an appeal.
- It is not compulsory to provide reasons for seeking the information.
- No prescribed form of application is there for seeking information. Plain paper can be used.

- An appeal to the first Appellate Authority can be made if information is not provided within time. A second appeal with the State Information Commission is made if first appeal is not accepted.
- The Commission decides the appeals and conveys its decision to the Appellant/ Complainant and First Appellant Authority.

#### SELF ASSESSMENT QUESTIONS

1. It is not compulsory to provide reasons for seeking information. (True/False)
2. The main aim of RTI is to promote \_\_\_\_\_ and \_\_\_\_\_.

#### ACTIVITY

Discuss few incidences where RTI Act, 2005 has helped citizens to obtain information.

### **8.3 OBJECTIVES, PUBLIC AUTHORITIES AND THEIR OBLIGATIONS**

The basic object of the Right to Information Act is to authorise citizens, promote transparency and accountability in the working of the government, discourage corruption, and make democracy work for the people in real sense. An informed citizen could keep necessary vigil on the instruments of governance and make governments more accountable to the governed. The Act is a big step towards making citizens informed about the activities of the Government. The objectives of the Right to Information Act are as follows:

- a. To encourage the accountability and transparency in the performance of public duty by the public bodies.
- b. To set up a system wherein the citizens have a right to access the information under the control of public authorities.
- c. To allow the government bodies (public authorities) to take decisions as per the prescribed laws and contain corruption.
- d. To bring forward the irregularity of the public authorities into the public domain.

A "Public Authority" is any authority, body or institution of self government. These bodies or institutions are constituted by or under the constitution or by another law made by the parliament or the state legislature. The state government or the Central Government may by issuing the notification declare any body or institution as the public authority. The bodies owned or substantially financed by the Central or State Government ...

authorities. The non-financial bodies that are substantially financed by either the State Government or the Central Government also come under the definition of the Public Authority. The various obligations of a Public Authority are as follows:

- a. Maintain all records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.
- b. Publish within one hundred and twenty days from the enactment of this Act, details of particulars of its organisation, functions and duties, powers of officials, the procedures, regulations, etc.
- c. Publish all relevant facts while formulating important policies on announcing the decisions that may affect the general public.
- d. Provide reasons for its administrative or quasi-judicial decisions to affected persons.

#### SELF ASSESSMENT QUESTIONS

3. A "Public Authority" is any authority, body or institution of self government. (True/False)
4. The non-financial bodies which are substantially financed by either the State Government or the Central Government do not come under the definition of the Public Authority. (True/False)

#### ACTIVITY

Make a list of bodies that could be included under the head of Public Authority.

### **8.4 DESIGNATION OF THE PUBLIC INFORMATION AUTHORITY**

A public authority, within 100 days of enactment, is required to designate the Central Public Information Officers or the State Public Information Officers in respective public offices or the administrative offices. These designated officers have to provide the necessary information to the public. At every sub-divisional level and other sub-district level, Central Assistant Public Information Officer or the State Assistant Public Information Officer, as applicable, will be designated to receive the request of the information and submit the information.

The Central Public Information Officer or the State Public Information officer provides reasonable help to the persons who seek information from these officers in form of Appellate Authorities. The Central Public Information Officer or the State Public Information Officer shall take the reasonable help from any officer. Any officer whose assistance is required by the above officer shall render the reasonable assistance at a reasonable time.

#### SELF ASSESSMENT QUESTIONS

5. The public and state public officers are appointed within:
  - a. 100 days
  - b. 200 days
  - c. 50 days
  - d. None of the above
6. The designated officers shall provide the necessary information to the public. (True/False)

#### ACTIVITY

List the objectives of designating public information officers under the RTI Act.

### 8.5 PUBLIC INFORMATION OFFICERS AND THEIR DUTIES

Every public authority in compliance of the Act is required to designate officers as public information officers. They are required to furnish the necessary information as demanded by the public. The public information officers are the officers who are required to furnish the necessary information as desired by the citizens under the Act. The various duties to be undertaken by the public information officers are as follows:

- Public information officers shall deal with the applications or request of information of the citizens demanding the information, and if the information cannot be provided, an explanation should be provided for the same.
- If the information demanded for is related to the other public authority office, the public information officer shall transfer the same within 5 days of the request to that concerned officer and shall inform the applicant accordingly.
- The public information officer can seek the information from any other officer as he deems fit for discharge of its duties.
- The public information officer within 30 days of the receipt of the request shall provide the desired information to the applicant.

- If the information desired is for the liberty or life of a person, it shall be provided within 48 hours of the receipt of the information.
- If the public information officer fails to provide the information within the specified time, it is deemed that he had refused to supply the information.
- If the information desired cannot be provided in full, the public information officer shall inform the applicant stating the reasons for providing the partial information.
- If the information to be supplied is treated to be confidential by the third party, the public information officer shall take it into consideration within 5 days from the receipt of request.
- Public information officer can issue a notice to the third party to present itself within 10 days of the receipt of notice.

#### SELF ASSESSMENT QUESTIONS

7. The public information officer is required:
  - a. To deal with information request
  - b. To furnish information within the specified period
  - c. Both of the above
  - d. None of the above
8. Within how many days shall the public information officer furnish the required information?
  - a. 30 days
  - b. 45 days
  - c. 60 days
  - d. None of the above

#### ACTIVITY

Describe the duties of a public information officer.

### 8.6 PROCEDURE FOR REQUESTS FOR OBTAINING INFORMATION

The procedure for the request for obtaining information involves four main steps, which are shown in Figure 8.1:



Figure 8.1: Procedure for Request of Information

Let us discuss these steps in detail:

- **Application:** The request for getting the information is required to be submitted in writing or using the electronic means in English, Hindi or the official language of the area. The request should clearly state the information sought for. The reason for seeking the information is not required to be given while making the application. The prescribed fee shall be paid for obtaining the information.
- **Time Limit:** The time limit for obtaining information is as follows:
  - ◆ The time limit of supplying the information is 30 days.
  - ◆ If the information is regarding the life and liberty of a person, it shall be provided within 48 hours.
  - ◆ An additional 5 days should be given if the information is to be furnished by the Assistant Public Information Officer.
  - ◆ If the interest of a third party is also included, then an additional 10 days are to be provided, which means a total of 40 days are to be given.
  - ◆ The public information officer shall furnish the information free of cost if the above time limits are breached.
- **Fee:** The various fees applicable are prescribed in the following manner:
  - ◆ The application fee paid should be reasonable and prescribed through a notification from time-to-time.
  - ◆ People living below the poverty line should not be charged.
  - ◆ The information must be furnished free of cost if Public Information Officer fails to furnish information within the prescribed time.
- **Grounds for Rejection:** The grounds for rejection are as follows:
  - ◆ If the information is covered under the exemption from disclosure.
  - ◆ If the information infringes the copyright of any person other than the State.



#### SELF ASSESSMENT QUESTIONS

9. It is mandatory to mention the reason for which information is required under Right to Information Act, 2005. (True/False)



#### ACTIVITY

Visit RTI Act's website to find the details of the fee applicable to people living below the poverty line.

## 8.7 EXEMPTION FROM DISCLOSURE

The following type of information is exempted to be provided to the public (as given by the RTI Act):

1. Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
2. 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;
3. Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
4. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
5. Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
6. Information received in confidence from foreign Government;
7. Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
8. Information which would impede the process of investigation or apprehension or prosecution of offenders; cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
9. 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;
10. Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.



#### SELF ASSESSMENT QUESTIONS

10. The public information officer can reject the application:
- a. If private rights are affected
  - b. If copyright is to be infringed
  - c. Both a and b
  - d. None of the above

**ACTIVITY**

Give examples of information that is exempted from disclosure.

## **8.8 CENTRAL AND STATE INFORMATION COMMISSION**

The Central Government shall by notification in the official Gazette constitute a body, which shall be known as Central Information Commission and it shall exercise the powers conferred upon it as prescribed under the Right to Information Act, 2005. Apart from this Commission, the State Government, by notification in the official gazette may constitute a body to be known as the State Information Commission that is vested to exercise prescribed rights under Right to Information Act, 2005. Let us discuss these two Commissions in detail in the following sections.

### **8.8.1 CENTRAL INFORMATION COMMISSION**

The Central Information Commission (CIC) shall consist of the following members:

1. Chief Information Commissioner
2. Such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary
3. The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of the following:
  - a. The Prime Minister, who shall be the Chairperson of the committee
  - b. The Leader of Opposition in the Lok Sabha
  - c. Union Cabinet Minister to be nominated by the Prime Minister

The Chief Information Commissioner and other commissioners appointed are required to be the persons having varied experience in areas of law, science, technology, social service, management, journalism, mass media or administration or governance. The Chief Information Commissioner or other commissioners appointed cannot be the members of Parliament or Legislature. They cannot hold any office of profit or be members of any political party.

The headquarters of the Central Information Commission shall be based in Delhi. The Central Information Commission may, with the prior approval of Central Government, establish its office at any other place.

The Chief Information Officer shall hold the office for a term of 5 years from resuming the office or till attaining the age of 65, whichever is earlier, and shall not be eligible for the re-appointment.

### **8.8.2 STATE INFORMATION COMMISSION**

The composition of the State Information Commission is as follows:

- a. The State Chief Information Commissioner
- b. Such numbers of State Information Commissioners which shall not exceed 10

The State Chief Information Commissioner and State Information Commissioners are appointed by the Governor of the State on the recommendation for their appointment by the Committee, which consists of the following:

- a. The Chief Minister, who shall be Chairperson of the Committee
- b. The leader of the opposition in Legislative Assembly
- c. The cabinet minister who shall be nominated by the Chief Minister

The State Information Commissioner and other Commissioners appointed are required to be the persons having a varied experience in areas of law, science, technology, social service, management, journalism, mass media or administration or governance. The State Information Commissioner or other commissioners appointed cannot be the members of Parliament or Legislature. They cannot hold any office of profit of any political party.

The headquarters of the State Information Commission shall be based as per the notification in the official Gazette and the State Information Commission may, with the prior approval of State government, establish the office at any other place.

