UNIVERSITY GRANTS COMMISSION

COMMERCE **CODE: 08**

Unit 9: Legal Aspect of Business

Content

Sub Unit-1: Indian Contract Act. 1872

Sl. No.	Topic
1	9.1.1 Elements of a valid contract:
2	9.1.2 Capacity of a parties:
3	9.1.3 Free consent:
4	9.1.4 Discharge of a contract:
5	9.1.5 Breach of contract and remedies against breach:
6	9.1.6 Quasi contract:

Sub Unit-2 Special contract:

Sl. No.	Topic
7	9.2.1 Contracts of indemnity and guarantee:
8	9.2.2 Contracts of bailment and pledge:
9	9.2.3 Contract of agency:

Sub Unit-3 Sale of Goods Act. 1930:

Sl. No.	Topic
10	9.3.1 Sale and agreement to sell:
11	9.3.2 Doctrine of Caveat Emptor
12	9.3.3 Rights of unpaid seller and rights of buyer

Sub Unit-4: Negotiable Instruments Act.1881:

Sl. No.	Topic
13	9.4.1 Types of negotiable instruments:
14	9.4.2 Negotiation and assignment:
15	9.4.3 Dishonor and discharge of negotiable instruments:

Sub Unit-5: The Companies Act. 2013:

Sl. No.	Topic
16	9.5.1 Nature and kinds of companies
17	9.5.2 Company formation
18	9.5.3 Management, meetings and winding up of a joint stock company

Sub Unit-6: Limited Liability Partnership:

Sl. No.	Topic
19	9.6.1Structure and procedure of formation of LLP in India

Sub Unit-7: The Competition Act. 2002:

Sl. No.	Topic
20	9.6.1 Objective and main provision

Sub Unit-8: The Information Technology Act. 2000:

Sl. No.	Topic
21	9.8.1 Objective and main provision
22	9.8.2 Cyber crimes and penalties

Sub Unit-9: The RTI Act. 2005:

Sl. No.	Topic
23	9.9.1 Objective and main provision

Sub Unit-10: Intellectual property Rights (IPRs):

Sl. No.	Topic
24	9.10.1 Patents, trademarks and copyrights:

Sub Unit-11: Goods and Service Tax (GST):

Sl. No.	Topic
25	9.11.1. Objective and main provision
26	9.11.2 Benefits of GST
27	9.11.3 Implementation mechanism
28	9.11.4 Working of dual GST

SECTION – 1: Unit at a Glance

Sub Unit-1: Indian Contract Act. 1872

- **Elements of a valid contract:**
  1. Offers and Acceptance
  2. Legal Relationship
  3. Lawful Consideration
  4. Capacity of Parties
  5. Free Consent
  6. Lawful Objects
  7. Writing and Registration
  8. Certainty
  9. Possibility of Performance
  10. Not Expressly Declared Void
- **Capacity of a parties:**

  Section 11- Who are competent to contract. - Every person is competent to contract who is of the age of majority according to the law to which he is subject, and

  • Who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

  Person's incompetent to contract

  • Minor

  • Persons of unsound mind
- **Free consent:**

  According to Sec 10 of the Indian Contract Act one of the essentials of a valid contract is "Free Consent"

  Sec 13 defines "consent" as "Two or more persons are said to consent when they agree upon the same thing in the same sense". According to Sec 14, consent is said to be free when it is not caused by:

  1. Coercion
  2. Undue influence
  3. Fraud
  4. Misrepresentation
  5. Mistake
- **Discharge of a contract:**
  - Discharge by Performance
  - Discharge by Agreement or Consent
  - Discharge by Impossibility of Performance
  - Discharge by Lapse of Time
  - Discharge by Operation of Law
  - Discharge by Breach of Contract
- **Breach of contract and remedies against breach:**

  A remedy is a means given by law for the enforcement of a right Following are the remedies

  [1] Rescission

  [2] Suit upon damages

  [3] Suit upon quantum merit

[4] Suit for specific performance
[5] Suit for injunction Rescission

- **Quasi contract:**
  In case of Quasi Contract there will be no offer and acceptance so, actually there will be no Contractual relations between the partners. Such a Contract which is created by Virtue of law is called Quasi Contract.

Sub Unit-2: Special contract:

- **Contracts of indemnity and guarantee:**

"Contract of Indemnity" defined (Section 124): 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." There are two parties in this form of contract. The party who promises to indemnify/ save the other party from loss is known as 'indemnifier', whereas the party who is promised to be saved against the loss is known as 'indemnified' or indemnity holder.

Contract of guarantee: A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default. Three parties are involved in a contract of guarantee

Surety - Person who gives the guarantee,

Principal debtor - Person in respect of whose default the guarantee is given,

Creditor- Person to whom the guarantee is given

- **Contracts of bailment and pledge:**
  - **Bailment**

    A bailment is a special contract defined under section 148 of the Indian Contract Act, 1872. It is derived from a French word i.e. "bailer" which means "to deliver". The etymological meaning of bailment is "handing over" or "change of possession of goods". By bailment, we mean delivery of goods from one person to another for a special purpose on the contract that they shall reimburse the goods on the fulfilment of the purpose or dispose of them as per the direction of the Bailor. The person who delivers the goods is known as Bailor. And the person to whom the goods are given is known as Bailee. And the property bailed is known as Bailed Property.
  - **Pledge**

    Pledge is a kind of bailment. Pledge is also known as Pawn. It is defined under section 172 of the Indian Contract Act, 1892. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise. The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favor the goods are pledged is known as Pledgee or Pawnee.
- **Contracts of agency:**

  Agency is an agreement by which a relation based upon an expressed or implied. There is one person the agent, who is authorized to act under the control of and for another, principal in negotiating and making contract with third person.

  According to Indian Contract Act, 1872 "Contract of agency is a contract by which a person employs another person to do any act for himself or to represent him dealing with third person".

Sub Unit-3: Sale of Goods Act. 1930:

- **Sale and agreement to sell:**

Where the property (ownership) in the goods is transferred from the seller to the buyer mean-time, the contract is called a sale; but where the transfer of property in the goods is to take place at a future time the contract is called agreement to sell.

- **Doctrine of Caveat Emptor:**

The term 'Caveat Emptor' is Latin word which means 'let the buyer beware'. In other words it is not the part of the seller's duty to point out defects of the goods which he offers for sale rather it is duty of buyer to satisfy him about the quality as well as suitability of goods. This doctrine points out that in a contract of sale of goods the seller is under no duty to reveal undisclosed defects about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his own skill and judgment and makes a bad selection, he cannot blame anybody.

- **Rights of unpaid seller and rights of buyer:**

Unpaid Seller

✓ Rights of an Unpaid Seller: -

- Rights Against Goods: -

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

- Rights of Lien: - A lien is a right to retain/possession of goods until payment of the price. The unpaid seller can use this right in following conditions: -
  a. When goods have been sold without any stipulation as credit
  b. If sold in credit but credit time expired
  c. When buyer becomes insolvent
  d. The price or part of price remain unpaid
- Right of Stoppage Goods in Transit: - Where unpaid seller parted with the possession of goods but goods not yet come to buyer, the law confers right to seller to stop goods in transit if the buyer become insolvent. The following condition must be proved: -
  a. When goods are in transit
  b. When price is not paid
  c. When buyer becomes insolvent
- **Right of Resale: -** An unpaid seller also entitled with right of resale of goods. The unpaid seller can resale the goods in following conditions: -
  a. When the goods are perishable nature
  b. When seller expressly reserve right of resale in case of buyers of default.
  c. Where seller gives notice to buyer of his intention to resale and buyer doesn't pay price within reasonable time.

- **Rights Against Buyer**

- Right to sue for price (ownership must have been transferred)
- Right to sue for damages
- Right to rescind the contract

- **Duties of unpaid seller**
  - To deliver what was promised, if any.
  - To fulfill responsibility according to the contract.
  - To wait for payment up to credit period.
  - Should give notice to the buyer if he is unpaid seller.
  - Should only case file if adequate proof and evidence he has

Sub Unit-4: Negotiable Instruments Act. 1881:

- **Types of negotiable instruments:**
  - Commercial bill
  - Promissory note
  - Cheque
  - Commercial paper
  - Treasury bills
  - Bank draft
- **Negotiation and assignment:**
  - Section 14 of the Negotiable Instrument Act defines negotiation as When a Promissory Note, Bid &Exchange or Cheque is transferred to any person sue to constitute that person the holder thereof, the instrument is said to be negotiated-. Thus negotiation means that the negotiable instrument is transferred to another person in such a manner, that the transferee of the instrument becomes its holder, who has the right to possess the instrument in his own name and to recover the amount mentioned therein from concerned parties.
- **Dishonor and discharge of negotiable instruments:**
  - **Dishonor of negotiable instrument** means loss of honour or respect for the instrument in question on the part of the maker, drawee, or acceptor, as the case may be, which eventually results in non-realization of payment due on the instrument.

Sub unit-5: The Companies Act. 2013:

- **Nature and kinds of companies:**

The Companies Act, 2013 provides for the types of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

- Private Companies;
- Public Companies; and
- One Person Company (to be formed as Private Limited).

Section 3 (1) of the Companies Act 2013 states that a company may be formed for any lawful purpose by—

- seven or more persons, where the company to be formed is to be a public company;
- two or more persons, where the company to be formed is to be a private company; or
- one person, where the company to be formed is to be One Person Company, that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration

(2) A company formed under sub-section (1) may be either—

- a company limited by shares; or
- a company limited by guarantee; or
- an unlimited company.

Types of Company

I. Types of Company on the basis of Incorporation

There are three ways in which companies may be incorporated.

a. **Statutory Companies:** These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.
b. **Registered Companies:** The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC fall under this category.

II. Types of Company on the basis of Liability

Under this category there are three types of companies:

a. **Unlimited Liability Companies:** In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may be either a public company or a private company.
b. **Companies limited by guarantee:** A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.
c. **Companies limited by shares:** A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid `75 on a share of face value ` 100 can be called upon to pay the balance of `25 only. Companies limited by shares are by far the most common and may be either public or private.

III. Other Types of Company

a. Associations not for profit having a license under Section 8 of the Companies Act, 2013 or under any previous company law; Private Company, Public Companies; and One Person Company
b. Government Companies;
c. Foreign Companies;
d. Holding and Subsidiary Companies;
e. Associate Companies/Joint Venture Companies
f. Investment Companies
g. Producer Companies.
h. Dormant Companies

- **Company formation:**

(*1*) A company may be formed for any lawful purpose by—

(*a*) seven or more persons, where the company to be formed is to be a public company;

(*b*) two or more persons, where the company to be formed is to be a private company; or (*c*) one person, where the company to be formed is to be One Person Company that is to say, a private company.

- **Management, meetings and winding up of a joint stock company:**

The internal management of companies is carried on according to the articles of association. The articles define the relationship between members and between members and the company. On this basis, members are bound to each other but neither the company nor the members are bound to outsiders.

Sub Unit-6: Limited Liability partnership:

- **Structure and procedure of formation of LLP in India:**

According to Ministry of Corporate Affairs, Limited Liability Partnership (LLP) is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. In simple words, the partners have limited liability such that their personal assets cannot be used for paying off the debts of the company. Moreover, one partner is not held responsible for the misconduct of misconduct or negligence of another partner.

Sub Unit-7: Objectives and main provisions (Company act. 2002):

- **Objectives and main provisions:**

Competition is the act of the sellers individually seeking to acquire the patronage of buyers in order to achieve profits or market share. The Competition Act, 2002 was enacted by the Parliament of India and replaced The Monopolies and Restrictive Trade Practices Act, 1969. It is in effect to govern Indian competition law. After its enactment The Competition Act, 2002 has been amended twice, The Competition (Amendment) Act, 2007 and The Competition (Amendment) Act, 2009. Two of the main features of the Competition Act, 2002 is the framework it provides for the establishment of the Competition Commission, and the tools it provides to prevent anti-competitive practices and to promote positive competition in the Indian market.

Sub Unit-8: The Information technology Act. 2000:

- **Objectives and main provisions:**
    - Facilitating the electronic filing of documents with different Government departments and also agencies.
    - Facilitating the electronic storage of data
    - Providing legal sanction and also facilitating the electronic transfer of funds between banks and financial institutions.
    - Granting legal recognition to bankers for keeping the books of accounts in an electronic form. Further, this is granted under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934.
- **Cyber-crimes and penalties:**

  Offences:

  Cyber offences are the unlawful acts which are carried in a very sophisticated manner in which either the computer is the tool or target or both. Cyber crime usually includes:

  (a) Unauthorized access of the computers

  (b) Data diddling

(c) Virus/worms attack
(d) Theft of computer system
(e) Hacking
(f) Denial of attacks
(g) Logic bombs
(h) Trojan attacks
(i) Internet time theft
(j) Web jacking
(k) Email bombing
(l) Salami attacks
(m) Physically damaging computer system.

The offences included in the IT Act 2000 are as follows:

1. Tampering with the computer source documents.
2. Hacking with computer system.
3. Publishing of information which is obscene in electronic form.
4. Power of Controller to give directions
5. Directions of Controller to a subscriber to extend facilities to decrypt information
6. Protected system
7. Penalty for misrepresentation
8. Penalty for breach of confidentiality and privacy
9. Penalty for publishing Digital Signature Certificate false in certain particulars
10. Publication for fraudulent purpose
11. Act to apply for offence or contravention committed outside India
12. Confiscation
13. Penalties or confiscation not to interfere with other punishments.
14. Power to investigate offences.

Sub Unit-9: The RTI Act. 2005:

The Right to Information Act, 2005 came into force on the 12th October, 2005. As per section 2(F) of the Act, 'Information' means any material in any form including records, documents, memos, emails, opinions, advices, press-releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data, material held in any electronic form and information, relating to any private body which can be accessed by a public authority under other law for the time being force.

- **Objectives and main provisions:**
  - **Objectives of RTI Act.**

1. To make our democracy work for the people in real sense.
2. To ensure less expensive and time bound information.
3. To promote transparency and accountability in the working of the government.

Sub Unit-10: Intellectual Property Rights (IPRs.):

- **Patents, trademarks and copyrights:**
  - **Patent:** A patent safeguards an original invention for a certain period of time and is granted by the United States Patent and Trademark Office (USPTO). By granting the right to produce a product without fear of competition for the duration of the

patent, incentive is provided for companies or individuals to continue developing innovative new products or services.

- **Trademarks:** A trademark can be defined as a word, symbol, design, and/or phrase which is used to identify and differentiate the source of goods from other similar parties. A somewhat similar right is the service mark, which affords the same protection rights to services rather than goods.
- **Copyrights:** Copyrights protect "works of authorship," such as writings, art, architecture, and music. For as long as the copyright is in effect, the copyright owner has the sole right to display, share, perform, or license the material. One notable exception is the "fair use" doctrine, which allows some degree of distribution of copyrighted material for scholarly, educational or news-reporting purposes.

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

Sub Unit-11: Goods and Service Tax (GST):

- **Objectives and main provision:**
- Prevention of unhealthy competition among states.
- Increasing the tax base and raising compliance.
- Removal of cascading effect.
- Free movement of Goods across the country without any additional tax.
- **Benefits of GST:**
- Uniformity of tax rates across the states
- Ensure better compliance due to aggregate tax rate reduces.
- By reducing the tax burden the competitiveness of Indian products in international market is expected to increase and there by development of the nation.
- **Implementation mechanism:**
The Centre and the States to levy and collect the GST, four legislations were given assent by the President on12th April, 2017, which include
    - The Central GST Act, 2017
    - The integrated GST Act, 2017
    - The GST (Compensation to States) Act, 2017
    - The Union territory GST Act, 2017
- **Working of dual GST:**
Dual GST means, the proposed model will have two part called
1. CGST – Central goods and service tax for levied by central Govt. 2. SGST – State goods and service tax levied by state Govt. There would have multiple statute one CGST statute and SGST statute for every state. 9. Salient features of the GST

SECTION – 2: KEY STATEMENTS

Every candidate appearing for NET/SET examination should follow these key (main) points those can help them a better understanding regarding this unit very quickly.

Basic Key Statements: Elements of a valid contract (9.1.1), Capacity of a parties (9.1.2), Free consent (9.1.3), Sale and agreement to sell (9.3.1), Types of negotiable instruments (9.4.2), Nature and kinds of companies (9.5.1), The Competition Act. 2002 (9.7), Benefits of GST (9.11.2).

Standard Key Statements: Discharge of a contract (9.1.4), Breach of contract and remedies against breach (9.1.5), Rights of unpaid seller and rights of buyer (9.3.3), company formation (9.5.2), Structure and procedure of formation of LLP in India (9.6.1), Patents, trademarks and copyrights (9.10.1), Implementation mechanism (9.11.3).

Advanced Key Statements: Quasi contract (9.1.6), Doctrine of Caveat Emptor (9.3.2), Cybercrimes and penalties (9.8.2), Emerging issues in intellectual property (9.10.2), Working of dual GST (9.11.4).

Sub Unit-1: Indian Contract Act. 1872
9.1Indian Contract Act. 1872:
9.1.1 Elements of a valid contract:

Definition of Contract: A contract is an agreement made between two or more parties which the law will enforce. Sec 2(h) defines contract "as an agreement enforceable by law". Contract=Agreement + Enforceability at law.

Agreement: Agreement is defined as "every promise and every set of promises, forming consideration for each other".

Promise= a proposal when accepted becomes a promise.

Agreement = Offer+ Acceptance

Consensus Ad Idem: The parties to the agreement must have agreed about the subject matter of the agreement in the same sense and at the same time. Unless there is consensus ad idem, there can be no contract.

- **Enforceable by law:** An agreement, to become a contract, must give rise to a legal obligation or duty. An agreement may be social agreement or legal agreement. But only those agreements which are enforceable in a court of law are contracts.
  "All contracts are agreements, but all agreements are not necessarily contract"
- **Essential elements of a Valid Contract:**
  1. Offers and Acceptance 2. Legal Relationship 3. Lawful Consideration 4. Capacity of Parties 5. Free Consent 6. Lawful Objects 7. Writing and Registration 8. Certainty 9. Possibility of Performance 10. Not Expressly Declared Void.

1. Offers and Acceptance: It is one of the essentials of valid contract. There must an offer and acceptance of the same.

2. Legal Relationship: The parties to an agreement must create legal relationship. Agreements of a social or domestic nature do not create legal relations and as such cannot give rise to a contract

Example, X invited Y to a dinner Y accepted the invitation. It is a social agreement. If X fails to serve dinner to Y, Y cannot go to the courts of law for enforcing the agreement.