The State Information Officer shall hold the office for a term of 5 years from when he has entered his office and shall not be eligible for re-appointment.

### **8.8.3 POWER OF INFORMATION COMMISSION**

The powers of the Information Commission (i.e. both the Central Information Commission and the State Information Commission) are contained in Section 18 of the Right to Information Act, 2005. The powers of the Information Commission are as follows:

- To receive complaints
- To take disciplinary action against information officer
- To impose monetary penalty
- To conduct enquiry

The Central and State Information Commission are empowered to inquire into the complaint of any person:

- a. Who has not been able to submit a request to the Central Public Information Officer or State Public Information Officer either of the reason that no such officer has been appointed under the provisions of this Act or his application under this Act has been rejected for further forwarding.
- b. Who has been denied the access to information requested under this Act.
- c. Who has been required to pay any fee which he or she feels is unreasonable.
- d. Who believes that he or she has been given an information which is completely misleading.
- e. Who has not been given a response for the information enquired for.

The Central or the State Information Commissioner while enquiring into the matter shall have a same right as in the Civil Procedure Code, 1908 in respect of the following matters:

- Summoning or enforcing the attendance of persons and compelling them to give oral or written representation
- Receiving evidence on affidavits
- Issuing summons for the examination of witnesses
- Any other matter which may be prescribed



#### SELF ASSESSMENT QUESTIONS

11. The Chief Information Officer shall have the same rights as specified in:
- a. Civil Procedure Code, 1908
  - b. India Evidence Act, 1972
  - c. Negotiable Instrument Act, 1996
  - d. All of the above



#### ACTIVITY

Discuss and list down the powers enjoyed by the Information Commissioners.

## 8.9 APPELLATE AUTHORITIES

It is the responsibility of the Public Information Officer of a public authority to supply correct and complete information within the specified time to any person seeking information under the RTI Act, 2005. There are possibilities that a Public Information Officer may not act as per provisions of the Act or an applicant may not otherwise be satisfied with the decision of the Public Information Officer. The Act contains provision of two-tier appeals to tide over such situations.

The first appeal lies within the public authority itself which is made to an officer designated as the First Appellate Authority by the concerned public authority. The First Appellate Authority happens to be an officer senior in rank to the Public Information Officer.

The second appeal lies with the Information Commission. The Central Information Commission (Appeal Procedure) Rules, 2005 govern the procedure for deciding appeals by the Central Information Commission. Section 19 of the Right to Information Act, 2005 deals with appeals.

The Appellate Authorities under this Act are Central Public Information Officers, Central Commission or State Commission.

### 8.9.1 APPEAL

Any person who does not receive the decision within the time limit specified in the Act or who is aggrieved with any of the decisions of the State Public Information Officer or the Central Information Officer may file an appeal within 30 days from the expiry of such period or from the receipt of decision to the officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be. However, the aggrieved party may appeal even after 30 days if there are sufficient grounds of filing an appeal.

The appeal by the concerned third party shall be made within 30 days, if it relates to disclosure of the third party information against the order of the Central or the State Public Information Officer.

The second appeal against the above officer shall be made within 90 days from the date when the decision has been made or has been received.

**Disposal of Appeal:** If an appellate authority while deciding an appeal comes to a conclusion that the appellant should be supplied information in addition to what has been supplied by the Public Information Officer, he/she may either:

## NOTES

- a. Pass an order directing the Public Information Officer to give such information to the appellant; or
  - b. He himself may give information to the appellant. In the first case, the appellate authority should ensure that the information ordered by him to be supplied is supplied to the appellant immediately.
- **Time Limit of Appeal:** The first appellate authority should dispose-off the appeal within 30 days of receipt of the appeal. In exceptional cases, the Appellate Authority may take 45 days for its disposal. However, in cases where disposal of appeal takes more than 30 days, the Appellate Authority should record in writing the reasons for such delay.

### 8.9.2 PENALTIES

A penalty of ₹250 each day till the time of furnishing information can be imposed by the State Information Commission or the Central Information Commission at the time of deciding the complaint as the case may be on the Central or State Public Information Officer, as the case may be, who has not furnished the information or the information furnished is misleading. However, the total amount of penalty imposed shall in no case exceed ₹25,000. Further, if the Central Commission or the State Commission is of the opinion that the State Public Information Officer or the Central Information Officer, as the case may be, has not provided the requisite information or with the *mala fide* intentions has not supplied the requisite information, it shall recommend the disciplinary action against the Central or the State Public Information Officer as the case may be.

### 8.9.3 JURISDICTION OF COURTS

No court shall entertain any suit, application or any other proceeding with respect to any order made under this Act and besides that no order shall be called in question. The Supreme Court after the reference may remove the State Commissioner and Central Commissioner and thereafter the Governor or the President, as the case may be, may remove them from their office. However, the orders of the authorities under the Act or the denial of the information can be challenged by a Writ Petition before the High Court or Special Leave Petition before the Supreme Court.

### 8.9.4 ROLE OF CENTRAL AND STATE GOVERNMENT

The role of the Central Government or the State Government in the RTI Act, 2005 is as follows:

- a. To develop or organise the educational programme to advance the understanding of the public and making them clear about the relative provisions of the Act.
- b. To encourage the public authorities to participate in the development programs and to undertake such programs.
- c. To promote timely and effective dissemination of the information by public authorities about their activities.
- d. To train the Central Public Information Officers or State Public Information Officers and facilitate relevant training materials.

The appropriate government is required to compile a guide in its official language. The appropriate government may, if considered necessary, can update the objects of the Act, postal address, email address, of the Central and State Public Information Officer.

#### SELF ASSESSMENT QUESTIONS

12. In how many days can an appeal be filed with the senior rank officer of the Central Information Commissioner or State Information Commissioner?
  - a. 30 days
  - b. 20 days
  - c. 15 days
  - d. 25 days
13. It is the responsibility of the Public Information Officer of a public authority to supply correct and complete information within the specified time. (True/False)
14. What are the Appellate Authorities under the RTI Act?

#### ACTIVITY

List a few Appellate Authorities under the Right to Information Act, 2005.

### 8.10 SUMMARY

- The Right to Information Act, 2005 provides a right to the citizens to seek any information from the public authorities or the authorities that are substantially financed by the government.
- The Act defines provisions for appointment of the Public Information Officers who shall be responsible for supplying the information.

**NOTES**

- The Act provides that the public officers shall be appointed both at the central level and the state levels.
- The Act provides that the State Information Commission and the Central Information Commission shall be constituted as per the Act.
- The State as well as the Central Information Commission shall have commissioners to be appointed which shall not exceed 10 in number as per the Act.
- The Public Information Officer shall have to furnish the requisite information within 30 days, however, if the third party rights are affected an additional 10 grace days can be taken.
- The State Commission or the Central Information Commission as the case may be, shall make enquiry on the public information of officers.
- The State Commission or Central Information Commission, as the case may be, can recommend disciplinary action or monetary penalty of ₹250 per day till the information is received (up to ₹25,000 can be imposed).

**KEY WORDS**

- Appellate Courts:** These are courts concerned with or dealing with applications for decisions to be reversed.
- Appropriate Government:** It refers to the public authority which is owned, controlled or substantially financed by the government.
- Information:** It refers to any material in form of documents, memos, mails, log books, contracts, etc.
- Official Gazette:** It is a public journal, which prints official notices from the government for imparting information.
- Public Information Officer:** This is an officer appointed at the state level or the central level, as the case may be, to provide the information required.

**8.11 DESCRIPTIVE QUESTIONS**

1. What are the salient features of the Right to Information Act, 2005?
2. Explain public authorities. What are their obligations?
3. What are the duties of public information officers?
4. Explain the procedure of obtaining the information under the Right to Information Act, 2005.

5. Describe the composition of the Central Information Commission.
6. Describe the appeal procedures under the Right to Information Act, 2005.

**8.12 ANSWERS AND HINTS****ANSWERS FOR SELF ASSESSMENT QUESTIONS**

Topic	Q.No.	Answers
Salient Features of the Right to Information Act, 2005	1.	True
Objectives, Public Authorities and their Obligations	2.	Transparency and accountability
Designation of Public Information Authority	3.	True
Designation of Public Information Authority	4.	False
Public Information Officers and their Duties	5.	a. 100 days
Procedure for Requests for Obtaining Information	6.	True
Exemption from Disclosure	7.	c. Both of the above
Central and State Information Commission	8.	a. 30 days
Appellate Authorities	9.	False
Central and State Information Commission	10.	c. Both a and b
Appellate Authorities	11.	a. Civil Procedure Code, 1908
Central and State Information Commission	12.	a. 30 days
Appellate Authorities	13.	True
Central and State Information Commission	14.	Central Public Information Officers, Central State Commission or State Commission

**HINTS FOR DESCRIPTIVE QUESTIONS**

1. The Right to Information Act provides the citizen the right of information which is equivalent to the right available to the members of the parliament and the state legislature. Refer to Section 8.2 Salient Features of the Right to Information Act, 2005.

## NOTES

2. A "Public Authority" is any authority, body or institution of self-government. Refer to Section 8.3 Objectives, Public Authorities and their Obligations.
3. The Central Public Information Officer or the State Public Information officer shall provide the reasonable help to the persons who seek information from them. Refer to Section 8.5 Public Information Officers and their Duties.
4. The procedure for the request for obtaining the information involves four main steps: Application, Time Limit, Fee, and Grounds for Rejection. Refer to Section 8.6 Procedure for Requests for Obtaining Information.
5. The Central Information Commission shall consist of Chief Information Commissioner and such number of Central Information Commissioners, not exceeding 10, as may be deemed necessary. Refer to Section 8.8 Central and State Information Commission.
6. Any person who is aggrieved with any of the decisions of the State Public Information Officer or the Central Information Officer may file an appeal within 30 days from the expiry of such period or from the receipt of decision. Refer to Section 8.9 Appellate Authorities.

**8.13 SUGGESTED READING FOR REFERENCE****SUGGESTED READINGS**

- Clarkson, K., Miller, R., Jentz, G., & Cross, F. (2014). Business Law: Text and Cases (11th ed.).
- Keenan, D., & Riches, S. (2007). Business law. Harlow: Pearson Longman.