3. Lawful Consideration: Consideration is "something in return." Consideration has been defined as the price paid by one party for the promise of the other.

Example: X agrees to sell his motor bike to Y for Rs. 1,00,000. Here Y's promise to pay Rs. 1, 00,000 is the consideration for X's promise to sell the motor bike and X's promise to sell the motor bike is the consideration for Y's promise to pay 1, 00,000.

4. Capacity of Parties: It means that the parities to an agreement must be competent to contract. A contract by a person of unsound mind is void ab-initio. Thus, a contract entered into by a minor or by a lunatic is void.

Example: X a minor borrowed Rs 8,000 from Y and executed mortgage of his property in favour of the lender. This was not a valid contract because X is not competent to contract.

5. Free Consent: For a valid contract it is necessary that the consent of parties to the contact must be free.

Example: X threatens to kill Y if he does not sell his car to X. Y agrees to sell his car to X. In this case, Y's consent has been obtained by coercion and therefore, it cannot be regarded as free.

6. Lawful Objects: It is also necessary that agreement should be made for a lawful object. Every agreement of which the object or consideration is unlawful is illegal and the therefore void.

7. Writing and Registration: According to Contract Act, a contract may be oral or in writing. Although in practice, it is always in the interest of the parties that the contract should be made in writing so that it may be convenient to prove in the court.

8. Certainty: For a valid contract the terms and conditions of an agreement must be clear and certain.

9. Possibility of Performance: If the act is legally or physically impossible to perform, the agreement cannot be enforced at law. Example: A agrees with B to discover treasure by magic and B agrees to pay Rs 1,000 to A. This agreement is void because it is an agreement to do an impossible act.

10. Not Expressly Declared Void: An agreement must not be one of those, which have been expressly declared to be void by the Act.

9.1.2 Capacity of a parties:

Section 10 requires that the parties shall be competent to contract.

Section 11- Who are competent to contract.- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and

• Who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Person's incompetent to contract

• Minor

• Persons of unsound mind

MINORS

According to Indian Majority Act, 1875, a person attains majority on completion of 18 years of his age. But when a guardian of a minor person or property has been appointed by the court, he attains majority on completion of 21 years of age. Mohoribibi v. Dharmadas Ghose

HELD: Minor's agreement is void ab-initio

The position of Minor's agreement and effect thereof is as under;

(a) An agreement with a minor is void ab-initio.

(b) The law of estoppels does not apply against a minor. It means a minor can always his plead his minority despite earlier misrepresenting to be a major. In other words he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.

(c) Doctrine of Restitution does not apply against a minor i.e., As per section 70 Obligation of person enjoying benefit of non-gratuitous act does not apply.

(d) Ratification of agreement is not permitted: Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.

(e) Contract beneficial to Minor; A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.

(f) Minor as an agent. A minor can be appointed an agent, but he is not personally liable for any of his acts.
(g) Minor's liability for necessities: "Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other's property".

- **SOUND MIND FOR THE PURPOSES OF CONTRACTING (Section 12):**

A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect 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.
Other Disqualified Persons: The persons who are disqualified from entering into contract due to certain other reasons may be from legal status, political status or corporate status. Some of such categories of persons are given below;
1. Alien Enemy: An agreement with an Alien Enemy is void.
2. Foreign Sovereign and Ambassadors: Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India.
3. Convicts: A convict cannot enter into a contract while he is undergoing imprisonment.
4. Insolvents: An insolvent person is one who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of his creditors. An insolvent person cannot enter into any contract relating to his property.
5. Company or Statutory bodies: A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association

9.1.3 Free consent:

According to Sec 10 of the Indian Contract Act one of the essentials of a valid contract is "Free Consent"
Sec 13 defines "consent" as "Two or more persons are said to consent when they agree upon the same thing in the same sense". According to Sec 14, consent is said to be free when it is not caused by:
1. Coercion
2. Undue influence
3. Fraud
4. Misrepresentation
5. Mistake

1. COERCION: According to Sec 15 coercion means "Committing or threaten to commit any act forbidden by Indian Penal Code or unlawful detaining or threatening to detain any other persons property with a view to enter into an agreement. Effect of Coercion- When the consent of a party to an agreement is obtained by coercion; the contract becomes voidable at the option of the party, whose consent is so obtained. The burden of proving that the consent was obtained through coercion shall be upon the party who wants to set aside the contract on the plea of contract.

2. UNDUE INFLUENCE: Sometimes a party is compelled to enter into a contract against his will as a result of unfair persuasion by the other party. Section 16 defines undue influence as follows A contract is said to be induced by "undue influence", where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
Analyzing the provision of Section 16(1), we get the following essential features – i) A relation subsists between the parties whereby one of them is in a position to dominate the will of the other, ii) The dominant party uses his superior position to obtain an unfair advantage over the other.
3. FRAUD: Misrepresentation of facts may be intentional or innocent. Intentional misrepresentation has been termed as Fraud and innocent misrepresentation has been termed simply as 'misrepresentation' in the contract act. The essentials of fraud are:
1. There must be a representation or assertion and it must be false
2. The representation must relate to a fact
3. The representation must have been made with the intention of inducing the other party to act upon it
4. The representation must have been made with a knowledge of its falsity 5. The other party must have subsequently suffered some loss
4. MISREPRESENTATION: Misrepresentation is a false representation made innocently without any intention of deceiving the other party. It may include two things: (a) Wrong statement of a material fact not known to be false (b) Non-disclosure of facts where there is a legal duty to disclose without intention to deceive **5. MISTAKE:** Mistake are of two type (a) Mistake of law (b) Mistake of fact Mistake of law Mistake of law is further divided into three categories:

(a) Mistake of Indian law
(b) Mistake of foreign law
(C) Mistake as to private rights of the parties – treated as mistake of fact. Here, the agreement will be void in case of bilateral mistake only.
Mistake of fact i) Bilateral mistake ii) Unilateral mistake

9.1.4 Discharge of a contract:

1. Discharge by Performance
2. Discharge by Agreement or Consent
3. Discharge by Impossibility of Performance
4. Discharge by Lapse of Time
5. Discharge by Operation of Law
6. Discharge by Breach of Contract

1. DISCHARGE BY PERFORMANCE:

i) ACTUAL PERFORMANCE: When both the parties perform their promises.

ii) ATTEMPTED PERFORMANCE: When the promisor offers to perform his obligation, but promise refuses to accept the performance. It is also known as tender.

2. DISCHARGE BY AGREEMENT OR CONSENT:

i) NOVATION (Sec 62): New contract substituted for old contract with the same or different parties.

ii) RESCISSION (Sec 62) : When some or all terms of a contract are cancelled
iii) ALTERATION (Sec 62): When one or more terms of a contract is/are altered by the mutual consent of the parties to the contract
iv) REMISSION (Sec 63): Acceptance of a lesser fulfilment of the promise made.
v) WAIVER: Mutual abandonment of the right by the parties to contract
vi) MERGER: When an inferior right accruing to a party to contract merges into a superior right accruing to the same party

3. DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

- ➢ Known to Parties
- ➢ Unknown to Parties
- ➢ Subsequent Impossibility
- ➢ Supervening Impossibility (Sec 56)

- Destruction of subject matter
- Non-existence of state of things
- Death or incapacity of personal services
- Change of law
- Outbreak of war

4. **DISCHARGE BY LAPSE OF TIME:** The limitation act 1963, clearly states that a contract should be performed within a specified time called period of limitation. If it is not performed and if the promisee takes no action within the limitation time, then he is deprived of his remedy at law.
5. **DISCHARGE BY OPERATION OF LAW:**
   - Death
   - Merger
   - Insolvency
   - Unauthorized Alteration of The Terms Of A Written Agreement
   - Rights & Liabilities Vesting In The Same Person
6. **DISHARGE BY BREACH OF CONTRACT:**
   i) ACTUAL BREACH:
   - At the time of performance
   - During the performance

   ii) **ANTICIPATORY BREACH**:
   - By the act of promisor (implied repudiation)
   - By renunciation of obligation (express repudiation)

9.1.5 Breach of contract and remedies against breach:

A remedy is a means given by law for the enforcement of a right Following are the remedies

[1] Rescission
[2] Suit upon damages
[3] Suit upon quantum meruit
[4] Suit for specific performance
[5] Suit for injunction Rescission

[1] Rescission

When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance. In such a case, he is absolved of all his obligations under the contract. The court may give rescission due to 1) Contract is voidable 2) Contract is unlawful

[2] Damages

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

1. Ordinary Damages
2. Special Damages
3. Vindictive Damages
4. Nominal Damages
5. Liquidated

[3] Damages Suit upon quantum meruit

The phrase quantum meruit literally means 'as much as earned'. A right to sue on a quantum meruit arises when a contract, partly performed by one party, has been discharged by breach of contract by the other party. This right is performed not on original contract but on implied promise by other party for what has been done.

[4] Suit for specific performance

In certain cases of breach of contract damages are not an adequate remedy. The court may, in such cases, direct the party in breach to carry out his promise according to terms of the contract. This is a direction by the court for specific performance of the contract at the suit of the party not in breach.

[5] Suit for injunction

When a party is in breach of a negative term of contract the court may, by issuing an order, restrain him by doing what he promised him not to do. Such an order of the court is called injunction.

9.1.6 Quasi contract: In case of Quasi Contract there will be no offer and acceptance so, actually there will be no Contractual relations between the partners. Such a Contract which is created by Virtue of law is called Quasi Contract.

Sub Unit-2 Special contract:

9.2.1 Contracts of indemnity and guarantee:

"Contract of Indemnity" defined (Section 124): 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." There are two parties in this form of contract. The party who promises to indemnify/ save the other party from loss is known as 'indemnifier', whereas the party who is promised to be saved against the loss is known as 'indemnified' or indemnity holder.

Example 1: A may contract to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of ` 5000/- advanced by C to B. In consequence, when B who is called upon to pay the sum of money to C fails to do so, C would be able to recover the amount from A as provided in Section 124.

Example 2: X, a shareholder of a company lost his share certificate. He applied for the duplicate. The company agreed to issue the same on the term that X will compensate the company against the loss where any holder produces the original certificate. Here, there is contract of indemnity between X and the company.

Explanation: To indemnify means to compensate or make good the loss. Thus, under a contract of indemnity the "existence of loss" is essential. Unless the promisee has suffered a loss, he cannot hold the promisor liable on the contract of indemnity. However, the above definition of indemnity restricts the scope of contracts of indemnity in as much as it covers only the loss caused:

(i) By the conduct of the promisor himself, or
(ii) By the conduct of any other person.

Thus, loss occasioned by the conduct of the promise, or accident, or an act of God is not covered.

A contract of indemnity like any other contract may be express or implied.

A contract of indemnity is like any other contract and must fulfill all the essentials of a valid contract like consideration, free consent, competency of contract, lawful object etc.

Example: A asks B to beat C promising to indemnify him against the consequences. The promise of A cannot be enforced. Suppose, B beats C and is fined Rs. 1000, B cannot claim this amount from A because the object of the agreement is unlawful.

A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is no contract of indemnity in case of contract of Life Insurance.

Rights of Indemnity—holder when sued (Section 125): The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor/indemnifier—

(1) All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
(2) All costs which he may be compelled to pay in any such suit if, in bringing or defending it.
(3) All sums which he may have paid under the terms of any compromise of any such suit.

"Contract of guarantee", "surety", "principal debtor" and "creditor" [Section 126]:

Contract of guarantee: A contract of guarantee is a contract to perform the promise made or discharge the liability, of a third person in case of his default. Three parties are involved in a contract of guarantee

Surety - Person who gives the guarantee,
Principal debtor - Person in respect of whose default the guarantee is given,
Creditor- Person to whom the guarantee is given
Example 1: When A requests B to lend `10,000 to C and guarantees that C will repay the amount within the agreed time and that on C falling to do so, he will himself pay to B, there is a contract of guarantee. Here, B is the creditor, C the principal debtor and A the surety. **Example 2:** Where 'A' obtains housing loan from LIC Housing and if 'B' promises to pay LIC Housing in the event of 'A' failing to repay, it is a contract of guarantee. **Example 3:** X and Y go into a car showroom where X says to the dealer to supply latest model of Wagon R to Y. In case of Y's failure to pay, X will be paying for it. This is a contract of guarantee because X promises to discharge the liability of Y in case of his defaults.
Explanation: Guarantee is a promise to pay a debt owed by a third person in case the latter does not pay.
Any guarantee given may be oral or written.
From the above definition, it is clear that in a contract of guarantee there are, in effect three contracts

(i) A principal contract between the principal debtor and the creditor
(ii) A secondary contract between the creditor ad the surety.
(iii) A implied contract between the surety and the principal debtor whereby principal debtor is under an obligation to indemnify the surety; if the surety is made to pay or perform.

The right of surety is not affected by the fact that the creditor has refused to sue the principal debtor or that he has not demanded the sum due from him.
Consideration for guarantee [Section 127]: What constitutes consideration in a case of guarantee is an important issue and is laid down in Section 127 of the Act. As per Section 127 of the Act, "anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee."
Example 1: B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.
Example 2: A sell and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.
Example 3: A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void. Essentials of a valid Guarantee:
1. Existence of a principal debt.
2. Benefit to principal debtor is sufficient consideration, but past consideration is no consideration for a contract of guarantee.
3. Consent of surety should not be obtained by misrepresentation or concealment of a material fact.
4. Can be oral or written.
5. Surety can proceed against without proceeding against the principal debtor first. 6. If the co-surety does not join, the contract of guarantee is not valid.

9.2.2 Contracts of bailment and pledge

- **Bailment**

A bailment is a special contract defined under section 148 of the Indian Contract Act, 1872. It is derived from a French word i.e. "bailer" which means "to deliver". The etymological meaning of bailment is "handing over" or "change of possession of goods". By bailment, we mean delivery of goods from one person to another for a special purpose on the contract that they shall reimburse the goods on the fulfilment of the purpose or dispose of them as per the direction of the Bailor. The person who delivers the goods is known as Bailor. And the person to whom the goods are given is known as Bailee. And the property bailed is known as Bailed Property.

- Essentials of Bailment:
  - There shall be a contract between the parties for the delivery of goods,
  - The goods shall be delivered for a special purpose only,
  - Bailment can only be done for movable goods and not for immovable goods or money,
  - There shall be a transfer of possession of goods,
  - Ownership is not transferred to Bailee, therefore Bailor remains the owner,
  - Bailee is duty bound to deliver the same goods back and not any other goods.
  - **Exception:** *The money deposited in the bank shall not account to bailment as the money returned by the bank would not be the same identical notes. And it is one of the essentials of the bailment that same goods are to be delivered back.*

- Duties of a Bailor

  Section 150 of the Indian Contract Act, 1872 bound the Bailor with certain duties to disclose the latent facts specifically pertaining to defect in goods. Bailor's duty of disclosure are:

  - **Gratuitous Bailment:** It is the duty of the Bailor to disclose all the defects in the goods that he is aware of to the Bailee that can interfere with the use of goods or can expose him to extraordinary risks. And failure to do the same will make Bailor liable for damages.
  - **Non-Gratuitous Bailment (Bailment for Reward):** This duty particularly deals with the goods given on hire. As per this provision, when the goods are bailed for hire, then in such a situation even if the Bailor is aware of the defect in the goods or not will be held liable for the injury that has been caused due to the existence of such defect.

In ***Hyman v Nye & Sons***, the plaintiff took a carriage on hire from the defendant but the carriage was not fit for the journey and subsequently, the plaintiff suffered injuries. The court held that even though the defendant was aware of such defect or not he shall be liable.

- Duties of Bailee

  Bailee has to fulfil several obligations as per Indian Contract Act, 1872. That is:

Duty to take reasonable care: It is the duty of the Bailee to take care of goods as his own goods. He shall ensure all safety measures that are necessary to protect the goods. The standard of care should be such as taken care by a prudent man. The goods shall be taken care of equally whether they are gratuitous or non-gratuitous. The Bailee shall be held liable for payment of compensation if he fails to take due care. But if the Bailee has taken due care and instead of that the goods are damaged then in such a situation Bailee will not be liable to pay compensation. The Bailee is not liable for the loss of goods due to destruction by fire. (Section 151-152)

Duty not to make unauthorized use of the goods: Bailee is duty bound to use the goods for a specific purpose only and not otherwise. If he uses the goods for any other purpose than what is agreed for then the bailor has the right to terminate such bailment or is entitled with compensation for damage caused due to unauthorized use. (Section 153-154)

Duty not to mix bailor's goods with his own goods: It is the duty of the Bailee not to mix bailor's goods with his own. But if he wants to do the same then he shall seek consent from the bailor for mixing of goods. If the bailor agrees for the mixing of the goods then the interest in the mixed goods shall be shared in proportion. In case, Bailee without the consent of bailor mixes the goods with his own then two situations arise: goods can be separated and goods can't be separated. In the former case the Bailee has to bear the cost of separation and in the latter case since there is the loss of the goods, therefore, bailor shall be entitled with damages of such loss. (Section 155-157)

Duty to return the goods on the fulfilment of purpose: Bailee is duty bound to return the goods once the purpose is achieved or on the expiry of the time period for which the goods were bailed. But if the Bailee makes default in returning the goods on proper time then he will be responsible with the loss, destruction or deterioration of the goods if any. (Section 160-161)
In the case of *Bank of India v. Grains & Gunny Agencies* the court held that if the goods are lost or destroyed due to the negligence of servant of Bailee, then in such case as well Bailee shall be liable.

Duty to deliver to the Bailor increase or profit if any on the goods bailed: The Bailee has a duty to return the goods along with increase or profit subject to contract to the contrary. Accretion that has accrued from the bailed goods is the part of the bailed goods and therefore Bailor has the right over such accretions if any. And such accretions shall be handed over to the Bailor along with the goods bailed. For instance, A leaves a cow in the custody of B and cow gives birth to the calf. Then B is duty bound to hand over the bailed goods along with accretion to the Bailor. (Section 163)

- Rights of a Bailor
  As such Indian Contract Act, 1872 does not provide for Rights of a Bailor. But Rights of a Bailor is same as Duties of the Bailee i.e. Rights of Bailor = Duties of Bailee. So the rights of Bailor are:

Enforcement of Bailee's Duty: Since Right of the Bailor is same as the right of the Bailee, therefore on the fulfilment of all duties of Bailee the Bailor's right is accomplished. For example, it is the duty of the Bailee to give the accretions and it is the right of Bailor to demand the same.

Right to claim damages: If the Bailee fails to take care of the goods, the Bailor has the right to claim damages for such loss. (Section 151)

Right to Termination the Contract: If the Bailee does not comply with the terms of the contract and acts in a negligent manner in such case the Bailor has the right to rescind the contract. (Section 153)

Right to claim compensation: If the Bailee uses the goods for an unauthorized purpose or mixes the goods which cause loss of goods in such case Bailor has the right to claim compensation.

Right to demand the return of goods: It is the duty of the Bailee to return the goods and the Bailor has the right to demand the same.

- Rights of a Bailee

Right to recover expenses: In the contract of Bailment, the Bailee incurs expenses to ensure the safety of goods. The Bailee has the right to recover such expenses from the Bailor. (Section 158)

Right to remuneration: When the goods are bailed to the Bailee he is entitled to receive certain remuneration for services that he has rendered. But in case of gratuitous bailment, the Bailee is not awarded any remuneration.

Right to recover compensation: At times a situation arises wherein Bailor did not have the capacity to contract for bailment. Such a contract causing loss to the Bailee, therefore the Bailee has the right to recover such compensation from the Bailor. (Section 168)

Right to Lien: Bailee has the right over Lien. By this, we mean that if the Bailor fails to make payment of remuneration or does not pay the amount due, the Bailee has the right to keep the goods bailed in his possession till the time debtor dues are cleared. Lien is of two types: particular lien and general lien. (Section 170-171)

In the case of Surya Investment Co. v. S.T.C, the court held that expenses incurred by Bailee during preservation of goods under lien shall be borne by Bailor.

Right to suit against a wrongdoer: After the goods have been bailed and any third party deprives the Bailee of use of such goods, then the Bailee or Bailor can bring an action against the third party. (Section 180)

- **Pledge**

Pledge is a kind of bailment. Pledge is also known as Pawn. It is defined under section 172 of the Indian Contract Act, 1892. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise. The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favour the goods are pledged is known as Pledgee or Pawnee.

- Essentials of Pledge

Since Pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are:

- There shall be a bailment for security against payment or performance of the promise,
- The subject matter of pledge is goods,
- Goods pledged for shall be in existence,
- There shall be the delivery of goods from pledger to pledgee,
- There is no transfer of ownership in case of the pledge.

- ***Exception:*** *In exception circumstances pledgee has the right to sell the movable goods or property that has been pledged.*
- Rights of Pawnor

  As per Section 177 of the Indian Contract Act, 1872 the Pawnor has the Right to Redeem. By this, we mean that on the repayment of the debt or the performance of the promise, the Pawnor can redeem the goods or property pledged from the Pawnee before the Pawnee makes the actual sale. The right of redemption is extinguished once the actual sale is done by the Pawnee as per his right under section 176 of the Indian Contract Act, 1872.
- Rights of a Pawnee

  The rights of the Pawnee as per Indian Contract Act, 1872 are:

Right to retain the goods: If the Pawnor fails to make the payment of a debt or does not perform as per the promise made, the Pawnee has the right to retain the goods pledged as security. Moreover, Pawnee can also retain goods for non-payment of interest on debt or non-payment of expenses incurred. But Pawnee cannot retain goods for any other debt or promise other than that agreed for in the contract. (Section 173-174)**Right to recover extraordinary expenses:** The expenses incurred by Pawnee on the preservation of goods pledged can be recovered from Pawnor. (Section 175)

The right of suit to procure debt and sale of pledged goods: On the failure to make repayment to Pawnee of the debt, the Pawnee has two rights either to initiate suit proceedings against him or sell the goods. In the former case, the Pawnee retains the goods with himself as collateral security and initiate the court proceedings. He need not provide any notice of such proceedings to the Pawnor. And in the latter case, the Pawnee can sell the goods after giving due notice of sale to the Pawnor. If the amount received from the sale of goods is less than the amount due then the rest amount can be recovered from Pawnor. And if the Pawnee gets more amount than the due amount then such surplus is to be given back to Pawnor. (Section 176)

9.2.3 Contract of agency:

Agency is an agreement by which a relation based upon an expressed or implied. There is one person the agent, who is authorized to act under the control of and for another, principal in negotiating and making contract with third person.

According to Indian Contract Act, 1872 "Contract of agency is a contract by which a person employs another person to do any act for himself or to represent him dealing with third person". The person who employs or appoints another person to do act on his behalf is known as principal. The principal should qualify i.e. mature to appoint an agent because principal is responsible for every work of the agent. In Nepal Principal should be over 16 and in India, Principal should over 18 years.

According to Black Law's Dictionary "A fiduciary relationship created by express or implied contract or by law in which one party may act on behalf of another party and bind the other party by words or actions".

The principal is only responsible up to the extent to which the agent is assigned rights to do act beyond this boundary the principal isn't responsible but the agent is self-responsible.

While making contract there may be or may not be consideration. Agency is process of delegating the authority by a principal to the agent to act and represent from his behalf.

The act done and representation made by an agent aren't the act of the agent but are regarded as the act of principal. Therefore, rights and duties created by agent are the right and duties of the principal. However, some acts relating to personal skill cannot be done through agency.

Following act can be done through Agency: -

- To do at for himself.
- To run commercial transaction by agent.
- To do transaction with third person.
- To establish legal relation with principal and third person.

We may note that the contract relating to agency is legally recognized in following criteria:-

- Whatever a person can lawfully do he may also does the same through an agent.
- He who acts through another is considered to have acted personally.

All Contracts are agreements but all agreements are not contracts.

- **General Rule of Agency**
  - No essential of consideration
  - Delegation of Authority
  - Contractual capacity
  - Agent can appoint sub agent with permission of Principal
  - If the agent has removed, subagent is automatically terminated

- **Distinction between Agent and Servant**
  - Agent is a person who represents another in matter to relating contracts but servant is person employed by someone to do in a house for a payment.
  - An agent is bound by lawful instructions of principal but is not under a direct control and supervision. He has a discretionary (Sobibek) power whereas servant acts under direct control and supervision of his owner. He has no discretionary power.
  - An agent is employed with an authority to bring the principal into legal relations with third parties. He represents his principal in dealings with third party but servant does not ordinarily do this kind of acts.
  - Mistakes made by an agent with authority are attributed to his principal. The agent isn't responsible personally for the act done but mistakes made by servant may make his master liable only when it is committed at the time of employment.
  - Agent is a representative of the principal with a high status. A servant may act as an agent office master with low standard.
  - An agent may work for several principals at some time. A servant usually provides services for only one master.
  - An agent generally received commission for the acts done from his principal. A servant generally receives salary as remuneration from his master.

- **Model/ Methods of Creating Agency: -**

  Modes mean the way and methods. There are various ways or modes by which the relationship of principal and agent may arise.
  - By Express Agreement: Normally the authority given by principal to his agent is an express authority in such case; the agent may be appointed either by the words spoken or written or conduct of activities. For e.g. power of attorney.
  - By Implied Agreement: Implied agreements are unexpressed agreement. Implied agreements/agency arises from the conduct, situation or relationship of the parties. It may be inferred from circumstances of the case; and things spoken or written or the ordinary course of dealing may be accounted as circumstance of the case. Implies agency may come from different cases.
  - Agency by Estoppel: If a person represents by words or conducts that another person is his agent and third party reasonably believe on such representation and enters into an agreement, the person who represents so is bound by the act of other this is known as the agency by estoppel. In this case of agency by estoppel, the third party must act in good faith and must rely on a representation of the agent's authority to act as an agent.

• Agency by Holding Out: This may arise from the relation of employer and employee. A manager is an agent of the company. The agency that is held due to any kind of business relationship is known as agency by holding out.

• Agency by Necessity: In certain urgent circumstance the law confers an authority on a person to act as an agent for the benefit of another such agency is called an agency of necessity. In such cases, the agent must act in good faith and have to protect and preserve the interest of the principal.

For example: - 'A' a common interest carrier carries dairy product of 'B' from Kathmandu to Narayanghat because of landslide, the carrier sold all dairy product on the way (transit) otherwise there was chance of damage of all goods. In such case 'B' cannot sue against 'A' because of no authority. Here 'A' is treated as an agent of 'B' by necessity.

• Agency of Ratification (Later Acceptance): Even if the agent enters into a contract without the authority of the principal, the principal may subsequently ratify i.e. adopt the benefits and liabilities of a contact made on the principal's behalf. It may occur in two ways: -

- ✓ Firstly, when a person acts one behalf of another without authority of the principal and principal adopt the transaction.
- ✓ Secondly, when a person is an agent of another but he exceeds his authority and acts on behalf of principal and principal adopts the transaction.

In either case if act is done on behalf of another (principal) and later principal adopts or rectifies the transaction there is an agency relationship between the parties. (if one person does something without the permissions or authority of another person and another person makes good response for that work then it is known as Agency of Ratification. In this case person is known as 'Agent' and another person is 'Principal'. Though another person (principal) gives positive response to person (agent) the date when person 'agent' starts the work for another person (principal) should be called the agency)

➢ Requisites for Valid Ratification

a. The principal must be named
b. Ratification must be done by the person to whom act is done
c. Ratification must be done by a person with full knowledge of material facts or with intent to take the risk of any irregularity
d. Ratification must be by a person competent to have authorized the transactions
e. Void or illegal contract cannot be ratified by the principal

➢ Rights of Agent

There are number of rights which an agent has against his principal and third parties. These are as follows: -

• Right to get remuneration: If it is provided in the contract of agent agent has right to receive reasonably remuneration for his work for principal.

• Right of Lien: If agent is not paid lawful charges remunerations or expenses by his principal and of goods of principal are under his control, he can retain the goods until the lawful charges is paid by principal. This right last till the lawful charges are fully satisfied.

• Right to get indemnity: If principal removes the agent without concrete reason agent has right to claim compensation from his principal. Therefore, agent has also right to continue business performance until nothing is wrong done by agent.

- **Duties of Agent**

An agent owes a number of duties to his principal who varies in degree according to the nature of agency and circumstances of a case. These duties are as follows

• Duty to follow instructions/directions: -The first and foremast duty of an agent is to act strictly within the scope to the authority conferred upon him and to carry out the instructions of the principal.

• To act under the terms of the contract: - An agent is obliged to perform each and every term mentioned in the contract towards his principal.

• Duty to communication: - In cases of difficulty, it will be also the agent’s duty to communicate the principal and obtain his instructions while carrying the business agency.

• Not to delegate his authority: - An agent must not delegate his authority to delegate authority agent must have the permission of principal. As much as possible agent himself performs on behalf of principal.

• Duty not to make secret profit from agency: -An agent’s duty is to be loyal to his principal. It an agent makes secret profit from its agency; the principal can demand all the profits from the agent.

• Duty to follow customs: - Where, however the principal has not given any instructions it is the duty of agent to follow the customs prevailing in the same kind of business at the place where the agent conducts his business.

• Duty to carry out the work with reasonable care, skill and diligence: - Agent is always bound to act with reasonable care, skill and diligence as he possesses and to make compensation to his principal in respect of direct consequences of his neglect or want of skill or misconduct.

• Duty to keep and render separate and correct accounts: - An agent must keep the money and property of the principal separate. He must keep true, correct and proper accounts of his all transactions o0n behalf of his principal and to be prepared all times to produce them to his principal.

• Duty to act with good faith: - An agent must act in good faith while representing the principal. Agent should not have any intention to cause harm to the principal.

• Not disclose confidential information: - Though the agent may have authority from his principal to deal on his accounts, agents are not allowed to disclose or leak the confidential information of the principal. It is the duty of agent to maintain privacy and secrecy of such confidential information of the principal.

- **Types of Agent**

  The agent within the limit of authority, acts on behalf of the principal and binds him or brings the principal in a contractual relation with third person. The principal is liable for the act of agent to the third persons. Agent can be classified into different types of basis which are as follows: -

- On the Basis of Limit of Authority:
  - Specific Agent: - A specific agent is one who is appointed to perform a particular act or to represent in some particular transactions. For example, an agent appointed for sale of particular house.
  - General Agent: - A person hired to carry on a series of transaction relating to particular business, he is the one who has authority to do all acts connected with a particular trade, business or employment. For example, A manager of a firm.
  - Universal Agent: - This agent is appointed to do all acts and whose authority is unlimited and can do everything which the principal lawfully do.
- On the Basis of Nature of Act/Business
  - Mercantile Agent: - He is the agent appointed for mercantile or business activities. The business activities consist of both trade activities and commerce activities. There are different types of mercantile agent. They are as follows: -

    a. Factor: - The agent to whom goods are entrusted for the purpose of selling them. He can sell the goods in his own name and can do such things as are usual and necessary in the course of such businesses.

    b. Broker: - A broker is an agent who is employed to buy or sell goods on behalf of another. He is a middleman for purchase or sale of goods but he is not entrusted with the possession of goods and he doesn't sell or purchase the goods himself. He is appointed to bring about a contractual relation between principal and third parties.

    c. Commission Agent: - Agents who act on behalf of another for commission of his act or service. Generally, this type of agent buys or sells goods in the foreign market on behalf of his principal.

    d. Auctioneer: - An auctioneer is an agent appointed by a seller to sell his goods by public auction for commission. He sales good by auction to the highest bidder in public competition.

    e. Del-Credence Agent: - An agent who in extra commission guarantees his principal the person with whom he enters into contract on behalf of the principal shall perform their obligations otherwise he (agent) will be liable. He is surety (state of being sure) also.

    f. Bankers: - Bank and Bankers is the agent of the customers because the relationship between banker and customer is generally creditor and debtors. The bankers collect cheque, draft or bills or buys and sales securities on behalf and get commissions from the customer as considerations for services.
- Non-Mercantile Agent: - The agent who is unrelated with business activities. It includes estate agent, house agent, election agent, promoter, insurance agents, solicitors, clearing and forwarding agent etc. These include attorneys.

- **Personal Responsibility of Agent (Nepal Contract Act 2056 Sec-60):**

  Though the agent is for representing the principal and act as agent is act of principal, there are number of situations in which an agent himself might be responsible. Except when provided in the contract, the agent shall be personally responsible for transaction made by him on behalf of principal in the following circumstances: -

  - In case of he concludes a contract with 3rd party in relation to any transaction with provision for personal responsibility.
  - In case of any work has been done for or on behalf of an unidentified principal person.
  - In case the principal cannot be sued for any reason.
  - In case of anything has been done in 'contravention' (opposition, biparit) of the contract relating to the appointment of agent of beyond his authority.
  - In case, contract has been signed in his own name.
  - In case of any fraud or cheating has been committed in the course of transaction.
  - In case of the agent has to bear personal liability according to the nature of the trade.
  - In case the interest of the agent is also involved in the transaction.

- **Termination of Agency:**

  The parties by an agreement can create a contract of agency. Similarly, by an agreement they can terminate it. If agency is made for some specific purpose and for a fixed time period the agency terminates when purposes are achieved or time is lapse. There are various modes in which the agency can be terminated: -

  - **By the act of the parties**
    - Mutual Agreement
    - Revocation by the principal
    - Renunciation by the agent
    - Rescinding (Cancel) the authority by the principal

  - **By operation of law**
    - By performance: - If agency is made for certain purpose on the completion of achievements of purpose the agency is terminated.
    - By expiry of time fixed: - If time is fixed for the agency, whether or not purposes are fulfilled, and the agency is terminated after expiry of time fixed.
    - Insanity of principal (unsound mind):- If the principal become insane the contract can be terminated. Not only principal it also applies in case of agent as well.
    - Death of either party: - The death of the principal or agent terminates the contract of agency.
    - Insolvency of principal: - After the insolvency or bankruptcy of principal if agent acts on behalf of principal, he himself will be liable for that not the principal. So, after the insolvency the contract of agency terminates.

- Destruction of the subject matter: - If the subject matter for which agency was created, destroyed it terminates the contract of agency.
- By dissolution of company: - If the company dissolves the agent will have no more authority provided by the company or principal, and then contract of agency terminates.
- By the happening of any event rendering the agency unlawful: - If subsequent to the contract, law change in such way which invalidated the transaction, then the agency also terminates. Subsequent to the contract, if principal and agent became alien enemy the contract of agency also terminated.

Sub Unit-3 Sale of Goods Act. 1930

9.2.4 Sale and agreement to sell:

Where the property (ownership) in the goods is transferred from the seller to the buyer mean-time, the contract is called a sale; but where the transfer of property in the goods is to take place at a future time the contract is called agreement to sell.

➢ **Difference between Sale and Agreement to Sell:-**

Bases of Difference	Sale	Agreement to Sell
1. Nature of Contract	Sale means contract already done and fulfilled at present.	It means contract regarding the future contingencies.
2. Price	The price of goods is fixed/ predetermined at the time of sale of agreement.	The price may or may not be fixed at the time of agreement to sell.
3. Risks	After the sale, even if the goods are under control of seller. The buyer himself liable for the risk of losses.	Even if there is agreement to sell, until goods are sold, the seller will be liable for the risks o0f the goods during that time.
4. Time to Perform Contract	The sale of agreement is performed /completed instantly.	Agreement to sell is completed after the completion of term and conditions.
5. Condition	Sale agreement is condition free contract	Agreement to sell is a contract with various conditions which to be performed until goods are sold
6. Ownership	In sale agreement, the ownership in goods is to the buyer.	In agreement to sell, the ownership of goods is still not transferred to the buyer.
7. Rights of Resale	Even if the sold goods are with seller, he can't resale it anymore to the third parties.	Even if the agreement to sell is made, the sellers can resale goods to the third party if he wants but lawfully.
8. Rights of Seller	If the sale of contract is done but buyer refuses to pay price, the seller has right to claim price and compensation.	If the agreement to sell is done and buyer refuses to pay price the seller have only right to sue the compensation not the price.
9. Rights of Buyer	If after the sale of contract is done seller refuses to handover goods, the buyer has right to claim both full price and compensation. It also applies in case, the seller sold goods to 3rd party after sale agreement is done.	If agreement to sell is done and seller refuses to handover, the buyer has only right to sue for compensations. Buyer cannot sue to get handover of the goods.

9.2.5 Doctrine of caveat Emptor:

The term 'Caveat Emptor' is Latin word which means 'let the buyer beware'. In other words it is not the part of the seller's duty to point out defects of the goods which he offers for sale rather it is duty of buyer to satisfy him about the quality as well as suitability of goods. This doctrine points out that in a contract of sale of goods the seller is under no duty to reveal undisclosed defects about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose or if he depends upon his own skill and judgment and makes a bad selection, he cannot blame anybody.

Thus, the rule is that there is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under the contract of sale of goods.