**E-REFERENCES**

- Kumar, V. (2009). Main Provisions of Competition Act 2002. Business. svtuition.org. Retrieved 8 November 2014, from <http://business.svtuition.org/2009/11/main-provisions-of-competition-act-2002.html>
- MoFPI.nic.in., (2014). Retrieved 8 November 2014, from [http://mofpi.nic.in/H\\_Dwld.aspx?KEYwmOL+HGoC3PktBWCmTRa5aMH-H7uT6BV0hU4XfgsBo6t5yowVJA==](http://mofpi.nic.in/H_Dwld.aspx?KEYwmOL+HGoC3PktBWCmTRa5aMH-H7uT6BV0hU4XfgsBo6t5yowVJA==)
- RTI.gov.in., (2014). Right to Information Act (India). Retrieved 8 November 2014, from <http://rti.gov.in/>

**9****CHAPTER****ARBITRATION, MEDIATION AND NEGOTIATION  
(SETTLEMENT OF DISPUTES)****CONTENTS**

9.1	Introduction
9.2	Alternate Dispute Resolution
9.2.1	Scope
9.2.2	Advantages of Alternate Dispute Resolution
	Self Assessment Questions
	Activity
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	Self Assessment Questions
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9.6.5	Arbitral Award: Making, Finality and Enforcement
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	Self Assessment Questions
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9.9	Answers and Hints
9.10	Suggested Reading for Reference

## INTRODUCTORY CASE STUDY

### THE FIELD OF BROKERAGE AND THE ARBITRATION PROCEDURE

The use of the Arbitration clause is very significant in the service industry, and especially in the field of brokerage. In this field, if there is any dispute between a client and a stock broker about the trades executed at the Bombay Stock Exchange or the National Stock Exchange, those disputed transactions can be referred to the arbitral tribunal of that particular exchange. After receipt of the complaint, an arbitrator is appointed by the choice of both the parties. Thereafter, relevant evidences are submitted with the sole arbitrator who, on the basis of the submissions, makes a decision that is binding on the parties. However, the parties have a right to challenge the legality and impropriety of the order given by the arbitrator, in the civil court.

#### LEARNING OBJECTIVES

After studying the chapter, you will be able to:

- Discuss the Alternate Dispute Resolution
- Explain the concept of conciliation
- Describe the meaning of mediation
- Explain the concept of negotiation
- Describe the Arbitration and Conciliation Act, 1996

## 9.1 INTRODUCTION

In India, it could take years for the settlement of disputes, as Indian courts already have a long list of pending cases. Therefore, for speedy disposal of cases, alternative settlement methods are required. Alternative dispute settlement methods like Arbitration, Mediation and Conciliation have become a global necessity of modern times. The statutory law governing and regulating the Alternative Dispute Settlement mechanism in India is the Arbitration and Conciliation Act, 1996, wherein a dispute is decided by arbitrators, and the place and language of arbitration are decided according to the mutual agreement of the concerned parties.

The arbitrator, while awarding, has to state the reasons behind giving the award, which facilitates a quick settlement of the dispute. Arbitration is a method wherein settlements of disputes are arrived at through the effective intervention of the arbitrator, who effectively mediates between both the parties by collecting necessary evidence from each of the parties and thereafter gives its award. Here, both the parties may have to compromise a bit, but the speedy disposal of settlement of the dispute takes place. Through arbitration, disputes are settled between the parties expeditiously, amicably and effectively. In this chapter, you will study about the arbitration process in detail.

## 9.2 ALTERNATE DISPUTE RESOLUTION

Alternate Dispute Resolution (ADR) or external dispute resolution refers to dispute resolution processes and techniques that work as a means for conflicting parties to reach a settlement. It includes all the methods for resolving disputes, other than by litigation. It is a comprehensive term used for the ways that parties can use for settling disputes, with or without the help of a third party. It also focuses on giving people more opportunity to determine when and how they want their dispute to be resolved.

## NOTES

The concept of ADR is very broad. ADR is usually less formal, costly, and time-consuming than a court hearing. It may include methods such as early neutral evaluation, negotiation, conciliation, mediation and arbitration. Two of the most important sides of these procedures are related to the following:

- Whether the procedure is facilitative or evaluative
- Whether the procedure is binding or non-binding

In a facilitative process, a neutral person assists the conflicting parties in reaching an acceptable decision. It is usually a non-binding process where the parties voluntarily agree to accept the results. On the other hand, in the evaluative process, a neutral person evaluates the dispute and gives a judgement to the conflicting parties, to which they agree.

There are certain processes that may involve aspects of both facilitative and evaluative processes. These are called hybrid processes where the neutral person first attempts to provide a settlement based on his/her own judgement, but failing that, may give binding/non-binding decisions. However, the switch from facilitation to evaluation is done only on the consent of all the disputing parties.

### 9.2.1 SCOPE

Whenever there are disputes between parties, the matter is taken to a court for settlement. It is a time-consuming, expensive and troublesome process and delays the case in many instances. In some cases, it takes many years to get the court decision.

However, with globalisation and liberalisation, a need for quick, less expensive and simple mode of settling disputes was felt. The concept of ADR provided the substitute dispute resolution techniques.

ADR can be used along with existing legal systems within common law jurisdictions. ADR traditions differ by country and culture. ADR methods are used for resolving disputes outside of official judicial mechanisms. These include informal tribunals, informal mediation processes, formal tribunals and formal mediation processes.

The classic formal tribunal forms of ADR are arbitration and private judges. The classic formal mediative process is a recommendation for mediation before a court selects a mediator or mediation panel. Structured transformative mediation is a formal process. On the other hand, classic informal methods range from social processes and referrals to non-formal authorities and intercession.

### 9.2.2 ADVANTAGES OF ALTERNATE DISPUTE RESOLUTION

Today, ADR techniques are considered as one of the most acceptable dispute resolution techniques used worldwide, either alongside or com-

bined with the legal systems. This is because ADR is preferred over litigation for resolving disputes. The main advantages of ADR are as follows:

- It is appropriate for resolving multi-party disputes.
- It has a flexible procedure. The parties can decide when and how they want the dispute to be resolved. Therefore, the process is controlled by the conflicting parties.
- It is less expensive than other methods.
- It is less complex.
- The third party involved in ADR happens to be Neutral to provide unbiased decisions.
- It settles the dispute without too much delay.
- It provides practical solutions to parties, which protect their interests.
- It maintains privacy of the disputing parties.
- It maintains the relationships and reputations of the conflicting parties.

### SELF ASSESSMENT QUESTIONS

1. \_\_\_\_\_ or external dispute resolution refers to dispute resolution processes and techniques that work as a means for conflicting parties to come to a settlement.
2. ADR is usually less official, costly and time-consuming than a court hearing. (True/False)
3. ADR can be used along with existing legal systems within common law jurisdictions. (True/False)

### ACTIVITY

Meet the HR manager of an organisation in your vicinity and discuss with him/her the advantages of ADR techniques for resolving disputes.

### 9.3 CONCILIATION

Conciliation refers to a process of managing the gap between the two sides of any weighing scale to bring them at an equilibrium. Similarly, as an important ADR technique, conciliation bridges the gap that may arise between parties due to disputes or conflicts. It brings an equilibrium in the concerns of both parties, so that a mutual agreement is obtained. A third party is involved in this process, which tries to mediate and make a compromise between the disputing parties.

## NOTES

The reconciliation involves an interaction that concerns both the parties through a conciliator that balances the views. The third party that acts as a mediator and solves the dispute is called a conciliator. The representatives of the parties are brought for consultation with the conciliator tries to reduce the differences or concerns of both the parties. The conciliator can be an individual or a group with whom both the parties agree to share their concerns.

According to B.R. Patil, "Conciliation is a method of resolving a conflict with the help of a third-party, who intervenes in the dispute situation upon a request by either or both the parties. It is a procedure in which the decision-making function remains the prerogative of the parties to the dispute as in collective bargaining. The conciliator simply assists them in their negotiations and decision-making, resolves the impasse and removes the bottlenecks."

In a manual for workers' education on collective bargaining published by ILQ, conciliation has been defined as, "practice by which the services of a neutral party are used in a dispute as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution".

The Industrial Dispute Act, 1947 has also recognised conciliators as a measure of settlement of industrial disputes through Section 4 of the Act. The Japanese dispute settlement procedure gives high importance to this type of dispute resolution for civil disputes. It involves the following provisions:

- Appointing one or more conciliation officers through notification in the Official Gazette by the appropriate government
- Assigning the responsibility of mediating in and promoting the settlement of industrial disputes to the conciliation officers so appointed

Therefore, conciliation can be defined as a voluntary proceeding where the disputing parties are free to agree to and resolve their dispute by conciliation. It is a flexible process that allows the concerned parties to define the time, structure and content of the conciliation proceedings.

In conciliation, there is no legal standing, and the conciliator usually has no right to seek evidence or call witnesses. Its main goal is to conciliate, mostly by seeking concessions. In conciliation, the parties rarely face each other during the entire process.

### SELF ASSESSMENT QUESTIONS

4. \_\_\_\_\_ is an important ADR technique that bridges the gap arising between parties due to disputes or conflicts.
5. In conciliation, the parties rarely face each other during the entire process. (True/False)

## NOTE

### ACTIVITY

Using various sources like the Internet, magazines, newspapers, etc., find out the cases that used conciliation method for resolving disputes in some big Indian corporate organisations.

### 9.4 MEDIATION

Mediation implies an involvement of a third party called a mediator as a dispute resolution practitioner who facilitates the resolution of disputes between the parties. Mediations take place when:

- Direct negotiations have failed, leading to an increase in dispute
- Direct negotiations are complex and difficult
- Multiple parties are involved, leading to confusion

The role of a mediator is to facilitate the consensual agreement among the parties in dispute. The mediator can also play the role of a conciliator by making suggestions.

The main advantages of mediation are as follows:

- Less Expensive:** Mediation is a less expensive process, requiring less money for the service rendered.
- Less Time Consuming:** Mediation is a process that is comparatively less time consuming than the litigation process; hence, mediations allow speedy disposal of a matter.
- Confidentiality of the Proceedings:** In the mediation process, total confidentiality is maintained, as the whole process is not public in nature.

### SELF ASSESSMENT QUESTIONS

6. Mediations take place when direct negotiations have failed. (True/False)
7. The role of a \_\_\_\_\_ is to facilitate a consensual agreement among the parties in dispute.

### ACTIVITY

Search for an example where the mediation process is used to resolve a dispute. Prepare a report on the proceedings of the case.

## 9.5 NEGOTIATION

Negotiation is an informal technique of resolving a dispute, where the parties in dispute directly try to communicate with each other and reach a conclusion. In a negotiation, two or more parties with opposing interests discuss the form of a joint action that they might take to manage and ultimately resolve the dispute among themselves. This is a preferred technique of dispute resolution when the parties want to maintain an on-going relationship with each other.

The characteristics of a negotiation are as follows:

- Voluntary:** Negotiation is a voluntary step as no party is forced to participate in a negotiation proceeding.
- Bilateral/Multilateral:** There is no limit to the number of parties involved in a negotiation.
- Informal:** There are no prescribed rules followed in a negotiation.
- Flexible:** The process of negotiation is flexible as its scope depends on the choice of the involved parties.

The process of negotiation offers the following advantages:

- Confidentiality:** The negotiation process maintains the privacy of the involved parties.
- Economical:** The fee paid for negotiation is minimal.
- Establishes Relationships Amongst the Parties:** The negotiation process helps in establishing and maintaining relationships amongst parties in the future.



### SELF ASSESSMENT QUESTIONS

8. In \_\_\_\_\_, two or more parties with opposing interests discuss the form of a joint action that they might take to manage and ultimately resolve disputes among themselves.
9. In negotiation, parties are forced to participate in the proceeding. (True/False)



### ACTIVITY

Discuss the bilateral/multilateral characteristics of negotiation and cite examples of each.

## 9.6 ARBITRATION AND CONCILIATION ACT, 1996

The Arbitration and Conciliation Act, 1996 is divided into 86 sections and 4 chapters, and extends to the whole of India. This Act was brought into force on 25<sup>th</sup> January, 1996.

Prior to the Arbitration and Conciliation Act, 1996, India had the Arbitration Act, 1940, which regulated arbitrations in India. However, with India adopting the UNCITRAL (United Nations Commission on International Trade Law) resolution, it was imperative to bring about changes in arbitration law to ensure that it is UNCITRAL compliant and addresses issues concerning the regulation of ADR and arbitrations in India.

1. **Definitions:** Some of the important definitions as defined under the Arbitration and Conciliation Act, 1996, are as follows:

- ◆ Arbitration means any arbitration, irrespective of whether it is administered by a permanent arbitral institution or not.
- ◆ Arbitration agreement means an agreement referred to in section 7.
- ◆ Arbitral award includes an interim award.
- ◆ Arbitral tribunal means a sole arbitrator or a panel of arbitrators.
- ◆ Court means the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having the jurisdiction to decide questions forming the subject-matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal civil court, or any court of small causes.
- ◆ International commercial arbitration means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in India and where at least one of the parties is an individual or a body corporate or a company.

2. **Scope:** This part shall apply where the place of arbitration is in India.

An Arbitral Award made under this part shall be considered as a domestic award.

Where this part:

- ◆ Refers to the fact that the parties have agreed or that they may agree, or

- ♦ In any other way refers to an agreement of the parties, the agreement shall include any arbitration rules referred to in that agreement.

#### 9.6.1 ARBITRATION AGREEMENT

An arbitration agreement is the sine qua non of arbitration. Without an arbitration agreement, arbitration cannot commence. Arbitration can be contained in a specific clause or as a separate agreement or by way of reference of an arbitration clause in another agreement.

An arbitration agreement as defined in Section 7 of the Arbitration and Conciliation Act refers to an agreement by the parties to submit to arbitration all or certain disputes between them in respect of the legal relationship. The disputes may pertain to the past or future, and the legal relationship may or may not be contractual. The important aspects of an arbitration agreement are as follows:

- It must be in writing.
- It may be in the form of an arbitration clause in a contract.
- The arbitration agreement is said to be in writing if it is signed between the parties and there is an exchange of letter, faxes or such other forms that record such agreements.
- In order to accept the application of arbitration, it must be accompanied by the original arbitration agreement or a certified copy of the agreement.

#### 9.6.2 INTERIM MEASURES BY COURT

Any of the parties in dispute, before or during the arbitral proceedings may apply to the court:

- For the appointment of a guardian of a person who is minor or a person who is of unsound mind for the purpose of the arbitral proceedings
- For an interim measure or protection in respect to the following:
  - The preservation, interim custody for stopping the sale of any product
  - Securing the amount in dispute in the arbitration
  - The detention, preservation and inspection of any property which is the subject matter of the dispute under the arbitration proceedings
  - Interim injunction or the appointment of the receiver
  - Such other measures that the court may feel just and fair

The interim measures taken by the court ensure that the subject matter of the property is preserved and maintained. The jurisdiction of

the interim measures shall lie before the civil court in which the arbitration is to be conducted. The interim measures are an effective tool to ensure that the rights and interests of the concerned parties are protected till the disposal of the dispute by way of arbitration.

#### 9.6.3 COMPOSITION OF THE ARBITRATION TRIBUNAL

Section 10 deals with the composition of an arbitral tribunal. The parties are free to determine the number of arbitrators, but the total number of arbitrators should not be an even number. Among the arbitrators, there should be one sole arbitrator.

- **Appointment of Arbitrators:** While appointing the arbitrators, the following points should be considered:
- The arbitrator is a person who can be of any nationality as otherwise agreed by the parties.
  - The parties are normally free to talk about and finalise the procedure of selecting an arbitrator.
  - If three arbitrators are to be appointed, each party in the dispute shall appoint an arbitrator, and the third arbitrator shall act as the sole arbitrator. The sole arbitrator shall be appointed by the two arbitrators appointed.
  - If the party in dispute cannot appoint the arbitrator within 30 days or the first two arbitrators fail to appoint the sole arbitrator, the arbitrator shall be appointed by the Chief Justice of a High Court or any other person or institution designated by him.

If there is any doubt as to whether the appointed arbitrator shall be able to act impartially or independently, then in that case his appointment can be challenged under Section 12 of the Act.

#### 9.6.4 INTERIM MEASURES BY THE ARBITRAL TRIBUNAL

The Arbitrator or Arbitration Tribunal does have the right to provide the interim measure of protection to the parties in dispute if they deem fit. The arbitral tribunal, at the request of the parties, may take any interim measure for the protection of any of the party as it may deem fit in the best interest of the parties in dispute. The interim measure may be of following nature:

- To withhold the sale/or assets of any of the product related to the subject matter of the dispute
- Any other relief they feel is necessary for the settlement of the dispute

The arbitral tribunal may also provide adequate security to the party for any of the interim measure provided in the above points.

### 9.6.5 ARBITRAL AWARD: MAKING, FINALITY AND ENFORCEMENT

An arbitral award shall be in writing and should be signed by the majority of the members of the arbitral tribunal. The arbitral award shall have a date and place and shall be delivered to each of the parties. If the arbitral award is to be given in monetary terms, the award may include the amount that shall be included in the award along with the rate of interest payable whatever the arbitral tribunal members deem fit and reasonable. In case of absence of the information, the arbitration award shall carry the interest rate of 18% from the date of award till the time of payment. Unless otherwise agreed, the cost of arbitration shall be fixed by the arbitral tribunal. The arbitral tribunal shall specify:

- a. The party entitled to the cost
- b. The party that shall pay the cost
- c. The amount of the cost
- d. The mode of payment of the cost

With the giving of the arbitration award, the arbitration proceedings are terminated.

- Correction of the award:** The parties may request to correct clerical or computation errors, if any, within 30 days of receipt of the award. The additional arbitration award can be provided within 60 days if such a request is made, provided that the members of the arbitral tribunal consider it necessary and in the interest of the parties.
- Finality of Award:** As per Section 35 of the Act, an arbitration award shall be final and binding upon the parties.
- Enforcement of Award:** The arbitral award shall be endorsed under the Civil Procedure Code, 1908, in the same manner as if it is a decree of a court of law.

### 9.6.6 RECOURSE AGAINST THE ARBITRAL AWARD

Recourse against an arbitral award is provided under Section 34 of the Arbitration and Conciliation Act, 1996. It can be made by making an application for setting aside the award in accordance with sub-sections (2) and (3) of this Section. Section 34 (2) states that an arbitral award may be set aside by the court if a party furnishes proof that:

- The party was under some incapacity.
- The arbitration agreement is not valid under the law.
- The party making an application was not given proper information about the appointment of the arbitrator.
- The arbitration tribunal has dealt with a matter that does not fall under the purview of the arbitration agreement.

The composition of the arbitration tribunal was not according to the arbitration agreement.

If the court finds that the subject matter of the dispute is not capable of being settled by arbitration.

The arbitral award is in conflict with the public policy of India.

Section 34 (3) states that the request for setting aside the award shall be within the three months of the receipt of the arbitral award.

This section especially focuses on the fact that an award passed could only be challenged on the grounds of impropriety, partiality or patent illegality. The award could never be set aside based on the facts of a given case, i.e., once the award is passed by the arbitral tribunal, the award is final in respect to the determination of the facts of the case. In other words, Section 34 only comes into play if the arbitrator or parties have committed gross illegality or an unwarranted act that affects the interests of the parties in dispute.

### 9.6.7 APPEALS

Section 37 deals with appeals. Appeals shall lie from the following orders to the court authorised by law to hear appeals from the original decrees of the court which are as following:

- Granting or refusing to set aside the award as mentioned above in Section 34 (2) and/or Section 34 (3)
- Granting or refusing to grant a measure in Section 9, wherein interim measures are to be provided by the court.

Appeal shall also lie to the court if the arbitral tribunal refuses to provide interim measures to the parties and where the arbitral tribunal is exceeding its jurisdiction or deciding the matters that are not in its scope.