Exceptions of Caveat Emptor: -

The doctrine caveat emptor has certain important exceptions which are as follows: -

- Where seller sells goods by misrepresentation: - If while selling goods seller misrepresents about the quality of goods, the rule of Caveat Emptor does not apply.
- Goods sold by fraud: - If seller makes any kind of fraud the buyer may unable to judge the goods or may wrongly judge the goods so this time the doctrine doesn't apply.
- Purchase by disclosing the objective: - If buyer defines the objective of purchasing goods, the doctrine doesn't hold. The supplier in this case, must supply goods fit for the purpose of buyer, otherwise seller will be liable.
- Where buyer buys goods by description: - The selling of goods by description of buyer in such case the caveat emptor doesn't apply.
- Goods sold by sample
- Goods sold by both samples and description
- Goods are not of merchantable
- Where hidden defects are existing in goods

9.2.6 Rights of unpaid seller and rights of buyer

Unpaid Seller

- ✓ Rights of an Unpaid Seller: -
- Rights Against Goods: -

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

- Rights of Lien: - A lien is a right to retain/possession of goods until payment of the price. The unpaid seller can use this right in following conditions: -
  a. When goods have been sold without any stipulation as credit
  b. If sold in credit but credit time expired
  c. When buyer becomes insolvent
  d. The price or part of price remain unpaid
- Right of Stoppage Goods in Transit: - Where unpaid seller parted with the possession of goods but goods not yet come to buyer, the law confers right to seller to stop goods in transit if the buyer become insolvent. The following condition must be proved: -

a. When goods are in transit
b. When price is not paid
c. When buyer becomes insolvent

- Right of Resale: - An unpaid seller also entitled with right of resale of goods. The unpaid seller can resale the goods in following conditions: -
  a. When the goods are perishable nature
  b. When seller expressly reserve right of resale in case of buyers of default.
  c. Where seller gives notice to buyer of his intention to resale and buyer doesn't pay price within reasonable time.

- Rights Against Buyer

There are some rights which an unpaid seller may enforce against buyer as follows: -

- Right to sue for price (ownership must have been transferred)
- Right to sue for damages
- Right to rescind the contract

- Duties of unpaid seller

- To deliver what was promised, if any.
- To fulfill responsibility according to the contract.
- To wait for payment up to credit period.
- Should give notice to the buyer if he is unpaid seller.
- Should only case file if adequate proof and evidence he has

Sub Unit-4: Negotiable Instruments Act.1881

9.4.1 Types of negotiable instruments:

The Negotiable Instruments Act was enacted, in India, in 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act was applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir. The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. Section 31 of the Reserve Bank of India Act provides that no person in India other than the Bank or as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand. This Section further provides that no one except the RBI or the Central Government can make or issue a promissory note expressed to be payable or demand or after a certain time. Section 32 of the Reserve Bank of India Act makes issue of such bills or notes punishable with fine which may extend to the amount of the instrument. The effect or the consequences of these provisions are:

1. A promissory note cannot be made payable to the bearer, no matter whether it is payable on demand or after a certain time.
2. A bill of exchange cannot be made payable to the bearer on demand though it can be made payable to the bearer after a certain time.
3. But a cheque {though a bill of exchange} payable to bearer or demand can be drawn on a person's account with a banker.

➢ **MEANING OF NEGOTIABLE INSTRUMENTS**

According to Section 13 (a) of the Act, "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word "order" or "bearer" appear on the instrument or not." In the words of Justice, Willis, "A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value notwithstanding any defects of the title in the person from whom he took it". Thus, the term, negotiable instrument means a written document which creates a right in favour of some person and which is freely transferable. Although the Act mentions only these three instruments (such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability:

1. the instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade; and
2. the person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name. As such, documents like share warrants payable to bearer, debentures payable to bearer and dividend warrants are negotiable

instruments. But the money orders and postal orders, deposit receipts, share certificates, bill of lading, dock warrant, etc. are not negotiable instruments. Although they are transferable by delivery and endorsements, yet they are not able to give better title to the bonafide transferee for value than what the transferor has.

➢ CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

A negotiable instrument has the following characteristics:

1. Property: The possessor of the negotiable instrument is presumed to be the owner of the property contained therein. A negotiable instrument does not merely give possession of the instrument but right to property also. The property in a negotiable instrument can be transferred without any formality. In the case of bearer instrument, the property passes by mere delivery to the transferee. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2. Title: The transferee of a negotiable instrument is known as 'holder in due course.' A bona fide transferee for value is not affected by any defect of title on the part of the transferor or of any of the previous holders of the instrument.

3. Rights: The transferee of the negotiable instrument can sue in his own name, in case of dishonor. A negotiable instrument can be transferred any number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument to pay.

4. Presumptions: Certain presumptions apply to all negotiable instruments e.g., a presumption that consideration has been paid under it. It is not necessary to write in a promissory note the words 'for value received' or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

5. Prompt payment: A negotiable instrument enables the holder to expect prompt payment because a dishonor means the ruin of the credit of all persons who are parties to the instrument.

➢ PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENT

Sections 118 and 119 of the Negotiable Instrument Act lay down certain presumptions which the court presumes in regard to negotiable instruments. In other words these presumptions need not be proved as they are presumed to exist in every negotiable instrument. Until the contrary is proved the following presumptions shall be made in case of all negotiable instruments:

1. Consideration: It shall be presumed that every negotiable instrument was made drawn, accepted or endorsed for consideration. It is presumed that, consideration is present in every negotiable instrument until the contrary is presumed. The presumption of consideration, however may be rebutted by proof that the instrument had been obtained from, its lawful owner by means of fraud or undue influence.

2. Date: Where a negotiable instrument is dated, the presumption is that it has been made or drawn on such date, unless the contrary is proved.

3. Time of acceptance: Unless the contrary is proved, every accepted bill of exchange is presumed to have been accepted within a reasonable time after its issue and before its maturity. This presumption only applies when the acceptance is not dated; if the acceptance bears a date, it will prima facie be taken as evidence of the date on which it was made.

4. Time of transfer: Unless the contrary is presumed it shall be presumed that every transfer of a negotiable instrument was made before its maturity.

5. Order of endorsement: Until the contrary is proved it shall be presumed that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

6. Stamp: Unless the contrary is proved, it shall be presumed that a lost promissory note, bill of exchange or cheque was duly stamped.

7. Holder in due course: Until the contrary is proved, it shall be presumed that the holder of a negotiable instrument is the holder in due course. Every holder of a negotiable instrument is presumed to have paid consideration for it and to have taken it in good faith. But if the instrument was obtained from its lawful owner by means of an offence or fraud, the holder has to prove that he is a holder in due course.

8. Proof of protest: Section 119 lays down that in a suit upon an instrument which has been dishonored, the court shall on proof of the protest, presume the fact of dishonor, unless and until such fact is disproved.

- **TYPES OF NEGOTIABLE INSTRUMENT**

Section 13 of the Negotiable Instruments Act states that a negotiable instrument is a promissory note, bill of exchange or a cheque payable either to order or to bearer. Negotiable instruments recognized by statute are: (i) Promissory notes (ii) Bills of exchange (iii) Cheques. Negotiable instruments recognized by usage or custom are: (i) Hundis (ii) Share warrants (iii) Dividend warrants (iv) Bankers draft (v) Circular notes (vi) Bearer debentures (vii) Debentures of Bombay Port Trust (viii) Railway receipts (ix) Delivery orders. This list of negotiable instruments is not a closed chapter. With the growth of commerce, new kinds of securities may claim recognition as negotiable instruments. The courts in India usually follow the practice of English courts in according the character of negotiability to other instruments.

Bill of exchange

Section 5 of the Act defines, "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument". A bill of exchange, therefore, is a written acknowledgement of the debt, written by the creditor and accepted by the debtor. There are usually three parties to a bill of exchange drawer, acceptor or drawee and payee. Drawer himself may be the payee.

- **Essential conditions of a bill of exchange**

(1) It must be in writing.
(2) It must be signed by the drawer.
(3) The drawer, drawee and payee must be certain.
(4) The sum payable must also be certain.
(5) It should be properly stamped.
(6) It must contain an express order to pay money and money alone.
For example, In the following cases, there is no order to pay, but only a request to pay. Therefore, none can be considered as a bill of exchange:
(a) "I shall be highly obliged if you make it convenient to pay Rs. 1000 to Suresh".
(b) "Mr. Ramesh, please let the bearer have one thousand rupees, and place it to my account and oblige"
However, there is an order to pay, though it is politely made, in the following examples:
(a) "Please pay Rs. 500 to the order of 'A'.
(b) 'Mr. A will oblige Mr. C, by paying to the order of' P".
(7) The order must be unconditional.

➢ Distinction Between Bill of Exchange and Promissory Note

1. Number of parties: In a promissory note there are only two parties – the maker (debtor) and the payee (creditor). In a bill of exchange, there are three parties; drawer, drawee and payee; although any two out of the three may be filled by one and the same person,

2. Payment to the maker: A promissory note cannot be made payable the maker himself, while in a bill of exchange to the drawer and payee or drawee and payee may be same person.

3. Unconditional promise: A promissory note contains an unconditional promise by the maker to pay to the payee or his order, whereas in a bill of exchange, there is an unconditional order to the drawee to pay according to the direction of the drawer.

4. Prior acceptance: A note is presented for payment without any prior acceptance by the maker. A bill of exchange is payable after sight must be accepted by the drawee or someone else on his behalf, before it can be presented for payment.

5. Primary or absolute liability: The liability of the maker of a promissory note is primary and absolute, but the liability of the drawer of a bill of exchange is secondary and conditional.

6. Relation: The maker of the promissory note stands in immediate relation with the payee, while the maker or drawer of an accepted bill stands in immediate relations with the acceptor and not the payee.

7. Protest for dishonor: Foreign bill of exchange must be protested for dishonor when such protest is required to be made by the law of the country where they are drawn, but no such protest is needed in the case of a promissory note.

8. Notice of dishonor: When a bill is dishonored, due notice of dishonor is to be given by the holder to the drawer and the intermediate endorsers, but no such notice need be given in the case of a note.

➢ Classification of Bills

Bills can be classified as:

(1) Inland and foreign bills.

(2) Time and demand bills.

(3) Trade and accommodation bills.

(1) Inland and Foreign Bills

Inland bill: A bill is, named as an inland bill if:

(a) it is drawn in India on a person residing in India, whether payable in or outside India, or

(b) it is drawn in India on a person residing outside India but payable in India.

The following are the Inland bills

(i) A bill is drawn by a merchant in Delhi on a merchant in Madras. It is payable in Bombay. The bill is an inland bill.

(ii) A bill is drawn by a Delhi merchant on a person in London, but is made payable in India. This is an inland bill.

(iii) A bill is drawn by a merchant in Delhi on a merchant in Madras. It is accepted for payment in Japan. The bill is an inland bill.

Foreign Bill: A bill which is not an inland bill is a foreign bill. The following are the foreign bills:

1. A bill drawn outside India and made payable in India.

2. A bill drawn outside India on any person residing outside India.

3. A bill drawn in India on a person residing outside India and made payable outside India.
4. A bill drawn outside India on a person residing in India.
5. A bill drawn outside India and made payable outside India.

Bills in sets (Secs. 132 and 133): The foreign bills are generally drawn in sets of three, and each sets is termed as a 'via'. As soon as anyone of the set is paid, the others becomes inoperative. These bills are drawn in different parts. They are drawn in order to avoid their loss or miscarriage during transit. Each part is dispatched separately. To avoid delay, all the parts are sent on the same day; by different mode of conveyance.

Rules: Sections 132 and 133 provide for the following rules:

(i) A bill of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All parts make one bill and the entire bill is extinguished, i.e. when payment is made on one part- the other parts will become inoperative (Section 132).

(ii) The drawer should sign and deliver all the parts but the acceptance is to be conveyed only on one of the parts. In case a person accepts or endorses different parts of the bill in favour of different persons, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill (Sec. 132).

(iii) As between holders in due course of the different parts of the same bill, he who first acquired title to anyone part is entitled to the other parts and is also entitled to claim the money represented by bill (Sec. 133).

(2) Time and Demand Bill

Time bill: A bill payable after a fixed time is termed as a time bill. In other words, bill payable "after date" is a time bill.

Demand bill: A bill payable at sight or on demand is termed as a demand bill.

(3) Trade and Accommodation Bill

Trade bill: A bill drawn and accepted for a genuine trade transaction is termed as a "trade bill".

Accommodation bill: A bill drawn and accepted not for a genuine trade transaction but only to provide financial help to some party is termed as an "accommodation bill".

Example: A, is need of money for three months. He induces his friend B to accept a bill of exchange drawn on him for Rs. 1,000 for three months. The bill is drawn and accepted. The bill is an "accommodation bill". A may get the bill discounted from his bankers immediately, paying
a small sum as discount. Thus, he can use the funds for three months and then just before maturity he may remit the money to B, who will meet the bill on maturity. In the above example A is the "accommodated party" while B is the "accommodating party". It is to be noted that an recommendation bill may be for accommodation of both the drawer arid acceptor. In such a case, they share the proceeds of the discounted bill.

Rules regarding accommodation bills are: (i) In case the patty accommodated continues to hold the bill till maturity, the accommodating party shall not be liable to him for payment of, the bill since the contract between them is not based on any consideration (Section 43).

(ii) But the accommodating party shall be liable to any subsequent holder for value who may be knowing the exact position that the bill is an accommodation bill and that the full consideration has not been received by the acceptor. The accommodating party can, in turn, claim compensation from the accommodated party for the amount it has been asked to pay the holder for value.

(iii) An accommodation bill may be negotiated after maturity. The holder or such a bill after maturity is in the same position as a holder before maturity, provided he takes it in good faith and for value (Sec. 59) In form and all other respects an accommodation bill is quite similar to an ordinary bill of exchange. There is nothing on the face of the accommodation bill to distinguish it from an ordinary trade bill.

- **Parties to Bill of Exchange**

1. **Drawer:** The maker of a bill of exchange is called the 'drawer'.
2. **Drawee:** The person directed to pay the money by the drawer is called the 'drawee',
3. **Acceptor**: After a drawee of a bill has signed his assent upon the bill, or if there are more parts than one, upon one of such pares and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the ' acceptor'.
4. **Payee:** The person named in the instrument, to whom or to whose order the money is directed to be paid by the instrument is called the 'payee'. He is the real beneficiary under the instrument. Where he signs his name and makes the instrument payable to some other person, that other
person does not become the payee.
5. **Endorser:** When the holder transfers or indorses the instrument to anyone else, the holder becomes the 'indorser'.
6. **Endorsee:** The person to whom the bill is indorsed is called an 'endorsee'.
7. **Holder:** A person who is legally entitled to the possession of the negotiable instrument in his own name and to receive the amount thereof, is called a 'holder'. He is either the original payee, or the endorsee. In case the bill is payable to the bearer, the person in possession of the negotiable instrument is called the 'holder'.
8. **Drawee in case of need:** When in the bill or in any endorsement, the name of any person is given, in addition to the drawee, to be resorted to in case of need, such a person is called 'drawee in case of need'. In such a case it is obligatory on the part of the holder to present the bill to such a drawee in case the original drawee refuses to accept the bill. The bill is taken to be dishonored by non-acceptance or for nonpayment, only when such a drawee refuses to accept or pay the bill.
9. **Acceptor for honor:** In case the original drawee refuses to accept the bill or to furnish better security when demanded by the notary, any person who is not liable on the bill, may accept it with the consent of the holder, for the honor of any party liable on the bill. Such an acceptor is called 'acceptor for honor'.

- **Commercial bill**

This deals in commercial markets. They are drawn either by the seller or the drawer and it is drawn by the drawer of the goods of the buyer in place of the value for the goods delivered.

They are also called trade bills. When these bills are accepted by the commercial banks, they are called commercial bills.

Commercial bill is a short term, negotiable, and self-liquidating instrument with low risk. It enhances he liability to make payment in a fixed date when goods are bought on credit. According to the Indian Negotiable Instruments Act, 1881, bill or exchange is a written instrument containing an unconditional order, signed by the maker, directing to pay a certain amount of money only to a particular person, or to the bearer of the instrument. Bills of exchange are negotiable instruments drawn by the seller (drawer) on the buyer (drawee) or the value of the goods delivered to him. Such bills are called trade bills. When trade bills are accepted by commercial banks, they are called commercial bills. The bank discounts this bill by keeping a certain margin and credits the proceeds. Banks, when in need of money, can also get such bills rediscounted by financial institutions such as LIC, UTI, GIC, ICICI and IRBI. The maturity period of the bills varies from 30 days, 60 days or 90 days, depending on the credit extended in the industry.

Characteristics of Commercial Bill

- Securities offered to the public must be registered with the Securities and Exchange Commission according to the Securities Act of 1933. Registration requires extensive public disclosure, including issuing a prospectus on the offering. It is a time-consuming and expensive process. Most commercial paper is issued under Section 3(a) (3) of the 1933 Act which exempts from registration requirements short-term securities as long as they have certain characteristics.
- Commercial paper is typically a discount security (like Treasury bills): the investor purchases notes at less than face value and receives the face value at maturity. The difference between the purchase price and the face value, called the discount, is the interest received on the investment.
- Commercial paper is, occasionally, issued as an interest-bearing note (by request of investors). The investor pays the face value and, at maturity, receives the face value and accrued interest. All commercial paper interest rates are quoted on a discount basis.
- The exemption requirements have been a factor shaping the characteristics of the commercial paper market. The following are requirements for exemption: – The maturity of commercial paper must be less than 270 days. In practice, most commercial paper has a maturity of between 5 and 45 days, with 30-35 days being the average maturity.
- Many issuers continuously roll over their commercial paper, financing a more-or-less constant amount of their assets using commercial paper. The nine-month maturity limit is not violated by the continuous rollover of notes, as long as the rollover is not automatic but is at the discretion of the issuer and the dealer. Many issuers will adjust the maturity of commercial paper to suit the requirements of an investor.
- That proceeds from commercial paper issues be used to finance "current transactions," which include the funding of operating expenses and the funding of current assets such as receivables and inventories. Proceeds cannot be used to finance fixed assets, such as plant and equipment, on a permanent basis.
- A safekeeping agent hired by the investor held the certificates, until presented for payment at maturity. The "settling" of the transaction, (the exchange of funds for commercial paper first at issuance and then at redemption, occur in one day. On the day the commercial paper is issued and sold, the investor receives and pays for the notes and the issuer receives the proceeds. On the day of maturity, the investor presents the notes and receives payment. Commercial banks, in their role as issuing, paying, and clearing agents, facilitate the settling of commercial paper by carrying out the exchanges between issuer, investor, and dealer required to transfer commercial paper for funds.