#### SELF ASSESSMENT QUESTIONS

10. The Arbitration and Conciliation Act, 1996 is divided into \_\_\_\_\_ sections and 4 Chapters.
11. An arbitration agreement is defined in \_\_\_\_\_ of the Arbitration and Conciliation Act.
12. As per Section 35 of the Act, an arbitration award shall be final and binding upon the parties. This is called finality of the award. (True/False)
13. An arbitration tribunal has the right to provide an interim measure of protection to the parties in dispute, if they deem fit.
14. Recourse against an arbitral award is provided under the Section \_\_\_\_\_ of the Arbitration and Conciliation Act, 1996.

**ACTIVITY**

Form a group and discuss and document the composition of an arbitration tribunal.

**9.7 SUMMARY**

- ❑ Alternative Dispute Resolution (ADR) or external dispute resolution refers to dispute resolution processes and techniques that work as a means for conflicting parties to come to a settlement.
- ❑ Conciliation is an important ADR technique that helps to bridge the gap arising between parties due to disputes or conflicts.
- ❑ Mediation implies an involvement of a third party called a mediator as a dispute resolution practitioner who facilitates the resolution of disputes between parties.
- ❑ Negotiation is an informal technique of resolving a dispute, where the parties in dispute directly try to communicate with each other and reach a conclusion.
- ❑ The Arbitration and Conciliation Act, 1996 is divided into 86 sections and 4 chapters, and extends to the whole of India.
- ❑ An arbitration agreement as defined in Section 7 of the Arbitration and Conciliation Act refers to the agreement by the disputing parties to submit to arbitration all or certain disputes between them in respect of the legal relationship.
- ❑ The parties are free to determine the number of arbitrators, but the total number of arbitrators should not be an even number. Among the arbitrators, there should be one sole arbitrator.
- ❑ An arbitral tribunal, at the request of the parties, may take any interim measure for the protection of any of the party as the arbitral tribunal may deem fit.
- ❑ An arbitral award shall be in writing and should be signed by the majority of the members of the arbitral tribunal.
- ❑ Recourse against an arbitral award is provided under Section 34 of the Arbitration and Conciliation Act, 1996.
- ❑ Recourse against an arbitral award can be made through an application for setting aside the award in accordance with sub-sections (2) and (3) of Section 34.

**KEY WORDS**

- ❑ **Arbitration:** It is a method of dispute resolution between two parties by an impartial third party outside courts.
- ❑ **Dispute:** It is a state of argument or conflict between two or more parties.

- ❑ **Redressal:** It is the amount paid as compensation to the party initiating the process of arbitration.
- ❑ **Litigation:** It is the process of settling disputes through legal procedures.
- ❑ **Confidentiality:** It is a set of rules to ensure privacy of the disputing parties.

**9.8 DESCRIPTIVE QUESTIONS**

1. What do you mean by ADR?
2. Write a short note on the conciliation technique of dispute resolution.
3. Discuss the main advantages of mediation.
4. Write a short note on negotiation.
5. Describe the Arbitration and Conciliation Act, 1996.
6. Explain the process of recourse against an arbitral award.

**9.9 ANSWERS AND HINTS****ANSWERS FOR SELF ASSESSMENT QUESTIONS**

Topic	Q.No.	Answers
Alternate Dispute Resolution	1.	Alternate Dispute Resolution (ADR)
	2.	True
Conciliation	3.	True
	4.	Conciliation
Mediation	5.	True
	6.	True
Negotiation	7.	Mediator
	8.	Negotiation
Arbitration and Conciliation Act, 1996	9.	False
	10.	Section 86
	11.	Section 7
	12.	True
	13.	False
	14.	Section 34

## NOTES

**HINTS FOR DESCRIPTIVE QUESTIONS**

1. Alternate Dispute Resolution (ADR) or external dispute resolution refers to dispute resolution processes and techniques that work as a means for conflicting parties to come to a settlement. Refer to Section 9.2 **Alternate Dispute Resolution**.
2. Conciliation is a method of resolving a conflict with the help of a third party that intervenes in the dispute upon a request by either of the parties. Refer to Section 9.3 **Conciliation**.
3. The main advantage of using mediation is that it is less expensive as the amount required to be paid for the services rendered is small. Refer to Section 9.4 **Mediation**.
4. A negotiation is an informal technique of resolving a dispute, where the parties in dispute directly try to communicate with each other and try to reach a conclusion. Refer to Section 9.5 **Negotiation**.
5. The Arbitration and Conciliation Act, 1996 is divided into 86 sections and 4 chapters, and extends to the whole of India. Refer to Section 9.6 **Arbitration and Conciliation Act, 1996**.
6. Recourse against an arbitral award can be made through an application for setting aside the award in accordance with sub-sections (2) and (3) of Section 34 of the Arbitration and Conciliation Act, 1996. Refer to Section 9.6 **Arbitration and Conciliation Act, 1996**.

**9.10 SUGGESTED READING FOR REFERENCE****SUGGESTED READINGS**

- Clarkson, K., Miller, R., Jentz, G., & Cross, F. (2014). Business law: Text and cases (11th ed.). Cengage Learning.
- Keenan, D., & Riches, S. (2007). Business law. Harlow: Pearson Longman.

**E-REFERENCES**

- Advocatekhoj.com., (2014). Definitions | Arbitration and Conciliation Act, 1996 | Bare Acts | Law Library | AdvocateKhoj. Retrieved 8 November 2014, from <http://www.advocatekhoj.com/library/bareacts/arbitrationandconciliation/2.php?Title=Arbitration%20and%20Conciliation%20Act,%201996&STitle=Definitions>
- Business.gov.in., (2014). Business Portal of India: Legal Aspects: Key Regulations: Manpower : Laws relating to Equality and Empowerment of Women. Retrieved 8 November 2014, from [http://business.gov.in/legal\\_aspects/arbitration\\_conciliation.php](http://business.gov.in/legal_aspects/arbitration_conciliation.php)
- Ficci-arbitration.com., (2014). F A C T . Retrieved 8 November 2014, from <http://www.ficci-arbitration.com/htm/ruleandcts.htm>

**10****C H A P T E R****MISCELLANEOUS LAWS****CONTENTS**

10.1	Introduction
10.2	Workmen Compensation Act, 1923
10.2.1	Objectives
10.2.2	Scope and Major Provisions
	Self Assessment Questions
	Activity
10.3	Payment of Bonus Act, 1965
10.3.1	Objectives
10.3.2	Scope and Major Provisions
	Self Assessment Questions
	Activity
10.4	Employees Provident Fund and Miscellaneous Provisions Act, 1952
10.4.1	Objectives
10.4.2	Scope and Major Provisions
	Self Assessment Questions
	Activity
10.5	Payment of Gratuity Act, 1972
10.5.1	Objectives
10.5.2	Scope and Major Provisions
	Self Assessment Questions
	Activity
10.6	Minimum Wages Act, 1948
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10.7	Companies Act, 2013
10.7.1	Objectives
10.7.2	Scope and Major Provisions

## **CONTENTS**

- 10.7.3 Difference between the Companies Act, 1956 and Companies Act, 2013  
    Self Assessment Questions  
    Activity
- 10.8 Information Technology Act, 2000  
    Objectives  
    10.8.1 Scope and Major Provisions  
    10.8.2 Self Assessment Questions  
    Activity
- 10.9 Summary
- 10.10 Descriptive Questions
- 10.11 Answers and Hints
- 10.12 Suggested Reading for Reference

### LEARNING OBJECTIVES

- After studying the chapter, you will be able to:
- Discuss the Workmen Compensation Act, 1923
  - Explain the Payment of Bonus Act, 1965
  - Describe the Employee Provident Fund Act, 1952
  - Explain the Payment of Gratuity Act, 1972
  - Discuss the Minimum Wages Act, 1948

### 10.1 INTRODUCTION

In India, there are various laws enacted, and the objectives of all the laws are different. The umbrella of miscellaneous laws consists of various important acts, which are shown in Figure 10.1:

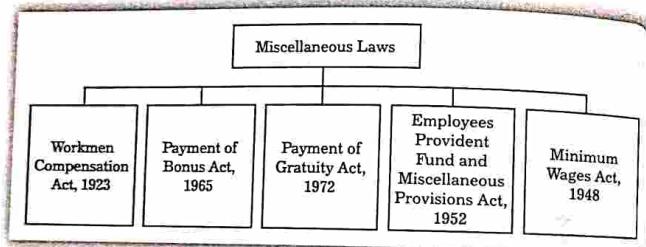


Figure 10.1: Miscellaneous Laws

All the laws shown in Figure 10.1 are related with promoting the welfare of workers and employees and improving their social life by providing sufficient remuneration to them and making provisions for their regular flow of income after attaining the age of superannuation.

Further, the Companies Act, 2013 is a recently implemented act, the prime objective of which is to maintain a high level of corporate governance among companies and protect and safeguard the interest of all the stakeholders.

Another act falling under the umbrella of miscellaneous laws is the Information Technology Act, 2000. This Act provides a legal recognition to electronic documents.

In this chapter, we will study the laws that ensure that workers and employees get fair remuneration, rewards and compensation in case of accidents. Besides this, there are provisions in the law to ensure that workers get a reasonable amount at the time of superannuation. The Companies Act, 2013 deals with corporate regulations and norms that ensure that the interests of shareholders and creditors are adequately protected.

### 10.2 WORKMEN COMPENSATION ACT, 1923

The Workmen Compensation Act, 1923 came in force on the first day of July, 1924. This Act is divided into four chapters and 36 sections. The important definitions under this Act are as follows:

- **Compensation:** "Compensation" means compensation paid under this Act.
- **Minor:** "Minor" means a person who has not attained the age of 18 years.

#### 10.2.1 OBJECTIVES

The Workmen Compensation Act, 1923 aims to provide relief to workers and/or their dependants in case of an accident or the death of the worker. The object is that if an employee or worker dies during the course of employment or while undertaking or performing his duty, his family or dependents should be provided relief in monetary terms so that their livelihood is not affected. This relief is also provided in the case of disablement.