Types of Commercial Bills:

Commercial bill is an important tool finance credit sale. It may be a demand bill or a usance bill. A demand bill is payable on demand, that is immediately at sight or on presentation by the drawee. A usance bill is payable after a specified time. If the seller wishes to give sometime for payment, the bill would be payable at a future date. These bills can either be clean bills or documentary bills. In a clean bill, documents are enclosed and delivered against acceptance by drawee, after which it becomes clear. In the case of a documentary bill, documents are delivered against payment accepted by the drawee and documents of bill are filed by bankers till the bill is paid.

Commercial bills can be inland bills or foreign bills. Inland bills must (1) be drawn or made in India and must be payable in India: or (2) drawn upon any person resident in India. Foreign bills, on the other hand, are (1) drawn outside India and may be payable and by a party outside India, or may be payable in India or drawn on a party in India or (2) it may be drawn in India and made payable outside India

A related classification of bills is export bills and import bills. While export bills are drawn by exporters in any country outside India, import bills are drawn on importers in India by exporters abroad. The indigenous variety of bill of exchange for financing the movement of agricultural produce, called a 'hundi' has a long tradition of use in India. It is vogue among indigenous bankers for raising money or remitting funds or to finance inland trade. A hundi is an important instrument in India; so indigenous bankers dominate the bill market. With a view to eliminating movement of papers and facilitating multiple rediscounting, RBI introduced an innovation instruments known as 'Derivative Usance Promissory Notes,' backed by such eligible commercial bills for required amounts and usance period (up to 90 days). Government has exempted stamp duty on derivative usance promissory notes.

- Promissory note

Section 4 of the Act defines, "A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments."

Essential elements

An instrument to be a promissory note must possess the following elements:

1. It must be in writing: A mere verbal promise to pay is not a promissory note. The method of writing (either in ink or pencil or printing, etc.) is unimportant, but it must be in any form that cannot be altered easily.

2. It must certainly an express promise or clear understanding to pay: There must be an express undertaking to pay. A mere acknowledgment is not enough.

The following are not promissory notes as there is no promise to pay.

If A writes:

(a) "Mr. B, I.O.U. (I owe you) Rs. 500"

(b) "I am liable to pay you Rs. 500".

(c) "I have taken from you Rs. 100, whenever you ask for it have to pay" .

The following will be taken as promissory notes because there is an express promise to pay:

If A writes:

(a) "I promise to pay B or order Rs. 500"

(b) "I acknowledge myself to be indebted to B in Rs. 1000 to be
paid on demand, for the value received".

(3) Promise to pay must be unconditional: A conditional undertaking destroys the negotiable character of an otherwise negotiable instrument. Therefore, the promise to pay must not depend upon the happening of some outside contingency or event. It must be payable absolutely.
(4) It should be signed by the maker: The person who promise to pay must sign the instrument even though it might have been written by the promisor himself. There are no restrictions regarding the form or place of signatures in the instrument. It may be in any part of the instrument. It may be in pencil or ink, a thumb mark or initials. The promote can be signed by the authorized agent of the maker, but the agent must expressly state as to on whose behalf he is signing, otherwise he himself may be held liable as a maker. The only legal requirement is that it should indicate with certainty the identity of the person and his intention to be bound by the terms of the agreement.
(5) The maker must be certain: The note self must show clearly who is the person agreeing to undertake the liability to pay the amount. In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity. In case two or more persons promise to pay, they may bind themselves jointly or jointly and severally, but their liability cannot be in the alternative.
(6) The payee must be certain: The instrument must point out with certainty the person to whom the promise has been made. The payee may be ascertained by name or by designation. A note payable to the maker himself is not promote unless it is indorsed by him. In case, there is a mistake in the name of the payee or his designation; the note is valid, if the payee can be ascertained by evidence. Even where the name of a dead person is entered as payee in ignorance of his death, his legal representative can enforce payment.
(7) The promise should be to pay money and money only:
Money means legal tender money and not old and rare coins. A promise to deliver paddy either in the alternative or in addition to money does not constitute a promissory note.
(8) The amount should be certain: One of the important characteristics of a promissory note is certainty—not only regarding the person to whom or by whom payment is to be made but also regarding the amount. However, paragraph 3 of Section 5 provides that the sum does not become indefinite merely because
(a) there is a promise to pay amount with interest at a specified rate.
(b) the amount is to be paid at an indicated rate of exchange.
(c) the amount is payable by instalments with a condition that the whole balance shall fall due for payment on a default being committed in the payment of anyone instalment.
(9) Other formalities: The other formalities regarding number, place, date, consideration etc. though usually found given in the promissory notes but are not essential in law. The date of instrument is not material unless the amount is made payable at a certain time after date. Even in such a case, omission of date does not invalidate the instrument and the date of execution can be independently ascertained and proved. On demand (or six month after date) I promise to pay Peter or order the sum of rupees one thousand with interest at 8 per cent per annum until payment.

Parties to a Promissory Note

1. **Maker.** He is the person who promises to pay the amount stated in the note. He is the debtor.
2. **Payee.** He is the person to whom the amount is payable i.e. the creditor.
3. **Holder.** He is the payee or the person to whom the note might have been indorsed.
4. The endorser and endorsee (the same as in the case of a bill).

Cheque

There are many forms of cheque available as the negotiable instruments in the market. The cheque is also known as the bill of exchange.

It orders the bank to pay a specified amount to a person's account from a person who has issued the cheque. Blank cheque, order cheque, bearer cheque, etc are the different types of the cheque.

Section 6 of the Act defines "A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand".

A cheque is bill of exchange with two more qualifications, namely, (i) it is always drawn on a specified banker, and (ii) it is always payable on demand. Consequently, all cheque are bill of exchange, but all bills are not cheque. A cheque must satisfy all the requirements of a bill of exchange; that is, it must be signed by the drawer, and must contain an unconditional order on a specified banker to pay a certain sum of money to or to the order of a certain person or to the bearer of the cheque. It does not require acceptance.

Parties to a Cheque

1. **Drawer.** He is the person who draws the cheque, i.e., the depositor of money in the bank.
2. **Drawee**. It is the drawer's banker on whom the cheque has been drawn.
3. **Payee.** He is the person who is entitled to receive the payment of the cheque.
4. The holder, endorser and endorsee (the same as in the case of a bill or note).

Distinction Between Bills of Exchange and Cheque

1. A bill of exchange is usually drawn on some person or firm, while a cheque is always drawn on a bank.
2. It is essential that a bill of exchange must be accepted before its payment can be claimed A cheque does not require any such acceptance.
3. A cheque can only be drawn payable on demand, a bill may be also drawn payable on demand, or on the expiry of a certain period after date or sight.
4. A grace of three days is allowed in the case of time bills while no grace is given in the case of a cheque.
5. The drawer of the bill is discharged from his liability, if it is not presented for payment, but the drawer of a cheque is discharged only if he suffers any damage by delay in presenting the cheque for payment.
6. Notice of dishonor of a bill is necessary, but no such notice is necessary in the case of cheque.
7. A cheque may be crossed, but not needed in the case of bill.
8. A bill of exchange must be properly stamped, while a cheque does not require any stamp.
9. A cheque drawn to bearer payable on demand shall be valid but a bill payable on demand can never be drawn to bearer.
10. Unlike cheques, the payment of a bill cannot be countermanded by the drawer.

- Commercial paper

  Commercial paper is also issued in the form of promissory note. It can be sold directly by the issuer to the investors. It can also be transferred to the borrowers through agents.

  These instruments can only be issued in multiples of 5 lakhs and thereafter. The maturity period varies from one week until one year.

Meaning of Commercial Paper

Commercial paper is an unsecured, short period debt tool issued by a company, usually for the finance and inventories and temporary liabilities. The maturities in this paper do not last longer than 270 days. These papers are like a promissory note allotted at a huge cost and exchangeable between the All-India Financial Institutions (FIs) and Primary Dealers (PDs).

Most of the commercial paper investors are from the banking sector, individuals, corporate and incorporated companies, Non-Resident Indians (NRIs) and Foreign Institutional Investors (FIIs), etc. However, FII can only invest according to the limit outlined by the Securities and Exchange Board of India (SEBI)

In India, commercial paper is a short-term unsecured promissory note issued by the Primary Dealers (PDs) and the All-India Financial Institutions (FIs) for a short period of 90 days to 364 days.

Features of Commercial Paper

- It is a short-term money market tool including a *promissory note* and a set maturity.
- It acts as an evidence certificate of unsecured debt.
- It is subscribed at a discount rate and can be issued in an interest-bearing application.
- The issuer guarantees the buyer to pay a fixed amount in future in terms of liquid cash and no assets.
- A company can directly issue the paper to investors or it can be done through banks/dealer banks.

Types of Commercial Paper

According to the Uniform Commercial Code (UCC), commercial papers are divided into four different types.

- **Draft –** It is written guidance by an individual to another and to pay a stipulated sum to a third party.
- **Check –** It is a unique draft where the drawee is a bank.
- **Note –** Here, an individual is promised to pay another individual or bank a particular amount.
- **Certificates of Deposit –** In this type, a bank confirms the receipt of deposit.

According to security, there are two types of commercial papers

- **Unsecured Commercial Papers –** These are traditional papers and allotted without any security.
- **Secured Commercial Papers –** It is also known as Asset-Backed Commercial Papers (ABCP) and assured by other financial assets.

Advantages of Commercial Paper

- **Contributes Funds –** It contributes extra funds as the cost of the paper to the issuing company is cheaper than the loans of the commercial bank.
- **Flexible –** It has a high liquidity value and flexible maturity range giving it extra flexibility.
- **Reliable –** It is highly reliable and does not have any limiting condition.
- **Save Money –** On commercial paper, companies can save extra cash and earn a good return.
- **Lasting Source of Funds**– Maturity range can be customized according to the firm's requirement and matured papers can be paid by selling the new commercial paper.

Limitations of Commercial Paper

i. *Only financially secure and highly rated organizations* can raise money through commercial papers. New and moderately rated organizations are not in a position to raise funds by this method.

ii. The amount of money that we can raise through commercial paper is *limited to the deductible liquidity* available with the suppliers of funds at a particular time.

iii. Commercial paper is an *odd method of financing*. As such if a firm is not in a position to redeem its paper due to financial difficulties, extending the duration of commercial paper is not possible.

- Treasury bills

Treasury bills are also known as T-bills. It is a short-term instrument for borrowing for the government. For these bills, the tender is issued in the money market and various government departments.

Thus, for this, tenders are invited weekly from brokers and bankers. It provides the government a very cheap way to borrow the money in the times of fluctuating cash and further it also provides the security for the transaction. Furthermore, the RBI which is the banker for government provides these bills at a discount rate.

- Bank draft

These are also the bills of exchange. So, in this, the bank's orders one its branch to repay the money to a person or to his order. For this, the banks charge a nominal fee.

9.4.2 Negotiation and assignment

Section 14 of the Negotiable Instrument Act defines negotiation as When a Promissory Note, Bid &Exchange or Cheque is transferred to any person sue to constitute that person the holder thereof, the instrument is said to be negotiated-. Thus negotiation means that the negotiable instrument is transferred to another person in such a manner, that the transferee of the instrument becomes its holder, who has the right to possess the instrument in his own name and to recover the amount mentioned therein from concerned parties.

When the ownership of a negotiable instrument is transferred by writing a separate deed of transfer, it is termed as 'assignment'. Endorsement is not required in this case. Assignment is done under Transfer of Property Act. The title of the assignee shall be the same as that of the assignor.

Distinction between Negotiation and Assignment

Negotiation

1. It can be done by mere delivery if the instrument is a bearer one or by endorsement and delivery if the instrument is an order instrument.
2. Consideration is presumed.
3. The title of the transferee is better than of the transferor.
4. Notice of transfer to debtor is not necessary.
5. It is done under Negotiable Instrument Act.

Assignment

1. It can be done by a written document.
2. Consideration must be proved.
3. The title of the assignee is the same-as that of the assignor.
4. The debtor must be informed about the assignment.
5. It is done under Transfer of Property Act.

9.4.3 Dishonor and discharge of negotiable instruments

- **What is a Dishonor of negotiable instrument?**

Dishonor of negotiable instrument means loss of honor or respect for the instrument in question on the part of the maker, drawee, or acceptor, as the case may be, which eventually results in non-realization of payment due on the instrument.

- **Dishonor by non-acceptance:**

Any type of negotiable instruments, i.e., **bill of exchange**, promissory note, or cheque may be Dishonored by non-payment by the drawee/acceptor thereof. But a bill may also be Dishonored by non-acceptance because bill of exchange is the only negotiable instrument which requires its presentment for acceptance and non-acceptance thereof, can amount to Dishonor.

- **When is a bill said to be Dishonored by Non-Acceptance?**

A bill is said to be Dishonored by non-acceptance in the following circumstances.

1. When the drawee or one of the several drawees, not being partners, commit default in acceptance upon being duly required to accept the bill. In this regard Section 63 expressly provides that the holder must, if so required by the drawee of a **bill of exchange** presented to for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.
2. Where presentment is required and the bill remains unrepresented.
3. Where the drawee is incompetent to enter into a valid contract.
4. Where the bill is given a qualified acceptance.
5. If the drawee is a fictitious person.
6. If the drawee cannot be found even after reasonable search.
7. Where the drawee has either become insolvent or is dead and the holder does not present the bill to the assignee or legal representative of the insolvent or deceased drawee.

It is relevant to note that where a drawee-in-case-of-need is named in a bill of exchange or in any endorsement thereon, the bill is not Dishonored until it has been Dishonored by such drawee.

- **Dishonor of negotiable instrument by Non-payment:**

A promissory note, **bill of exchange**, or cheque is said to be Dishonored by non-payment when the maker of the note, acceptor of the bill, or **drawee of the cheque** commit default in payment upon being duly required to pay the same. Also, the holder of a bill or pro-note may treat it as Dishonored, without placing for payment when presentment for payment is excused expressly by the maker of the pro-note, or acceptor of the bill and the note or bill when overdue remains unpaid.

- **Dishonor by non-acceptance vs Dishonor by non-payment:**

If a bill is Dishonored either by non-acceptance or by non-payment, the drawer and all the endorsers of the bill are liable to the holder, provided notice of such Dishonor is given to them. The drawee, on the other hand, shall be liable to the holder only in the event of Dishonor by non-payment.

- **Dishonor of Cheque for insufficient of funds in the account:**

A cheque drawn by a person on an account maintained by him with a bank for payment of any amount of money to another person can be returned unpaid for lack of enough funds in the said account. This is called **Dishonor of cheques** for insufficiency of funds (in the drawer's account). In such cases, the drawer is also criminally liable for this offense and may be punished with imprisonment for a term, which may extend to one year, or with fine that may extend to twice the amount of the cheque, or with both.

- **Dishonor of cheque vs. promissory note:**

A cheque being drawn on specified bank and not expressed to be payable otherwise than on demand is never presented to the drawee bank for acceptance and same is the case of a promissory note. However, a pro-note made payable at a certain period after sight is required to be presented for sight, but it is never subject to presentment for acceptance.

- **How is a party to a negotiable instrument discharged?**

A party to a negotiable instrument is discharged in the following ways

- By cancellation of the name of a party to the instruments
- by release of any party to the instruments
- by payments
- by allowing drawee more than 48 hours to accept
- by delay in presenting a cheque for payment
- by payment in due course of a cheque (payable to order)
- by taking qualified acceptance
- by non-presentment for acceptance of a bill of exchange
- by operation of law
- by material alteration

Sub unit-5: The Companies Act. 2013

9.5.1 Nature and kinds of companies:

The Companies Act, 2013 passed by the Parliament has received the approval of the President of India on 29th August, 2013. The Act consolidates and amends the law relating to companies. **The Companies Act, 2013 was enacted on August 30, 2013**. Some of the provisions of the Act have been implemented by a notification published on 12th September; 2013 and some need to be notified yet. It is worthy to mention that the provisions of **Companies Act, 1956 is still in force. Companies Act, 1956 has 13 parts, 658 sections, 15 schedules where as Companies Act, 2013 has 29 chapters, 470 sections and 7 schedules**
The key features of the Companies Act, 2013 are as follows;

1. The concept of “dormant companies” introduced (companies not engaged in business for two consecutive years can be declared a s dormant).
2. National Company Law Tribunal introduced.
3. Provision of self-regulation with disclosures/transparency instead of government approval-based regime.
4. Companies are required to go for maintenance of documents in electronic form.
5. Faster merger and acquisitions including short mergers and cross border mergers.
6. For companies which have net assets of 1 cr. or less, then official liquidators are empowered with adjudicatory powers.
7. Concept of “one Person Company” introduced.
8. Concept of independent directors included as a statutory requirement.
9. Women director for prescribed class of companies.
10. Compulsory provision for constitution of Corporate Social Responsibility (CSR) committee and formulation of CSR policy, with mandatory disclosure for specified class of companies.
11. The term “Key Managerial Personnel” and “Promoter” has been defined to affix the responsibility on main functionaries of the company.
12. Duties of director to shareholders, employees, the community and the environment defined.
13. Listed companies are required to have one director representing small shareholders.
14. Companies Act, 2013 has put a cap on the number of directorships up to 20 companies of which 10 can be public companies.
15. Search and seizure of documents, during investigation, without an order from a magistrate.
16. Freezing assets or disgorgement of illegal gains of company under investigation.
17. Stringent norms made for the accepting the deposits from the public.
18. Internal audit for bigger companies and auditor is not authorized to perform specified non audit services.
19. Substantial civil and criminal liability for an auditor in case of noncompliance.
20. National Financial Reporting Authority (NFRA) to be constituted.

The Ministry of Corporate affairs made the Company Act, 2013 to ensure the transparency in the functioning of the corporate world. If the Company Act, 2013 get success in achieving its desired objectives, it will accelerate the growth path of the country. The Ministry has constituted special courts for the purpose of trial of offences punishable under the Companies Act, 2013.

The Companies Act, 2013 provides for the types of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

- Private Companies;
- Public Companies; and
- One Person Company (to be formed as Private Limited).

  Section 3 (1) of the Companies Act 2013 states that a company may be formed for any lawful purpose by—
- seven or more persons, where the company to be formed is to be a public company;
- two or more persons, where the company to be formed is to be a private company; or
- one person, where the company to be formed is to be One Person Company, that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration

  (2) A company formed under sub-section (1) may be either—
- a company limited by shares; or
- a company limited by guarantee; or
- an unlimited company.

Types of Company

I. Types of Company on the basis of Incorporation

There are three ways in which companies may be incorporated.

c. **Statutory Companies:** These are constituted by a special Act of Parliament or State Legislature. The provisions of the Companies Act, 2013 do not apply to them. Examples of these types of companies are Reserve Bank of India, Life Insurance Corporation of India, etc.

d. **Registered Companies:** The companies which are incorporated under the Companies Act, 2013 or under any previous company law, with ROC fall under this category.