#### 10.2.2 SCOPE AND MAJOR PROVISIONS

The Workmen Compensation Act, 1923 extends to the whole of India. There was an amendment in the year 2000, wherein all the workers were brought in the ambit of the Workmen Compensation Act, irrespective of the nature of the job for which they were employed.

Hence, with the amendment, the workers employed on a casual basis or otherwise than for the purpose of employer trade or business are covered in the sphere of the Workmen Compensation Act.

The employees, including those employed through the labour contractor or otherwise, who suffer any injury that makes them disabled or incapable for earning the similar income or in other words, reduces their earning capacity are entitled for compensation.

The employer covered under this Act shall be liable to compensate the workers who have suffered an accident in the course of the employment, causing:

- a. **Death:** Death clause is applicable when the employee or worker dies on the account of the accident.
- b. **Permanent Total Disablement:** This applies when the earning capacity of the worker is lost permanently.
- c. **Temporary Disablement:** This applies when the earning capacity of the worker is lost for a certain period.

d. **Permanent Partial Disablement:** Permanent partial disablement takes place when the earning capacity of the worker is reduced.

The amount of compensation payable to a worker depends upon the wages drawn by the worker and the nature of the injury caused. For example, in case of death, the compensation shall be 50% of the monthly wages multiplied by the relevant factor or ₹80,000, whichever is more.

#### SELF ASSESSMENT QUESTIONS

1. The compensation under the Workmen Compensation Act is paid under which of the following conditions?
  - a. Death
  - b. Permanent disablement
  - c. Temporary disablement
  - d. All of the above
2. \_\_\_\_\_ is the amount of compensation paid in case of death, under the Workmen Compensation Act, 1923.
3. The Workmen Compensation Act, 1923 aims to provide \_\_\_\_\_.
4. The employees, including those employed through the labour contractor or otherwise, who suffer any injury that makes them disabled or incapable for earning the similar income or, in other words, reduces their earning capacity are entitled for compensation. (True/False)

#### ACTIVITY

Using the Internet, identify examples of the compensation paid by organisations in case of permanent partial disablement under the Workmen Compensation Act, 1923.

### 10.3 PAYMENT OF BONUS ACT, 1965

The Payment of Bonus Act was made applicable from 25th September, 1965. It has 40 sections. It is applicable on every factory and every other establishment that employs 20 or more employees on any day during an accounting year.

Some of the important definitions are as follows:

- a. "Accounting Year" is the year ending on the day on which the books and accounts of the corporation are to be closed or balanced in relation to a corporation.
- b. "Agricultural Income" is the income having the same meaning as per the Income Tax Act.
- c. "Available Surplus" means surplus computed under Section 5.

#### 10.3.1 OBJECTIVES

The Payment of Bonus Act, 1965 aims at providing a part of profits towards the payment of bonus to the employees of certain establishments.

#### 10.3.2 SCOPE AND MAJOR PROVISIONS

Under the Payment of Bonus Act, 1965, all the employees receiving salary or wages up to ₹10,000 per month and engaged in any kind of work whether skilled, unskilled, manual, etc. are covered under the Act if that particular employee has worked for at least 30 days in that particular accounting year.

The minimum bonus payable is 8.33% of the salary or wages of the employee during the accounting year. This is payable even if the employers suffer a loss. The maximum bonus payable under the Act is 20% of the basic salary and wages.

The relevant rates of the Bonus Act are shown in Figure 10.2:

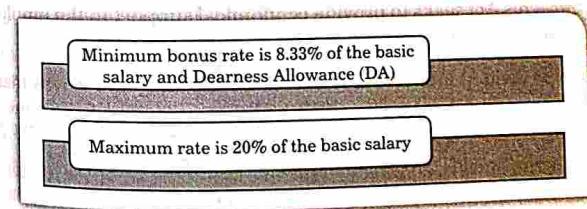


Figure 10.2: Relevant Rates of the Bonus Act

The bonus is paid within 8 months of the closure of the accounting year and is paid on an annual basis; the mode of payment of the bonus is cash.

If any employer contravenes any of the provisions of this Act, the penalty that may be imposed is up to ₹1000 or imprisonment for 6 months or both.



#### SELF ASSESSMENT QUESTIONS

5. What is the main requirement of applying the Payment of Bonus Act, 1965?
6. The minimum bonus payable under the Payment of Bonus Act, 1965 is:
  - a. 8.33%
  - b. 12%
  - c. 10%
  - d. 20%
7. The maximum bonus payable under the Payment of Bonus Act, 1965 is:
  - a. 20%
  - b. 5%
  - c. 12%
  - d. 8.33%



#### ACTIVITY

Explain how the minimum bonus shall be calculated under the Payment of Bonus Act, 1965 by using the Internet.

### 10.4 EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 is applicable in the entire India except in the state of Jammu & Kashmir. This Act seeks to provide economical support to the employees and workers employed in a factory.

This Act is divided into 10 chapters and 82 sections, and it was made effective from 2nd September, 1952 and was amended from time to time. Some of the important definitions under this Act are as follows:

- "Children" mean legitimate children, including adopted children if the commissioner is satisfied that the child is legally recognised.
- "Financial Year" means the year commencing from the 1st day of April.
- "Seasonal Establishment" means the plantation of tea, coffee, rubber or pepper or a coffee curing establishment.

#### 10.4.1 OBJECTIVES

The Employees Provident Fund and Miscellaneous Provisions Act, 1952 is enacted to provide monetary security to the employees after their retirement and to their dependants in case of death.

#### 10.4.2 SCOPE AND MAJOR PROVISIONS

Under this Act, three schemes are provided, which are shown in Figure 10.3:

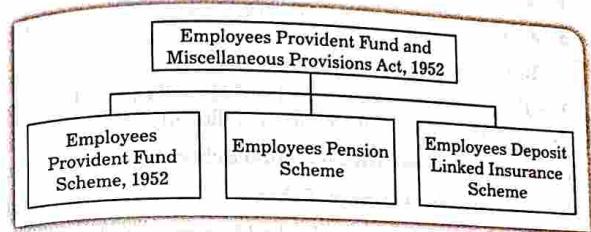


Figure 10.3: Schemes under the Employees Provident Fund and Miscellaneous Provisions Act, 1952

These three schemes under the Employees Provident Fund and Miscellaneous Provisions Act are discussed as follows:

- a. Employees Provident Fund Scheme: Under this scheme, the amount is accumulated and paid along with interest at the time of retirement, resignation or death. This scheme allows making a partial withdrawal from the account.
- b. Employees Pension Scheme: Under this scheme, the contributor shall be getting monthly pension after he/she retires.
- c. Employees Deposit Linked Insurance Scheme: Under this scheme, if the employee dies, the survivors or dependants shall be paid a lump sum amount.

Table 10.1 shows the amount of the contribution of the employee and employer in these three schemes:

TABLE 10.1: EMPLOYEE AND EMPLOYER CONTRIBUTIONS IN THE SCHEMES

	Employee Provident Fund	Employee Pension Scheme	Employee Deposit Linked Insurance Scheme
Employee	12%	0	0
Employer	3.67%	8.33%	0.5%

Besides the above contributions, the employer is also required to contribute towards the administration of funds.

The contribution is made of the basic salary. The contribution is mandatory when the employee wages/salary is up to ₹15,000.

## NOTES

**SELF ASSESSMENT QUESTIONS**

8. The employee contribution in the amount of the Provident Fund is:
- 8.33%
  - 12%
  - 10%
  - 15%
9. The Employees Provident Fund and Miscellaneous Provisions Act, 1952 provides for which of the following?
- The Employees Provident Fund Scheme
  - The Employees Pension Scheme
  - The Employees Deposit Linked Insurance Scheme
  - All of the Above

**ACTIVITY**

Using the Internet, prepare a report on how the contribution amount is calculated and deposited under the various schemes of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

**10.5 PAYMENT OF GRATUITY ACT, 1972**

The Payment of Gratuity Act, 1972 was enacted on 21st August, 1972. It is divided into 15 sections. The main objective of the Gratuity Act, 1972 is to reward the employee's past services, when the services are terminated or the employee is retired.

**10.5.1 OBJECTIVES**

Gratuity is a voluntary payment made by the employer to the employee for sincere and continuous services rendered by him/her. The Act provides for an obligation for the payment of gratuity to the employees covered under the Act.

**10.5.2 SCOPE AND MAJOR PROVISIONS**

Under the Act, completed years of service means continuous service of five years.

The Gratuity Act is applicable on the following:

- Employees engaged in factories, mines, oilfields, plantations, ports, railways, companies or other establishments and for matters connected therewith or incidental with.

- b. Every shop and establishment falling within the meaning of law, in which 10 or more persons are employed or were employed, on any day of the preceding twelve months as specified in the government notification.
- c. Such establishments where 10 or more persons are employed or were employed, on any day of the preceding the twelve months as specified in the government notification.

**Entitlement of Gratuity:** Gratuity is payable to employees who have rendered a continuous service of five years or more. It is payable on termination, superannuation or at the time of resignation.

**Forfeiture of Gratuity:** Gratuity can be forfeited in the following circumstances:

- Any act, wilful omission or negligence, causing damage to the employer's property or loss to the employer.
- Act of riotous conduct or any act of violence on the part of the employee.
- Any act that constitutes an offence of moral turpitude.
- If the employee leaves the employment before the completion of the continuous service period of 5 years.

**Maximum Limit and Amount of Gratuity Payable:** The maximum gratuity payable to the employee is ₹10 Lakhs, which is exempted as per the Income Tax Act. The gratuity amount is determined in the following manner:

- The employer shall pay gratuity at the rate of 15 days wages for every completed year of service based on the rate of last drawn wages by the employee concerned.
- The formula for calculation is as follows:

$$(Basic\ Salary + DA) \times \text{Number of Years of Continuous Service}$$

If the employee has worked for more than 6 months, one complete year is to be counted. If the employee has worked for less than 6 months, that period is ignored.