II. Types of Company on the basis of Liability

Under this category there are three types of companies:

d. **Unlimited Liability Companies:** In this type of company, the members are liable for the company's debts in proportion to their respective interests in the company and their liability is unlimited. Such companies may or may not have share capital. They may be either a public company or a private company.

e. **Companies limited by guarantee:** A company that has the liability of its members limited to such amount as the members may respectively undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee. The members of a guarantee company are, in effect, placed in the position of guarantors of the company's debts up to the agreed amount.

f. **Companies limited by shares:** A company that has the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them is termed as a company limited by shares. For example, a shareholder who has paid `75 on a share of face value ` 100 can be called upon to pay the balance of `25 only. Companies limited by shares are by far the most common and may be either public or private.

III. Other Types of Company

i. Associations not for profit having a license under Section 8 of the Companies Act, 2013 or under any previous company law; Private Company, Public Companies; and One Person Company
j. Government Companies;
k. Foreign Companies;
l. Holding and Subsidiary Companies;
m. Associate Companies/Joint Venture Companies
n. Investment Companies
o. Producer Companies.
p. Dormant Companies

A. Private Companies; Public Companies; and One Person Company

- **Private Company**
  As per Section 2(68) of the Companies Act, 2013, "private company" means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles, —
- restricts the right to transfer its shares;
- except in the case of One Person Company, limits the number of its members to two hundred:
  Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member:
  Provided further that the following persons shall not be included in the number of members; —

a. persons who are in the employment of the company; and
b. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, and
c. prohibits any invitation to the public to subscribe for any securities of the company; It must be noted that it is only the number of members that is limited to two hundred. A private company may issue debentures to any number of persons, the only condition being that an invitation to the public to subscribe for debentures is prohibited.
   The aforesaid definition of private limited company specifies the restrictions, limitations and prohibitions, which must be expressly provided in the articles of association of a private limited company.

As per proviso to Section 14 (1), if a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, such company shall, as from the date of such alteration, cease to be a private company.
A private company can only accept deposit from its members in accordance with section 73 of the Companies Act, 2013.
The words 'Private Limited' must be added at the end of its name by a private limited company. As per section 3 (1), a private company may be formed for any lawful purpose by two or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration.

Section 149(1) further lays down that a private company shall have a minimum number of two directors. The only two members may also be the two directors of the private company.

- **One Person Company (OPC)**

  With the implementation of the Companies Act, 2013, a single person could constitute a Company, under the One Person Company (OPC) concept.

The Companies Act, 2013 has done away with redundant provisions of the previous Companies Act, 1956, and provides for a new entity in the form of one-person company (OPC), while empowering the Central Government to provide a simpler compliance regime for small companies.

The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get credit, bank loans, access to the market, limited liability, and legal protection available to companies.

Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company (OPC) would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery.

Further, the amount of compliance by a one-person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one-person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs.

- **Small Company**

As recommended by the Dr JJ Irani Committee, the concept of small companies has been introduced in the Companies, Act, 2013. The recommendation of the Irani committee in this regard was as under:

A small company is a new form of a private company under the Companies Act, 2013. A classification of a private company into a small company is based on its size i.e. paid-up capital and turnover. In other words, such companies are small-sized private companies.

As per section 2(85) ‘‘small company’’ means a company, other than a public company, —

i. paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or

ii. turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

   Provided that nothing in this definition shall apply to—

A. a holding company or a subsidiary company;

B. a company registered under section 8; or

C. a company or body corporate governed by any special Act;

- **Public Company**

  By virtue of Section 2(71), a public company means a company which:

a. is not a private company;

b. has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed.

   Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be a public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles

As per section 3 (1) (a), a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.
A public company may be said to be an association consisting of not less than 7 members which is registered under the Act. In principle, any member of the public who is willing to pay the price may acquire shares in or debentures of it. The securities of a public company may be quoted on a Stock Exchange.
The number of members is not limited to two hundred. It may be noted that in the case of a public company, the articles do not contain the restriction provided in Sections 2(68) of the Act.
As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. However, any contract or arrangement between two or more persons in respect of the transfer of securities shall be enforceable as a contract.
The concept of free transferability of shares in public and private companies is very succinctly discussed in the case of **Western Maharashtra Development Corpn. Ltd. V. Bajaj Auto Ltd** [2010] 154 Com Cases 593 (Bom).
It was held that the Companies Act, makes a clear distinction in regard to the transferability of shares relating to private and public companies. By definition, a "private company" is a company which restricts the right to transfer its shares. In the case of a public company, the Act provides that the shares or debentures and any interest therein, of a company, shall be freely transferable.
The incorporation of a company in the public, as distinguished from the private, realm leads to specific consequences and the imposition of obligations envisaged in law. Those who promote and manage public companies assume those obligations. Corresponding to those obligations are rights, which the law recognizes as inherent in the members of the public who subscribe to shares.

- **Limited Company**

As per section 3(2), a company formed under this Act may be either (a) a company limited by shares; or (b) a company limited by guarantee or (c) an unlimited company.
The term 'Limited Company' means a company limited by shares or by guarantee.
The liability of the members, in the case of a limited company, may be limited with reference to the nominal value of the shares, respectively held by them or to the amount which they have respectively guaranteed to contribute in the event of winding up of the company.
Accordingly, a limited company can be further classified into: (a) Company limited by shares, and (b) Company limited by guarantee.
a. Companies Limited by Shares
As per section 2(22), "company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.
Accordingly, no member of a company limited by shares can be called upon to pay more than the nominal value of the shares held by him. If his shares are fully paid-up, he has nothing more to pay.

But in the case of partly paid shares, the unpaid portion is payable at any time during the existence of the company on a call being made, whether the company is a going concern or is being wound up. This is the essence of a company limited by shares and is the most common form in existence.

b. Companies Limited by Guarantee

As per section 2(21) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. Clubs, trade associations and societies for promoting different objects are examples of such a company.

As regards the funds, a guarantee company without share capital obtains working capital from other sources, e.g. fees or grants. But a guarantee company having a share capital raises its initial capital from its members, while the normal working funds would be provided from other sources, such as fees, charges, subscriptions, etc.

The Memorandum of Association of every guarantee company must state that every member of the company undertakes to contribute to assets of the company in the event of its being wound up while he is a member for the payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the charges, costs and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

The Memorandum of a company limited by guarantee must state the amount of guarantee. It may be of different denominations.

- **Unlimited Company**

As per section 2(92), "unlimited company" means a company not having any limit on the liability of its members. Thus, the maximum liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets. However, the members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm.

An unlimited company may or may not have share capital. Under Section 18, a company registered as an unlimited company may subsequently re-register itself as a limited company, by altering its memorandum and articles of the company in accordance with the provisions of Chapter II of the Companies Act subject to the provision that any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the unlimited company before such conversion are not affected by such changed registration.

B. Government Companies

Section 2(45) defines a "Government Company" as any company in which not less than fifty one per cent. Of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Notwithstanding all the pervasive control of the Government, the Government company is neither a Government department nor a Government establishment. [**Hindustan Steel Works Construction Co. Ltd. v. State of Kerala** (1998) 2 CLJ 383].

When the Government engages itself in trading ventures, particularly as Government companies under the company law, it does not do so as a State but it does so in essence as a company. A Government company is not a department of the Government.

C. Foreign Companies

As per section 2(42), “foreign company” means any company or body corporate incorporated outside India which—

a. has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
b. conducts any business activity in India in any other manner

   Sections 379 to 393 of the Act deal with such companies. Section 380 of the Act lays down that every foreign company which establishes a place of business in India must, within 30 days of the establishment of such place of business, file with the Registrar of Companies for registration.

The filing must include:

a. a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
b. the full address of the registered or principal office of the company;
c. a list of the directors and secretary of the company containing such particulars as may be prescribed;
d. the name and address or the names and addresses of one or more persons resident in India authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
e. the full address of the office of the company in India which is deemed to be its principal place of business in India;
f. particulars of opening and closing of a place of business in India on earlier occasion or occasions;
g. a declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from the formation of companies and management in India or abroad; and
h. any other information as may be prescribed.

Every foreign company has to ensure that the name of the company, the country of incorporation, the fact of limited liability of members is exhibited in the specified places or documents as required under Section 382.

Section 381 requires a Foreign Company to maintain books of Account and file a copy of the balance sheet and profit and loss account in the prescribed from with ROC every calendar year. These accounts should be accompanied by a list of places of business established by the foreign company in India.

Section 376 of the Companies Act, 2013 provides further that when a foreign company, which has been carrying on business in India, ceases to carry on such business in India, it may be wound up as an unregistered company under Sections 375 to 378 of the Act, even though the company has been dissolved or ceased to exist under the laws of the country in which it was incorporated.

D. Holding and Subsidiary Company

On the basis of control, companies can be classified into holding, subsidiary and associate companies.

- **Holding company**

  As per Section 2 (46), holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

- **Subsidiary company**

  Section 2 (87) provides that subsidiary company or subsidiary, in relation to any other company (that is to say the holding company), means a company in which the holding company—

i. controls the composition of the Board of Directors; or

ii. exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies, shall not have layers of subsidiaries beyond the prescribed limit. (Proviso to be notified)

For the above purpose, —

a. a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;

b. the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by the exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

c. the expression "company" includes anybody corporate;

E. Associate Company

As per Section 2(6), "Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation to section 2(6) provides that "significant influence" means control of at least twenty per cent of total share capital or of business decisions under an agreement.

To add more governance and transparency in the working of the company, the concept of the associate company has been introduced. It will provide a more rational and objective framework of the associated relationship between the companies.

Further, as per section 2 (76), Related party includes 'Associate Company'. Hence, contract with Associate Company will require disclosure/approval/entry in the statutory register as is applicable to contract with a related party.

F. Investment Companies

As per explanation (a) to section 186, "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities.

An investment company is a company, the principal business of which consists of acquiring, holding and dealing in shares and securities. The word 'investment', no doubt, suggests only the acquisition and holding of shares and securities and thereby earning income by way by of interesting dividend etc.

But investment companies in actual practice earn their income not only through the acquisition and holding but also by dealing in shares and securities i.e. to buy with a view to sell later on at higher prices and to sell with a view to buying later on at lower prices.

If a company is engaged in any other business to an appreciable extent, it will not be treated as an investment company.

The following two sets of legal opinions are quoted below as to the meaning of an investment company:

i. According to one set of legal opinion, an "investment company" means a company which acquires and holds shares and securities with an intent to earn income only from them by holding them. On the other hand, another school of legal opinion holds that "an Investment Company means a company, which acquires shares and securities for earning income by holding them as well as by dealing in such shares and other securities".
ii. According to Section 2(10A) of the Insurance Act, 1938, an investment company means a company whose principal business is the acquisition of shares, stocks, debentures or other securities.

G. Producer Company

Section 465(1) of the Companies Act, 2013 provides that the Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed.

However, the proviso to section 465(1) provides that the provisions of Part IX-A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

In view of the above provision, producer companies are still governed by the Companies Act, 1956. Companies (Amendment) Act, 2002 had added a new Part IXA to the main Companies Act, 1956 consisting of 46 new Sections from 581A to 581ZT.

According to the provisions as prescribed under Section 581A(l) of the Companies Act, 1956, a producer company is a body corporate having objects or activities specified in Section 581B and which is registered as such under the provisions of the Act.

The membership of producer companies is open to such people who themselves are the primary producers, which is an activity by which some agricultural produce is produced by such primary producers.

Objects of Producer Companies

In terms of Section 581B(1) of the Companies Act, 1956, the objects of a producer company registered under this Act may be all or any of the following matters:

- production, harvesting, procurement, grading, pooling, handling, marketing, selling, the export of primary produce of the Members or import of goods or services for their benefit.
- processing including preserving, drying, distilling, brewing, venting, canning and packaging of the produce of its members.
- manufacturing, sale or supply of machinery, equipment or consumables mainly to its members.
- providing education on the mutual assistance principles to its members and others.
- rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its members.
- generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce.

- insurance of producers or their primary produce.
- promoting techniques of mutuality and mutual assistance.
- welfare measures or facilities for the benefit of the members as may be decided by the Board.
- any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) above or other activities which may promote the principles of mutuality and mutual assistance amongst the members in any other manner.
- financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) above, which include extending of credit facilities or any other financial services to its members. Further, under Section 581B(2) it has also been clarified that every producer company shall deal primarily with the production of its active members for carrying out any of its objects specified above.

H. Dormant Companies

The Companies Act, 2013 has recognized a new set of companies called as dormant companies. *As per section 455 (1) where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.*

Explanation appended to section 455(1) says that for the purposes of this section,—

i. "inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
ii. "significant accounting transaction" means any transaction other than—
   a. payment of fees by a company to the Registrar;
   b. payments made by it to fulfil the requirements of this Act or any other law;
   c. allotment of shares to fulfil the requirements of this Act; and
   d. payments for maintenance of its office and records.

As per section 455(2), the Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

Section 455(3) provides that the Registrar shall maintain a register of dormant companies in such form as may be prescribed.

According to section 455(4), in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

Further, a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. [Section 455(5)]

9.5.2 Company formation:

(*1*) A company may be formed for any lawful purpose by—

(*a*) seven or more persons, where the company to be formed is to be a public company;

(*b*) two or more persons, where the company to be formed is to be a private company; or

(*c*) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber‘s death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles:

Provided further that such other person may withdraw his consent in such manner as may be prescribed:

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed:

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

(*2*) A company formed under sub-section (*1*) may be either—

(*a*) a company limited by shares; or

(*b*) a company limited by guarantee; or

(*c*) an unlimited company.

9.5.3 Management, meetings and winding up of a joint stock company:

- **General:**

The internal management of companies is carried on according to the articles of association. The articles define the relationship between members and between members and the company. On this basis, members are bound to each other but neither the company nor the members are bound to outsiders.

Articles may supplement the terms of a special contract between the company and an outsider, but the outsider will not be able to take advantage of the Articles unless he is informed by the company that the company will observe the terms of the Articles.

The memorandum and articles of association constitute a notice to persons dealing with the company, and persons contracting with the company are presumed to know their contents. If a contract is entered into by the company contrary to the terms of the Memorandum or the Articles, the company is not bound by it.

But outsiders are entitled to assume that the provisions of the Articles have been observed. This is known as the doctrine of "indoor management" or the rule in Royal British Bank v. Tarquand. For example, outsiders need not enquire into the validity of the election of directors.

Subject to the provisions of the law and the Memorandum, Articles define the powers of the shareholders, directors, managing director, etc. If directors exceed their powers as laid down in the Articles, the shareholders can ratify the act provided they are entitled to exercise the power themselves.
A public limited company limited by shares need not prepare special articles of association. If it does not, Table A of the First Schedule to the Companies Act will apply. Also, if the special articles are silent on any point, the relevant provisions of Table A will apply.

- **Powers of Shareholders:**

Annually, in general meeting, the shareholders consider the annual accounts and the balance sheet and the directors' report and adopt them if they think fit. They also declare a dividend (not more than that recommended by the Board of Directors), elect directors in place of those who are due to retire and appoint auditors.
In case of a public company and its subsidiary, the consent of the company in general meeting is necessary to:
(a) Undertake lines of business other than those mentioned in the Memorandum as the main objects including those auxiliaries to these;
(b) Sell, lease or otherwise dispose of company's undertaking or substantial part of the undertaking;
(c) Remit or give time for payment of any debt due by a director;
(d) Invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition after the commencement of the Act or of any premises or property used for any such undertaking;
(e) Borrow in excess of the aggregate paid-up capital plus reserves (temporary loans from company's bankers in the ordinary course: of the business of the company being left out of account for this purpose); and
(f) Contribute to charitable and other funds not relating to the company's business amounts exceeding Rs. 50,000 or 5% of its average net profits during the three preceding financial years, whichever is greater, in the course of any financial year.
'In respect of (e) and if) above, the necessary resolution passed by the company in general meeting must specify the total amounts concerned. Temporary loans are defined as loans repayable on demand or within six months from the date of the loan, but not loans raised for the purpose of financing capital expenditure.
If the Board of Directors acts in the above-mentioned matters without the consent of the company, the third parties will be protected.
Further, the following should be kept in mind:
(a) The appointment of the sole selling agents by the Board must be approved by the company in general meeting within 6 months of the appointment; otherwise it will cease to be valid.
(b) Issues of bonus shares or debentures can be made only with the consent of the company in general meeting.
(c) Re-organization of capital and amendment of the articles or memorandum of association also require the consent of the shareholders.
(d) Winding up, unless ordered by the Court, can be commenced only with the approval of the company in general meeting.

- **The Board of Directors:**

The management of a company is delegated to the Board of Directors. Directors are elected by the shareholders though some may be nominated by special interests like debenture-holders, etc. The Companies Act contains a number of provisions in respect of directors.
Directors must act as a Board, i.e., decisions arrived at only at meetings of the directors will be binding except that, depending upon Articles, and subject to Section 289 of the Act, resolutions may also be adopted by circulation. Individual directors have no powers unless specific powers are delegated at a properly held meeting of the Board of Directors.
The Board also has the power to appoint sub-committees to deal with specific matters. A meeting of the Board of Directors must be held once in every three calendar months. The Central Government has the power to exempt any class of companies from this provision. The quorum is two directors or one-third of the total number whichever is higher (not counting interested directors).
The directors are trustees for the company's property and it is their duty to apply the property for company's benefit alone. Any director using it for his personal benefit is guilty of breach of trust.
The Board is also in the position of an agent and hence contracts signed by the directors on behalf of the company are binding on the company as far as third parties are concerned, unless the contracts are beyond the powers of the company itself.
The directors are not responsible for any loss suffered by the company, if they exercise reasonable care and skill in the exercise of their powers and discharge of their duties. But if the directors are guilty of gross negligence or of breach of trust, they must compensate the company for damage suffered by it and any provision in the articles absolving the directors from such liability is invalid.
But if (according to section 633) the Court is satisfied that the director concerned acted honestly and reasonably and that, having regard to all the circumstances of the case, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it thinks fit.
The directors have the duty of general supervision of the affairs of the company even if there is a managing director.
The following powers must be exercised only by the Board at its meetings (section 292):

(i) The power to make calls;
(ii) The power to issue debentures;
(iii) The power to borrow moneys otherwise than on debentures;
(iv) The power to invest company's funds; and
(v) The power to make loans.
The powers specified in (iii), (iv), and (v) may be delegated by resolution at a Board meeting up to specified limits.
Section 292 does not cover the ordinary transactions with a bank.