Thus, the main provisions of the Gratuity Act are as follows:

- The minimum amount of the gratuity paid under the Gratuity Act is 3.5 lakhs.
- For getting the gratuity amount, an employee must have worked for at least five years with an organisation.
- The maximum gratuity amount cannot exceed beyond 10 lakhs.
- Employer can deduct gratuity for negligence in services.

## NOTE

**SELF ASSESSMENT QUESTIONS**

10. The maximum amount of gratuity payable is:
- ₹10,00,000
  - ₹3,50,000
  - ₹5,00,000
  - ₹7,50,000
11. Gratuity is payable to the employee if he/she has served a minimum of \_\_\_\_\_ years with the company.
- 5
  - 7
  - 3
  - 10
12. The employer shall pay gratuity at the rate of 15 days wages for every completed year of service based on the rate of last drawn wages by the employee concerned. (True/False)

**ACTIVITY**

Use the Internet to identify the cases in which the gratuity can be forfeited and how the gratuity amount is calculated.

**10.6 MINIMUM WAGES ACT, 1948**

The Minimum Wages Act, 1948 ensures that workers and employees earn wages that are sufficient to earn their livelihood. The Act is divided into 31 sections. Some important definitions under this Act are:

"Adolescent" means a person who has completed the age of 14 years but has not completed 18 years of age.

"Adult" means a person who has completed 18 years of age.

**10.6.1 OBJECTIVES**

The Minimum Wages Act, 1948 is an Act that protects the interest of workers; the wages of workers are fixed as per the norms prescribed by the fair wage committee. It is an Act that sets the minimum wages that are to be paid to skilled and unskilled labourers.

**10.6.2 SCOPE AND MAJOR PROVISIONS**

The Minimum Wages Act is applicable all over India and ensures that wages are sufficient for the subsistence of workers. This Act specifies the minimum wages rate on a per-day basis; the revision of the minimum wages takes place on the basis of the cost of living index.

The State and Central Governments have power to fix and revise the minimum wages. There are two methods of fixing the minimum wages:

- a. Committee Method: Under this method, a committee is appointed to make recommendations and enquiries.
- b. Notification Method: Under this method, the rates of minimum wages are notified in the Official Gazette.

**SELF ASSESSMENT QUESTIONS**

13. What is the main purpose of the Minimum Wages Act?
14. Which one of the following is/are the method(s) of fixing the minimum wages?
- Committee Method
  - Notification Method
  - Both of the Above
  - None of the Above
15. Under the Minimum Wages Act, the wages are provided on a \_\_\_\_\_ basis.

**ACTIVITY**

Use the Internet to find out how the minimum wages rates and their applicability can be notified.

**10.7 COMPANIES ACT, 2013**

The Companies Act, 2013 was made applicable from 1st April 2014, though the 98 sections of the Act were made applicable in the year 2013. The Act is applicable all over India. It is divided into 470 sections, 7 schedules and 29 chapters, against the 658 sections of the Companies Act, 1956.

The emphasis is more on e-management, compliance and enforcement, disclosure norms, auditors, mergers and acquisitions and governance practices. The new Companies Act has introduced the norms of disclosures, corporate social responsibility, etc.

**10.7.1 OBJECTIVES**

The Companies Act, 2013 is enacted to regulate companies and protect the interest of shareholders and other stakeholders.

The new Companies Act, 2013 is implemented for achieving the following objectives:

- To make the key managerial personnel and directors accountable by defining their duties

## NOTES

- To make more stringent norms for the disclosure of various information at periodic intervals
- To make norms wherein, in many of the cases, the prior approval from the shareholders of the company is required
- To make mandatory contribution towards corporate social responsibility

The Companies Act, 2013 introduced a new type of business entity (or company) to the existing list, including public and private limited company. This new business entity is termed as One Person Company (OPC). According to the Companies Act 2013, "An OPC means a company with only one person as its member [section 3(1) of 2013 Act]. The draft rules state that only a natural person who is an Indian citizen and resident in India can incorporate an OPC or be a nominee for the sole member of an OPC".

Audit provisions under the new Companies Act, 2013 are as follows:

- Mandatory auditor rotation and joint auditors:** The Companies Act, 2013 now mandates the rotation of auditors after the specified time period. The Act also includes an enabling provision for joint audits.
- Non-audit services:** The Companies Act, 2013 states that any services to be rendered by the auditor should be approved by the board of directors or the audit committee. Additionally, the auditor is also restricted from providing certain specific services.
- Auditing standards:** The standards on auditing have been accorded legal sanctity in the Companies Act, 2013 and would be subject to notification by the National Financial Reporting Authority (NFRA). Auditors are now mandatorily bound by the Act to ensure compliance with standards on auditing.
- Cognisance to Indian Accounting Standards (Ind AS):** The Companies Act, 2013, in several sections, has given cognisance to the Indian Accounting Standards, which are standards converged with the International Financial Reporting Standards, for their applicability in the future. For example, the definition of a financial statement includes a 'statement of changes in equity', which would be required under the Ind AS. [Section 2(40) of 2013 Act]
- Secretarial audit for bigger companies:** In respect of the listed companies and other class of companies as may be prescribed, the Companies Act, 2013 provides for a mandatory requirement to have a secretarial audit. The draft rules make it applicable to every public company with the paid-up share capital > ₹100 crores. As specified in the Companies Act, 2013, such companies would be required to annex a secretarial audit report given by a company secretary in practice with its board's report. [Section 204 of 2013 Act]

**Secretarial standards:** The Companies Act, 2013 requires every company to observe secretarial standards specified by the Institute of Company Secretaries of India with respect to general and board meetings [Section 118 (10) of 2013 Act], which were hitherto not given cognisance under the 1956 Act.

**Internal audit:** The importance of an internal audit has been well acknowledged in Companies (Auditor Report) Order, 2003 (the 'Order'), pursuant to which the auditor of a company is required to comment on the fact that the internal audit system of the company is commensurate with the nature and size of the company's operations. However, the order did not mandate that an internal audit should be conducted by the internal auditor of the company. The Order acknowledged that an internal audit can be conducted by an individual who is not appointed by the company.

The Companies Act, 2013 now moves a step forward and mandates the appointment of an internal auditor who shall be either a chartered accountant or a cost accountant or such other professional as may be decided by the board to conduct an internal audit of the functions and activities of the company.

The companies that shall be required to mandatorily appoint an internal auditor as per the draft rules are as follows:

- Every listed company
- Every public company having the paid-up share capital of more than 10 crores
- Every other public company that has any outstanding loans or borrowings of more than 25 crores from banks or public financial institutions or has accepted deposits of more than 25 crores at any point of time during the last financial year.
- Audit of items of cost:** The Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost, as may be prescribed, shall also be included in the books of account kept by that class of companies. By virtue of this section of the Companies Act, 2013, the cost audit would be mandated for certain companies [Section 148 of 2013 Act]. It is pertinent to note that similar requirements have recently been notified by the Central Government.

(Source: [http://www.pwc.in/en\\_IN/in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf](http://www.pwc.in/en_IN/in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf))

## NOTES

### 10.7.2 SCOPE AND MAJOR PROVISIONS

The Companies Act, 2013 is applicable to all companies registered and incorporated in India. Its major provisions are as follows:

- It lays down the procedure for incorporating a new company.
- It lays down the procedure for making changes in the chartered documents of a company such as the Memorandum of Association and Articles of Association.
- It lays down the procedure for conducting the meetings of the Board of Directors.
- It lays down the procedure for conducting the meetings of members.
- It lays down the procedure for voting in the matters of the decision to be passed at the meeting of the Board of Directors or members.
- It lays down the procedure for appointing Directors and Managing Directors.
- It lays down the procedure for appointing the other key managerial persons such as the Chief Executive Officer, Company Secretary and Chief Financial Officer.
- It lays down the procedure for signing financial accounts and presenting the same to the members.
- It lays down the procedures for prosecuting and punishing the key managerial personnel and Directors in case of default.

### 10.7.3 DIFFERENCE BETWEEN THE COMPANIES ACT, 1956 AND COMPANIES ACT, 2013

Some of the key differences between the Companies Act, 1956 and Companies Act, 2013 are as follows:

- Incorporation of One Person Company is allowed under the new Companies Act, 2013.
- The number of members in a private company is allowed to be increased to 200, while in the Companies Act, 1956, it was restricted to 50.
- The listed company or other prescribed company needs to have one woman director, while this provision was not there in the Companies Act, 1956.

- One of the directors should have mandatorily stayed in India for at least 182 days in the previous year.
- Definitions of the key managerial personnel CEO, CFO and Company Secretary are included.
- The responsibilities of the key managerial personnel are stated under this Act.
- Appointment of independent directors is made mandatory under the new Companies Act, 2013.
- Under the new Act, the Director can hold directorship in maximum 20 companies, including private companies, while in the earlier Act, one could serve as a director in 20 companies, excluding private companies.

From the point of view of sections, the following changes have taken place in the Companies Act, 2013 as compared with the Companies Act, 1956:

Basis of Difference	Companies Act, 2013	Companies Act, 1956
Charge Definition Sec 2(16)	Charge means an interest or lien created over the property or asset.	No Provision.
Appointment of Auditors	Section 139 states that auditors shall be appointed for the period of 5 years and have to compulsorily retire at the end of the 5 <sup>th</sup> year (in case of firm, 10 years).	No restriction on the appointment of auditors.
Concept of Independent Directors (Section 149)	For the specified classes of the company, the appointment of the independent Directors is mandatory.	No such requirement, and independent Directors were only required for listed companies.
Loans to Directors	Loans to Directors under Section 295 are restricted.	Approval of the Central Government was required.
Related Party Transaction	As per Section 188 of the Companies Act, 2013, prior approval is required to be taken for related party transactions.	Central Government's approval was required for related party transactions.