- **Managing Director:**

The directors may appoint one of themselves as managing director. A managing director is "a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board, or, by virtue of its memorandum or articles of association is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called."

In the case of a public company and its subsidiary, amendment of any provision relating to the appointment or re-appointment of a managing director, whole-time director, or a director not liable to retirement by rotation will not be effective unless approved by the Central Government.

A new managing director must be appointed only with the approval of the Central Government. Reappointment also requires the sanction of the Central Government (except appointment under schedule XIII of Companies Act). A managing director cannot act as such for more than two companies and in the case of the second company, unanimous approval of the Board of Directors is necessary.

An un-discharged insolvent, one who has at any time been adjudged an insolvent, one who suspends or has suspended payment to his creditors, one who makes or has at any time made a composition with the creditors or one who has been, at any time, convicted of an offence involving moral turpitude, cannot be appointed as managing director of any company.

- **Manager:**

A manager means **"an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not."**

A manager must be an individual. He is usually appointed by the Board of Directors. He cannot be appointed for more than five years at a time. The disqualifications and restrictions attaching to the managing director also attach to the manager.

- **Meetings:**

A meeting therefore, can be defined as a lawful association, or assembly of two or more persons by previous notice for transacting some business. The meeting must be validly summoned and convened. Such gatherings of the members of companies are known as company meetings.

- **Essentials of Company Meetings**

The essential requirements of a company meeting can be summed up as follows:

1. **Two or More Persons**: To constitute a valid meeting, there must be two or more persons. However, the articles of association may provide for a larger number of persons to constitute a valid quorum.
2. **Lawful Assembly**: The gathering must be for conducting a lawful business. An unlawful assembly shall not be a meeting in the eye of law.
3. **Previous Notice**: Previous notice is a condition precedent for a valid meeting. A meeting, which is purely accidental and not summoned after a due notice, is not at all a valid meeting in the eye of law.
4. **To Transact a Business**: The purpose of the meeting is to transact a business. If the meeting has no definite object or summoned without any predetermined object, it is not a valid meeting. Some business should be transacted in the meeting but no decision need be arrived in such meeting.

➢ Kinds of Company Meetings

The meetings of a company can be broadly classified into four kinds.

1. Meetings of the Shareholders.
2. Meetings of the Board of Directors and their Committees.
3. Meetings of the Debenture Holders.
4. Meetings of the Creditors.

1. Meeting of the Share Holders

The meetings of the shareholders can be further classified into four kinds namely,

1. Statutory Meeting,
2. Annual General Meeting,
3. Extraordinary General Meeting, and
4. Class Meeting.

The chart given below gives a classification of company meetings.

1. Statutory Meeting

This is the first meeting of the shareholders conducted after the commencement of the business of a public company. Companies Act provides that every public company limited by shares or limited by guarantee and having a share capital should hold a meeting of the shareholders within 6 months but not earlier than one month from the date of commencement of business of the company.

Usually, the statutory meeting is the first general meeting of the company. It is conducted only once in the lifetime of the company. A private company or a public company having no share capital need not conduct a statutory meeting.

2. Annual General Meeting

The Annual General Meeting is one of the important meetings of a company. It is usually held once in a year. AGM should be conducted by both private and public ltd companies whether limited by shares or by guarantee; having or not having a share capital. As the name suggests, the meeting is to be held annually to transact the ordinary business of the company.

3. Extra-ordinary General Meetings (EOGM)

Statutory Meeting and Annual General Meetings are called the ordinary meetings of a company. All other general meetings other than these two are called Extraordinary General Meetings. As the very name suggests, these meetings are convened to deal with all the extraordinary matters, which fall outside the usual business of the Annual General Meetings.

EOGMs are generally called for transacting some urgent or special business, which cannot be postponed till the next Annual General Meeting. Every business transacted at these meetings is called Special Business.

➢ Persons Authorized to Convene the Meeting

The following persons are authorized to convene an extraordinary general meeting.

1. The Board of Directors.
2. The Requisitions.
3. The National Company Law Tribunal.
4. Any Director or any two Members.

4. Class Meetings

Class meetings are those meetings, which are held by the shareholders of a particular class of shares e.g. preference shareholders or debenture holders.

Class meetings are generally conducted when it is proposed to alter, vary or affect the rights of a particular class of shareholders. Thus, for effecting such changes it is necessary that a separate meeting of the holders of those shares is to be held and the matter is to be approved at the meeting by a special resolution.

For example, for cancelling the arrears of dividends on cumulative preference shares, it is necessary to call for a meeting of such shareholders and pass a resolution as required by Companies Act. In case of such a class meeting, the holders of other class of shares have no right to attend and vote.

2. Meetings of the Directors

Meetings of directors are called Board Meetings. These are the most important as well as the most frequently held meetings of the company. It is only at these meetings that all important matters relating to the company and its policies are discussed and decided upon.

Since the administration of the company lies in the hands of the Board, it should meet frequently for the proper conduct of the business of the company. The Companies Act therefore gives wide discretion to the directors to frame rules and regulations regarding the holding and conduct of Board meetings.

The directors of most companies frame rules concerning how, where and when they shall meet and how their meetings would be regulated. These rules are commonly known as Standing Orders.

3. Meetings of Debenture Holders

The debenture holders of a particular class conduct these meeting. They are generally conducted when the company wants to vary the terms of security or to modify their rights or to vary the rate of interest payable etc. Rules and Regulations regarding the holding of the meetings of the debenture holders are either entered in the Trust Deed or endorsed on the Debenture Bond so that they are binding upon the holders of debentures and upon the company.

4. Meetings of the Creditors

Strictly speaking, these are not meetings of a company. They are held when the company proposes to make a scheme of arrangements with its creditors. Companies like individuals may sometimes find it necessary to compromise or make some arrangements with their creditors, In these circumstances, a meeting of the creditors is necessary.

- **Meaning of Winding Up:**

"Winding up is a means by which the dissolution of a company is brought about and its assets are realized and applied in the payment of its debts. After satisfaction of the debts, the remaining balance, if any, is paid back to the members in proportion to the contribution made by them to the capital of the company."

1. "The liquidation or winding up of a company is the process whereby its life is ended and its property is administered for the benefit of its creditors and members. An Administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights."

2. As per Section 2(94A) of the Companies Act, 2013, "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016.

Thus, winding up ultimately leads to the dissolution of the company. In between winding up and dissolution, the legal entity of the company remains and it can be sued in a Tribunal of law.

Meaning of Dissolution of a Company:

A company is said to be dissolved when it ceases to exist as a corporate entity. On dissolution, the company's name shall be struck off by the Registrar from the Register of Companies and he shall also get this fact published in the Official Gazette. The dissolution, thus puts an end to the existence of the company.

Difference between Dissolution & Winding Up of a Company:

SL. No.	Winding Up	Dissolution
1.	Winding up is one of the methods by which dissolution of a company is brought about.	Dissolution is the end result of winding up.
2.	Legal entity of the company continues at the commencement of the winding up.	Dissolution brings about an end to the legal entity of the company
3.	A company may be allowed to continue its business as far it is necessary for the beneficial winding up of the company	Company ceases to exist on its dissolution.

Modes of Winding Up of a Company:

A company may be wound up in any of the following two ways:

1. Compulsory Winding Up of a Company:

Winding up a company by an order of the Tribunal is known as compulsory winding up.

WHO MAY FILE A PETITION TO THE TRIBUNAL?

A petition for compulsory winding up of a company may be filed in the Tribunal by any of the following persons. (Sec. 272)

i. Petition by the Company - A company can file a petition to the Tribunal for its winding up when the members of the company have resolved by passing a Special Resolution to wind up the affairs of the company. Managing Director or the directors cannot file such a petition on their own account unless they do it on behalf of the company and with the proper authority of the members in the General Meeting.

ii. Petition by the Contributories - A contributory shall be entitled to present a petition for the winding up of the company, notwithstanding that he may be the holder of fully paid-up shares or that the company may have no assets at all, or may have no surplus assets left for distribution among the holders after the satisfaction of its liabilities. It is no more required of a contributory making petition to have tangible interest in the assets of the company

iii. Petition by the Registrar - Registrar may with the previous sanction of the Central Government make petition to the Tribunal for the winding up the company only in the following cases:

(a) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years;

(b) If the company has acted against the interests of the sovereignty and integrity of India the security of the State friendly relations with foreign States, public order, decency or morality;

(c) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up.

iv. Petition by the Central Government or a State Government on the ground that company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

v. Any person authorized by the Central Government in that behalf.

2. Liquidation under Insolvency and Bankruptcy Code 2016:

The Insolvency and Bankruptcy Code, 2016 relates to re-organization and insolvency resolution of companies, partnership firms and individuals in a time bound manner.

The Insolvency and Bankruptcy Code, 2016 applies to matters relating to the insolvency and liquidation of a company where the minimum amount of the default is Rs. 1 lakh (may be increased up to Rs.1 cr by the Government, by notification).

The Code lays down two stages:

1. INSOLVENCY RESOLUTION PROCESS -
   It is the stage during which financial creditors assess whether the debtor's business is viable to continue and the options for its re-organization and re-structuring are suggested; and
2. LIQUIDATION -
   In case the insolvency resolution process fails, the liquidation process shall commence in which the assets of the company are realized to pay off the creditors.

- **Modes of Dissolution:**

Dissolution of a company may be brought about in any of the following ways:

1. Through transfer of a company's undertaking to another under a scheme of reconstruction or amalgamation. In such a case, the transfer or company will be dissolved by an order of the Tribunal without being wound up.

2. Through the winding up of the company, wherein assets of the company are realized and applied towards the payment of its liabilities. The surplus, if any is distributed to the members of the company, in accordance with their rights.

- **Several new concepts in Companies Act 2013**

One person company, Dormant company, Small Company, Mandatory Corporate Social Responsibility (CSR), Mandatory Cash Flow and Consolidated Financial Statements, Mandatory retirement of auditors, Higher reporting responsibilities for auditors, More onerous penalties for auditors, Mandatory retirement of independent directors and pecuniary relationships ruled out , National Financial Reporting Authority, Related Party Transactions (incl. loans) – stricter norms, Non-judicial approval of mergers, Class action, etc.

Sub unit-6: Limited Liability Partnership

9.6.2 Structure and procedure of formation of LLP in India

According to Ministry of Corporate Affairs, Limited Liability Partnership (LLP) is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. In simple words, the partners have limited liability such that their personal assets cannot be used for paying off the debts of the company. Moreover, one partner is not held responsible for the misconduct of misconduct or negligence of another partner.

- **Process of LLP Registration**

If one wants to have a business entity, the Limited Liability Partnership (LLP) is the way to go. For this purpose, it is mandatory to follow the steps of **LLP Registration** under the LLP Act, 2008. The formation of LLP is easy in terms of its incorporation and its management. It is for this reason that the professionals, micro, and small businesses that are family owned and closely held prefer to register as LLPs. Moreover, there are simple compliance formalities. The steps involved in the LLP registration process are:

1. **Obtain Digital Signature Certificate:** Before beginning the process of Limited Liability Partnership registration, one must apply for the digital signature of the designated partners. This is important because all the documents required in the online LLP registration are digitally processed and would require digital signatures of the partners. One can avail these certificates from government recognized certifying agencies.

2. **Apply for Director Identification Number (DIN):** It is required by all designated partners or those who are intending to be the designated partners of the proposed LLP. One will have to attach a scanned copy of documents along with the Form DIR 3, which is signed by anyone who is a Chartered Accountant, Company Secretary, Cost Accountant, and Advocate.

3. **Reservation and approval of name:** One must conduct a free name search on the MCA portal before quoting a name in the formation process. The system will provide the names closely resembling the existing LLP's. At this stage, it is easier to choose a name that is not similar to already existing names. A name will be approved by the Registrar only if the name is distinct from those already existing and if it is not undesirable in the opinion of the Central Government.

4. **Incorporation of LLP:** One has to fill an application form for incorporation of LLP. All the details filled in the form must be correct. One will have to pay a prescribed registration fee which will be based on the contribution of the partners in the proposed LLP. The form so filled will be digitally signed by the person having DIN named in the incorporation document. It must also be digitally signed by anyone who is a Chartered Accountant, Company Secretary, Cost Accountant, and Advocate. If the Registrar is satisfied on the submission of the form, the LLP would get registered. The process takes 15 to 20 days.

5. **File Limited Liability Partnership Agreement:** An agreement is formed that defines the rights, duties, and responsibilities amongst the registered partners and also between the LLP and the registered partners. It is essential to file the LLP agreement within 30 days of the date

of incorporation. It has to be printed on a Stamp Paper whose value will be different for different states.

Documents required of partners:

1. PAN Card or ID Proof of partners: This acts as a primary ID proof.
2. Address proof of partners: One must submit anyone document out of Voter's ID, Passport, Driver's license or Aadhar card. An address proof, such as; a driving license, bank statement, residence card or any government-issued identity card that contains the address is required for all Foreign nationals who want to register as a partner in LLP.
3. Residence Proof of Partners: Latest bank statement, telephone bill, mobile bill or a gas bill has to be submitted as a residence proof.
4. Photograph: Partners should also provide their white background passport size photograph.
5. Passport is required in case of Foreign Nationals and NRI's.

Documents required of LLP:

1. **Proof of registered office address:** the proof has to be submitted during the registration or within 30 days of its incorporation. In case the registered office is taken on rent, a rental agreement or No Objection Certificate from the landlord has to be submitted.

2. **Digital Signature Certificate:** A DSC is important as all the documents and applications will be digitally signed by the authorized signatory.

In India, business generally operates as companies, sole proprietorships, and partnerships. There are different laws governing each form of business. However, a gap is often witnessed in the business structure. The gap has to be filled taking into consideration the growing service sector in India. The scope of LLP should be made available to the firms providing professional services against those trading or manufacturing. Moreover, in the recent past, aspects have been added to the Limited Liability Partnership Act such that the LLP registration in India can also be valid for small-scale industries. This has helped many small-scale industries to get organized which were earlier unorganized and improve their capability to have access to institutional credit.

Sub Unit-7: The Competition Act. 2002

9.7.1 Objective and main provision

Introduction

Competition is the act of the sellers individually seeking to acquire the patronage of buyers in order to achieve profits or market share. The Competition Act, 2002 was enacted by the Parliament of India and replaced The Monopolies and Restrictive Trade Practices Act, 1969. It is in effect to govern Indian competition law. After its enactment The Competition Act, 2002 has been amended twice, The Competition (Amendment) Act, 2007 and The Competition (Amendment) Act, 2009. Two of the main features of the Competition Act, 2002 is the framework it provides for the establishment of the Competition Commission, and the tools it provides to prevent anti-competitive practices and to promote positive competition in the Indian market.

➢ **Objectives of the Act**

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

- to provide the framework for the establishment of the Competition Commission
- to prevent monopolies and to promote competition in the market
- to protect the freedom of trade for the participating individuals and entities in the market
- to protect the interest of the consumer

The Act establishes a Commission which is duty bound to protect the interests of free and fair competition (including the process of competition), and as a consequence, protect the interests of consumers. Broadly, the Commission's duty is:-

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

In addition to this, the Competition Act envisages its enforcement with the aid of mutual international support and enforcement network across the world.

The Government of India in April 1964 appointed the Monopolies Inquiry Commission under the Chairmanship of Justice K. C Das Gupta, a judge of the Supreme Court, to inquire into the extent and effect of concentration of economic power in private hands and prevalence of monopolistic and restrictive trade practices in important sectors of economic activity other than agriculture.[3]

To regulate advertising, in 1984, Parliament inserted a chapter on unfair trade practices in the **Monopolies and Restrictive Trade Practices Act, 1969**.

The Monopolies and Restrictive Trade Practices Commission was constituted in the year 1970. The Monopolies and Restrictive Trade Practices Act, 1969 had its genesis in the Directive Principles of State Policy embodied in the Constitution of India.[6] It received the assent of the President of India on 27 December, 1969.[7] The Monopolies and Restrictive Trade Practices Act was intended to curb the rise of concentration of wealth in a few hands and of monopolistic practices.[8] It was repealed on September 2009. The Act has been succeeded by The Competition Act, 2002.

The Competition Bill, 2001 was introduced in Lok Sabha by Finance Minister Arun Jaitley on 6 August 2001.

➢ **Definition**

- **Acquisition:** Acquisition means, directly or indirectly, acquiring or agreeing to acquire shares, voting rights or assets of any enterprise or control over management or assets of any enterprise.
- **Cartel:** Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement among themselves, limit control or attempt to control the production, distribution, sale or price of goods or provision of services.
- **Dominant position:** It means a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces prevailing in the market or affect its competitors or consumers in its favour.
- **Predatory pricing:** Predatory pricing means the sale of goods or provision of services, at a price which is below the cost of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.
- **Rule of reason:** It is the analysis of any activity under the challenge on the basis of business justification, competitive intent, market impact, impact on competition and on consumer. It is the logic behind the conclusion for any order.

➢ **Salient features**

Anti-Agreements:

Enterprises, persons or associations of enterprises or persons, including cartels, shall not enter into agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which cause or are likely to cause an "**appreciable adverse impact**" on competition in India. Such agreements would consequently be considered void. Agreements which would be considered to have an appreciable adverse impact would be those agreements which-

- Directly or indirectly determine sale or purchase prices,
- Limit or control production, supply, markets, technical development, investment or provision of services,
- Share the market or source of production or provision of services by allocation of inter alia geographical area of market, nature of goods or number of customers or any other similar way,
- Directly or indirectly result in bid rigging or collusive bidding.

Types of agreement

A 'horizontal agreement' is an agreement for co-operation between two or more competing businesses operating at the same level in the market. A vertical agreement is an agreement between firms at different levels of the supply chain. For instance, a manufacturer of consumer electronics might have a vertical agreement with a retailer according to which the latter would promote their products in return for lower prices.

Abuse of dominant position

There shall be an abuse of dominant position if an enterprise imposes directly or indirectly unfair or discriminatory conditions in purchase or sale of goods or services or restricts production or technical development or create hindrance in entry of new operators to the prejudice of consumers. The provisions relating to abuse of dominant position require determination of dominance in the relevant market. Dominant position enables an enterprise to operate independently or effect competitors by action

Combinations

The Act is designed to regulate the operation and activities of combinations, a term, which contemplates acquisition, mergers or amalgamations. Combination that exceeds the threshold limits specified in the Act in terms of assets or turnover, which causes or is likely to cause adverse impact on competition within the relevant market in India, can be scrutinized by the Commission.