**NOTES**

Basis of Difference	Companies Act, 2013	Companies Act, 1956	Basis of Difference	Companies Act, 2013	Companies Act, 1956
Small companies	No concept of small companies.	The concept of small companies was introduced, and the same was defined as a company, other than a public company: I. having the paid-up share capital not exceeding ₹50 Lakhs or such amount, not exceeding ₹5 Crores, as may be prescribed or II. having turnover not exceeding ₹2 Crores or such amount, not exceeding ₹20 Crores, as may be prescribed, as per its last profit and loss account. [Clause 2(85)]	Auditors	Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting. Section 224.	Every company shall appoint an individual or a firm as an auditor at the first annual general meeting, who shall hold office till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting. In case of listed companies and certain other prescribed companies, compulsory rotation of individual auditors in every five years and of audit firm every 10 years has been provided. Limited Liability Partnership is allowed to be appointed as an auditor.
One Person Company	No concept of One Person Company	The concept of One Person Company was introduced.  Special features: One Person company is not bound to include a cash flow statement in its financial statement.  Memorandum of the One Person Company shall indicate the name of the other person, with his/her prior written consent in the prescribed form. Such other person may withdraw his/her consent in such manner as may be prescribed, provided that the member of the One Person Company may at any time, change the name of such other person by giving notice in such manner as may be prescribed. It is not bound to hold an annual general meeting.	Accounting Standards	Accounting standards are mandatory.	In addition to accounting standards, auditing standards have also been made mandatory.
			Directors	All the directors can be foreigners, not residing in India. The maximum limit of directors in a company is 12.	Every company shall have at least one director resident in India for at least one hundred and eighty two days. [Clause 149(2)]. The maximum limit of directors in a company has now been increased to 15.
			Board Committees		Besides the Audit Committee, the constitution of Nomination and Remuneration Committee has also been made mandatory in the case of listed companies and such other class or classes of companies as may be prescribed. [Clause 178(1)].
			National Company Law Tribunal and Appellate Tribunal		The Central Government shall, by notification, constitute a Tribunal to be known as the National Company Law Tribunal and an Appellate Tribunal to be known as the National Company Law Appellate Tribunal. (Clause 408 and 410)

## NOTES

Basis of Difference	Companies Act, 2013	Companies Act, 1956
Class Action Suits		For the first time, a provision has been made for class action suits. It is provided that a specified number of member(s), depositor(s) or any class of them may, if they are of the opinion that the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on the behalf of the members or depositors.
		Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner. The order passed by the Tribunal shall be binding on the company and all its members, depositors and auditors, including the audit firm or expert or consultant or advisor or any other person associated with the company. (Clause 245)



### SELF ASSESSMENT QUESTIONS

16. The Companies Act, 2013 lays down the procedure for conducting the meetings of the Board of Directors. (True/False)
17. The new Companies Act, 2013 is implemented for:
  - a. Protecting the interest of shareholders
  - b. Ensuring better corporate governance
  - c. Protecting the interest of other stakeholders
  - d. All of the above

18. The number of members in a private company under the new Companies Act, 2013 is:
- a. 200
  - b. 50
  - c. 100
  - d. 150

### ACTIVITY

Using the Internet, identify how an OPC is formulated as per the Companies Act, 2013.

## 10.8 INFORMATION TECHNOLOGY ACT, 2000

The Information Technology Act, 2000 was notified on 17th October, 2000. It consists of 94 sections segregated into 13 chapters and 4 schedules.

This Act recognises alternatives to the paper-based methods of communication and storage of information. This recognition allows the use of the electronic storage of data for the use for legal purposes. Further, other Acts such as the Indian Evidence Act, 1872 and Indian Penal Code, 1860 are amended to provide legal recognition to the documents specified under the Information Technology Act, 2000.

### 10.8.1 OBJECTIVES

The objective of the Information Technology Act, 2000 is to provide legal recognition to the information and transactions that are undertaken through the means of electronic interchange or other means of electronic communication.

### 10.8.2 SCOPE AND MAJOR PROVISIONS

The major provisions under the Information Technology Act, 2000 are as follows:

- **Legal Recognition to Electronic Documents:** Where any law provides that information or any matter shall be in writing or in the typewritten or printed form, then such requirement shall be deemed to have been satisfied if such information or matter is:
  - ◆ rendered or made available in the electronic form
  - ◆ accessible so as to be usable for a subsequent reference
- **Legal Recognition to Digital Signatures:** If any information/matter is required by the law to be authenticated by affixing the signature, such requirement shall be deemed to have been satisfied. If such information/matter is authenticated by the means of digital signature, it should be affixed in the prescribed manner.

- Offences:** Offences and punishments related to information technology is summarised in Table 10.2:

**TABLE 10.2: OFFENCES AND PUNISHMENTS RELATED TO INFORMATION TECHNOLOGY**

Offences	Imprisonment Term up to	Fine up to
Tampering with the computer source document	3 years	2 lakhs
Hacking a computer system	3 years	2 lakhs
Publishing of information that is obscene in electronic form	5 years	1 lakh
Failure to comply with the orders of the controller	3 years	2 lakhs
Failure to comply with the directions of the controller to extend facilities for decrypting information	7 years	NIL
Securing access to a protected system	10 years	No limit
Misrepresentation or suppression of fact	2 years	1 lakh
Breach of confidentiality and piracy, publishing false or fraudulent DSC	2 years	1 lakh

The Information Technology Act, 2000 validates electronic contracts. It states that the Civil Court has no jurisdiction to the offences under the Information Technology Act, 2000. Even the appeal lies to the High Court if anyone is aggrieved by the order of the lower court.

#### SELF ASSESSMENT QUESTIONS

19. The Information technology Act, 2000 has \_\_\_\_\_.
  - a. 13 chapters 94 sections
  - b. 13 chapters 96 sections
  - c. 15 chapters 94 sections
  - d. None of the above
20. The Information Technology Act, 2000 provides recognition to e-contracts, digital signatures and \_\_\_\_\_.

#### ACTIVITY

Using the Internet, find out the provisions of the Information of Technology Act, 2000 and what all documents are covered under this Act.

#### 10.9 SUMMARY

- In India, there are various laws that ensure equitable remuneration for employees working in various organisations and factories. Besides this, there are various provisions to ensure that even after retirement or in case of an accident, sufficient amount of money is accumulated for the survival of the employees and their dependents.
- In this direction, the Acts enacted by the Parliament include the Provident Fund Act, Gratuity Act, Minimum Wages Act, Bonus Act, Workmen Compensation Act, etc.
- The government also keeps on amending these acts from time to time for the betterment of labourers and employees.
- The Companies Act, 2013 has taken over the previous Companies Act of 1956. This law was enacted to safeguard the interest of shareholders and other stakeholders of a company and ensure that efficient corporate governance practices are followed by companies.
- The Information Technology Act provides legal sanctity to electronic documents or other documents that are transmitted during e-commerce.

#### KEY WORDS

- Employer:** The owner of the factory premises and in the case of a company, it includes the Director of the company.
- Bonus:** The payment made to employees over and above the salary.
- Private Company:** A company where the number of members is up to 200, and a restriction is put on the transfer of shares.
- Memorandum and Articles of Association:** The charter documents of a company that govern the working of companies.

#### 10.10 DESCRIPTIVE QUESTIONS

1. Discuss the Workmen Compensation Act, 1923.
2. Explain the Payment of Bonus Act, 1965.
3. Describe the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

4. Discuss the Payment of Gratuity Act, 1972.
5. Explain the Minimum Wages Act, 1948.
6. Discuss the Companies Act, 2013.
7. Differentiate between the Companies Act, 2013 and Companies Act, 1956.
8. Explain the Information Technology Act, 2000.

## 10.11 ANSWERS AND HINTS

### ANSWERS FOR SELF ASSESSMENT QUESTIONS

Topic	Q. No.	Answers
Workmen Compensation Act, 1923	1.	d. All of the above
	2.	50% of the monthly wages multiplied by the relevant factor or ₹80,000, whichever is more
	3.	Relief to workers and/or their dependants in case of an accident or the death of the worker
	4.	True
Payment of Bonus Act, 1965	5.	The Payment of Bonus Act is applicable on every factory and every other establishment that employs 20 or more employees on any day during an accounting year.
	6.	a. 8.33%
	7.	a. 20%
Employees Provident Fund and Miscellaneous Provisions Act, 1952	8.	b. 12%
	9.	d. All of the above
Payment of Gratuity Act, 1972	10.	a. ₹10,00,000
	11.	a. 5
	12.	True
Minimum Wages Act, 1948	13.	The Minimum Wages Act, 1948 ensures that workers and employees earn wages that are sufficient to earn their livelihood.

Topic	Q. No.	Answers
Companies Act, 2013	14.	c. Both of the above
	15.	Daily
	16.	True
	17.	d. All of the above
	18.	a. 200
Information Technology Act, 2000	19.	a. 13 chapters 94 sections
	20.	Electronic documents

### HINTS FOR DESCRIPTIVE QUESTIONS

1. The Workmen Compensation Act, 1923 aims to provide relief to workers and/or their dependants in case of an accident or the death of the worker. Refer to Section 10.2 **Workmen Compensation Act, 1923**.
2. The Payment of Bonus Act, 1965 aims at providing a part of profits towards the payment of bonus to the employees of certain establishments. Refer to Section 10.3 **Payment of Bonus Act, 1965**.
3. The Employees Provident Fund and Miscellaneous Provisions Act, 1952 is applicable to the whole of India except in the state of Jammu & Kashmir. This Act seeks to provide economical support to the employees and workers employed in a factory. Refer to Section 10.4 **Employees Provident Fund and Miscellaneous Provisions Act, 1952**.
4. The main objective of the Gratuity Act, 1972 is to reward the employee's past services, when the services are terminated or the employee is retired. Refer to Section 10.5 **Payment of Gratuity Act, 1972**.
5. The Minimum Wages Act, 1948 ensures that workers and employees earn wages that are sufficient to earn their livelihood. Refer to Section 10.6 **Minimum Wages Act, 1948**.
6. The Companies Act, 2013 is enacted to regulate companies and protect the interest of shareholders and other stakeholders. Refer to Section 10.7 **Companies Act, 2013**.
7. As per Section 188 of the Companies Act, 2013, prior approval is required to be taken for related party transactions, whereas in the Companies Act, 1956, Central Government's approval was required for such transactions. Refer to Section 10.7 **Companies Act, 2013**.