Competition Commission of India

Competition Commission of India is a body corporate and independent entity possessing a common seal with the power to enter into contracts and to sue in its name. It is to consist of a chairperson, who is to be assisted by a minimum of two, and a maximum of six, other members. It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India. The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

Commission has the power to inquire into unfair agreements or abuse of dominant position or combinations taking place outside India but having adverse effect on competition in India, if any of the circumstances exists:

- An agreement has been executed outside India
- Any contracting party resides outside India
- Any enterprise abusing dominant position is outside India
- A combination has been established outside India
- A party to a combination is located abroad.
- Any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

To deal with cross border issues, Commission is empowered to enter into any Memorandum of Understanding or arrangement with any foreign agency of any foreign country with the prior approval of Central Government.

Review of orders of Commission

Any person aggrieved by an order of the Commission can apply to the Commission for review of its order within thirty days from the date of the order. Commission may entertain a review application after the expiry of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time. No order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.[18]

Appeal

Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission. No appeal shall lie against any decision or order of the Commission made with the consent of the parties.

Penalty

If any person fails to comply with the orders or directions of the Commission shall be punishable with fine which may extend to ₹ 1 lakh for each day during which such noncompliance occurs, subject to a maximum of ₹ 10 crore.

If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under this section, he shall be punishable with imprisonment for a term which will extend to three years, or with fine which may extend to ₹ 25 crores or with both.

Section 44 provides that if any person, being a party to a combination makes a statement which is false in any material particular or knowing it to be false or omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than ₹ 50 lakhs but which may extend to ₹ 1 crore.

Sub unit-8: The Information Technology Act. 2000

9.8.1 Objective and main provision

The primary objectives of the IT Act, 2000 are:

- Granting legal recognition to all transactions done through electronic data exchange, other means of electronic communication or e-commerce in place of the earlier paper-based communication.
- Providing legal recognition to digital signatures for the authentication of any information or matters requiring authentication.
- Facilitating the electronic filing of documents with different Government departments and also agencies.
- Facilitating the electronic storage of data
- Providing legal sanction and also facilitating the electronic transfer of funds between banks and financial institutions.
- Granting legal recognition to bankers for keeping the books of accounts in an electronic form. Further, this is granted under the Evidence Act, 1891 and the Reserve Bank of India Act, 1934.

9.8.2 Cybercrimes and penalties:

Information Technology Act, 2000 was enacted on 17th May, 2000 to provide legal recognition for electronic transactions and facilitate E-Commerce. It was later amended by passing **Information Technology (Amendment) Act, 2008**.

The following are the important **objectives** of **Information Technology Act, 2000** :

1. Grant legal recognition to E-Transactions
2. Provide legal recognition to Digital Signatures for authentication
3. Facilitate E-Filing of data and information
4. Allow Electronic storage of data
5. Grant recognition to maintenance of books of accounts in Electronic Form

Penalties, Compensation and Adjudication under Information Technology Act, 2000

Section 43: Where a person without the permission of owner or any other person-in-charge damage the Computer, or Computer System, or Computer Network, the he shall be liable for Penalty and Compensation to such person so affected.

Section 44: Where a person fails to furnish any document, return, report to the controller, or certifying authority, then he shall be liable to pay penalty up to **Rs.1,50,000/-** per failure. Further where a person fails to furnish any information, books or other documents within time specified, then he shall be liable to pay penalty up to **Rs.5,000/-** per day. Further provided that where a person fails to maintain books of accounts or other records, then he shall be liable to pay penalty up to **Rs.10,000/-** per day.

Offences under Information Technology Act, 2000

Section 65: Any person tamper, conceal, destroy, or alter any computer source document intentionally, then he shall be liable to pay penalty up to **Rs.2,00,000/-**, or Imprisonment up to **3 years**, or both.

Section 66: Any person dishonestly, or fraudulently does any act as referred in **Section 43**, then he shall be liable to pay penalty up to **Rs.5,00,000/-**, or Imprisonment up to **3 years**, or both.

Section 66B: Any person dishonestly, or fraudulently receives or retains any stolen computer resource or communication device, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **3 years**, or both.
Section 66C: Any person dishonestly, or fraudulently makes use of Electronic Signature, Password or any other Unique Identification Feature of any other person, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **3 years**, or both.
Section 66D: Any person dishonestly, or fraudulently by means of any communication device or computer resource cheats by personating, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **3 years**, or both.
Section 66E: Any person intentionally captures, publishes, or transmits image of private area of any person without consent, then he shall be liable to pay penalty up to **Rs.2,00,000/-**, or Imprisonment up to **3 years**, or both.
Section 66F: Any person does any act electronically, or with use of computer with intent to threaten unity, integrity, security, or sovereignty of India, then he shall punishable with **Imprisonment for Life**.
Section 67: Any person publishes, or transmits in electronic form any material which appeals to prurient interest, or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see, or hear matter contained in it, then he shall be liable to pay penalty up to **Rs.5,00,000/-**, or Imprisonment up to **3 years**, or both, And in the event of second or subsequent conviction, he shall be liable to pay penalty up to **Rs.10,00,000/-**, or Imprisonment up to **5 years**, or both.
Section 67A: Any person publishes, or transmits in electronic form any material which contains sexually explicit act, or conduct, then he shall be liable to pay penalty up to **Rs.10,00,000/-**, or Imprisonment up to **5 years**, or both, **And** in the event of second or subsequent conviction, he shall be liable to pay penalty up to **Rs.10,00,000/-**, or Imprisonment up to **7 years**, or both.
Section 68: The Controller may, by order, direct a Certifying Authority or any employee of such Authority to take such measures or cease carrying on such activities as specified in the order if those are necessary to ensure compliance with the provisions of this Act, rules or any regulations made there under and if any person who intentionally or knowingly fails to comply with the order, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **2 years**, or both.
Section 69: Where the Central Government or a State Government or any of its officers specially authorized by the Central Government or the State Government, as the case may be, in this behalf may, if satisfied that it is necessary or expedient so to do, in the interest of the sovereignty or integrity of India, defense of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above or for investigation of any offence, it may with reasons to be recorded in writing, by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource, Any person who fails to comply with the order, then he shall be liable to Imprisonment of **7 years**, along with the **fine (amount of fine is not specified in the act)**.
Section 70: The appropriate Government may, by notification in the Official Gazette, declare any computer resource which directly or indirectly affects the facility of Critical Information

Infrastructure, to be a protected system, Any person who fails to comply with the notification, then he shall be liable to Imprisonment of **10 years**, along with the **fine (amount of fine is not specified in the act)**.

Section 71: Whoever makes any misrepresentation to, or suppresses any material fact from the Controller or the Certifying Authority for obtaining any License or Electronic Signature Certificate, as the case may be, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **2 years**, or both.

Section 72: If any person who has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **2 years**, or both.

Section 72A: If any person who has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, then he shall be liable to pay penalty up to **Rs.5,00,000/-**, or Imprisonment up to **3 years**, or both.

Section 73: If any person publishes a Electronic Signature Certificate, or make it available to any other person with the knowledge that

- Certifying Authority has not issued it, or
- Subscriber has not accepted it, or
- Certificate has been revoked or suspended

then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **2 years**, or both.

Section 74: If any person knowingly creates, publishes, or otherwise makes available Electronic Signature Certificate for any fraudulent or unlawful purpose, then he shall be liable to pay penalty up to **Rs.1,00,000/-**, or Imprisonment up to **2 years**, or both.

Section 75: If any person have committed an offence, or contravention committed outside India, and if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India, then the **provisions of this Act shall apply also to any offence or contravention committed outside India** by any person **irrespective of his nationality**.

Section 76: Any computer, computer system, floppies, compact disks, tape drives, or any other accessories related thereto, in respect of which any provision of this Act, rules, orders, or regulations made there under has been, or is being contravened, shall be **liable to confiscation**. However, if it is proved that such resources were not used in committing fraud then only person in default will be **arrested**.

Sub Unit-9: The RTI Act. 2005

9.9.1 Objective and main provision

- **Object behind the enactment of RTI Act, 2005**---- Mal-administration, mismanagement, corruption and delays are some of the melodies plaguing the public offices which a common person has to face in his daily life. With a view to curb corruption and mal-administration etc. in the public offices and to promote transparency and accountability amongst the public officers, the Parliament enacted a new legislation in the year 2005 namely, The Right To Information Act, 2005. Prior to the passage of the RTI Act, 2005 and because of the stringent provisions contained in the Official Secrets Act, 1923, it was almost impossible for a citizen to obtain any information regarding the official working and performance of a public officer holding a public office. The RTI Act, 2005 not only promotes transparency and accountability amongst the public servants regarding their performances in their public offices but also ensures that the concept of rule of law is not subverted and foiled. This new legislation has brought about the sense of devotion towards duty and tendency to adhere to the laws and norms amongst the public servants in discharge of their official duties as they have been made to realize under this Act that any willful breach of the laws, norms and the official duties on their part may invite punitive action against them under the provisions of the RTI Act, 2005.
- The relevant provisions in the Act and the information in respect of Plan Finance II Division, Department of Expenditure is as under - Section 4(1)(b) Every public authority shall publish within one hundred and twenty days from the enactment of this Act - (i) the particulars of its organization, functions and duties; PF II Division is primarily concerned with matters relating to the Central Plan. The Division serves as a window within the Finance Ministry, which has an overview of the development activity of the Central Government, both at the project level and sectoral policy level. The Division is the Secretariat for the Public Investment Board. The other functions/duties include assessment of Internal and Extra Budgetary Resources of Central PSUs, and processing proposals for financial restructuring of Central PSUs. (ii) the powers and duties of its officers and employees; No executive powers are exercised by PF II Division. The officers and employees of the Division process Central Plan related proposals/issues for facilitating appraisal and final decision. (iii) the procedure followed in the decision making process, including channels of supervision and accountability; The employees upto the level of Assistant Director in the Division submit files to five Directors in the Division who examine the proposals/issues under consideration and report to a Joint Secretary. (iv) the norms set by it for the discharge of its functions; The functions are discharged as per specified requirements of the work. (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- The provisions under Decision 4(A) below Rule 18 of Delegation of Financial Powers Rules, 1978 are complied with. Department of Expenditure has also issued guidelines for Formulation, Appraisal and Approval of Government funded Plan Schemes/Projects which are observed. (vi) a statement of the categories of documents that are held by it or under its control; The documents held by the Division mainly relate to proposals for consideration by Expenditure Finance Committee and Public Investment Board. (vii) the

particulars of any arrangement that exists for consultation with, or representation by the members of the public in relation to the formulation of its policy or implementation thereof; Not Applicable. (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public; Central Plan Proposals (except those specifically exempted) costing Rs.100 crore and above are appraised by EFC chaired by Secretary (Expenditure). Projects with quantifiable returns costing over Rs.200 crore are appraised by PIB chaired by Secretary (Expenditure). The meetings of the EFC/PIB are not open to the public. The records of appraisal level deliberations in EFC/PIB are not accessible to the public. (ix) a directory of its officers and employees; Information is available on the website of Ministry of Finance (Department of Expenditure). (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations; Information is available on the website of Ministry of Finance (Department of Expenditure). (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; Not Applicable. (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes; Not Applicable. (xiii) particulars of recipients of concessions, permits or authorizations granted by it; Not Applicable. (xiv) details in respect of the information, available to or held by it, reduced in an electronic form; Compendium of Circulars regarding Formulation, Appraisal and Approval of Plan Schemes and Projects is available on the website of Ministry of Finance (Department of Expenditure). (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use; Information is available on the website of Ministry of Finance (Department of Expenditure). (xvi) the names, designations and other particulars of the Public Information Officer; CPIO for PF II Division - Shri K.M. Gupta, Director (PF II), Room No.167- C, North Block, New Delhi, Tel.No.23093276. (xvii) such other information as may be prescribed. Nil.

2. **Composition of various authorities under the RTI Act, 2005**---- Various authorities constituted under the RTI Act, 2005 are as under----

(1) **Central Information Commission**—Sec. 12 of the RTI Act, 2005 0provides for the constitution of a Central Information Commission to be headed by the Central Information Commissioner (CIC). Such Commission has already been constituted and made functional with its office in New Delhi, the capital of the country. Former union cabinet secretary Sri Wazahat Ullah is presently heading the Central Information Commission as its Chief Information Commissioner (CIC).

(2) **State Information Commission**—Sec. 15 of the RTI Act, 2005 provides for the Constitution of State Information Commission in every State with the Chief Information Commissioner (SIC) as its head. Such a State Information Commission has already been constituted and notified in the State of U.P. with its head office at Lucknow. There are

several other Information Commissioners appointed and notified by the Govt. of U.P. to discharge their duties as per the provisions of the RTI Act, 2005.

(3) **First Appel (Sec. 19 of the RTI Act, 2005)** ---- Generally, Head of Departments (HOD) of various public offices in U.P. have been notified as first appellate authorities u/s. 19(1) of the RTI Act, 2005 against the orders passed by the CPIOs. Limitation period for preferring an appeal is 30 days from the date of order of the CPIO or from the date of deemed rejection.

(4) **Second Appeal (Sec. 19(3) of the RTI Act, 2005)** ---- A second appeal u/s. 19(3) of the RTI Act, 2005 shall lie to the CIC or SIC from the date when the decision should have been made. The limitation period is 90 days from the date of the decision of the first appellate authority.

Sub Unit-10: Intellectual property Rights (IPRs)

9.10.1 Patents, trademarks and copyrights:

- **Patent:** A patent safeguards an original invention for a certain period of time and is granted by the United States Patent and Trademark Office (USPTO). By granting the right to produce a product without fear of competition for the duration of the patent, incentive is provided for companies or individuals to continue developing innovative new products or services.

There are three types of patents: utility patents, plant patents, and design patents.

i) Utility Patent:

A utility patent covers the creation of a new or improved product, process, or machine. Also known as a "patent for invention," it bars other individuals or companies from making, using, or selling the creation without consent. Utility patents are good for up to 20 years after the patent application is filed, but require the holder to pay regularly scheduled maintenance fees.

While most people associate patents with machines and appliances, they can also apply to software, business processes, and chemical formulations such as in pharmaceutical products.

ii) Plant Patent:

A plant patent protects a new and unique plant's key characteristics from being copied, sold, or used by others. It is also good for 20 years after the application is filed. The plant must be asexually reproducible with reproduction being genetically identical to the original and performed through methods such as root cuttings, bulbs, division, or grafting and budding.

iii)Design Patent:

A design patent, on the other hand, applies to the unique look of a manufactured item. Take, for example, an automobile with a distinctive hood or headlight shape. These visual elements are part of the car's identity and may add to its value. However, without protecting these components with a patent, competitors could potentially copy them without legal consequences.

- **Trademarks:** A trademark can be defined as a word, symbol, design, and/or phrase which is used to identify and differentiate the source of goods from other similar parties. A somewhat similar right is the service mark, which affords the same protection rights to services rather than goods.

  Businesses make use of certain names, symbols, words, and designs when trading goods or services to distinguish themselves as the source of certain goods, products and services. The term "trademark" is frequently used to refer to service marks as well as trademarks.

  Some examples of intellectual property requiring a trademark are brand names, brand logos, and their slogans. These examples can all be categorized under the term "mark".

  When using your mark, you can use a designation with it to represent the trademark. This designation is the ™ symbol after the mark if the trademark is registered. If not, owners may use the abbreviations TM for goods and SM for services.

  Trademark rights are acquired in order to protect your intellectual property from use by other parties, such as using a confusingly similar phrase, name or symbol. However, these

rights do not prevent others from creating and selling the same services and goods under a different name, symbol etc.
All trademarks needn't be registered – owners can establish "common law" rights on their mark on the basis of use solely in commerce, in which case registration is not necessary. Nevertheless, federal registration of a trademark offers further useful benefits and is therefore recommended.
In the event of foreign or interstate commerce, trademarks may be registered with the patent and trademark office.
Trademarks are not subject to expire after a set period of time. Trademarks can last indefinitely so long as the mark is being used in commerce because the rights apply to actual "use". Trademark registrations also last forever once you have paid the due fees and filed the necessary documents.

- **Copyrights:** Copyrights protect "works of authorship," such as writings, art, architecture, and music. For as long as the copyright is in effect, the copyright owner has the sole right to display, share, perform, or license the material. One notable exception is the "fair use" doctrine, which allows some degree of distribution of copyrighted material for scholarly, educational or news-reporting purposes.
  Technically, you don't have to file for a copyright to have the piece of work protected. It's considered yours once your ideas are translated into a tangible form, such as a book, music, or published research. However, officially registering with the U.S. Copyright Office before – or within five years of – publishing your work makes it a lot easier to establish that you were the original author if you ever have to go to court.
  The duration of a copyright depends on the year it was created, as the laws have changed over the years. Since 1978, most compositions have been copyright-protected for 70 years after the author's death. After that time, individual works enter the public domain and can be reproduced by anyone without permission.
  As a general rule, the author retains ownership of copyright privileges, even if the material is published by another company. There is an important exception to this rule, though. Materials you create for your employer as part of your job requirements – for example, contributions to a podcast the company publishes – are usually considered "works for hire." The employer, not you, retains the copyright. If there's a gray area, you can try to negotiate with the publisher over copyright ownership prior to creating the piece – just be sure to get it in writing.

****Table showing differences between copyright, trademark and patent**

Particular	Copyright	Trademark	Patent
Intellectual Property Type	Artistic, literary or dramatic expressions such as songs, music, motion pictures, poetry, fiction and non-fiction writings, etc.	A company or brand's "mark" (e.g. its name, logo, motto etc.) which distinguishes it as the source of any services or goods.	An invention which must be a manufactured product, an apparatus, chemical composition or a manufacturing process
Protection Requirements	A materialized form of artistic expression which exists as a tangible entity. Ideas cannot be copyrighted.	A unique brand name, logo, symbol, design or motto which is distinctive to its representative source.	An invention which is innovative, previously undiscovered and has practical applications in any industry.
Duration of Rights	Copyright laws apply to the intellectual property for the duration of the artist's life plus 70 years.	Trademark laws last forever provided that the mark in question is actively in use by the source in commerce.	Patents are limited duration intellectual property rights which last a maximum of 20 years.
Rights Provided to Owner	Right to reproduce or copy the works, distribute or broadcast the works to the public, and lend or rent the work.	Right to use and prevent use by other parties in a manner that is similar and creates confusion about the source.	Right to use the invention and prevent others from using, recreating, importing or selling the patented invention.

9.10.2 Emerging issues in intellectual property:

India joined **WTO** (World Trade Organization) and became a signatory of the **TRIPS** (Trade-Related Aspects of Intellectual rights) agreements in the year of 1995. With this, all the signatories were supposed to align their IP rules in conformation with the TRIPS agreement. However, developing countries like India were granted a window period of 10 years (5-compulsory +5 extended) to comply with the rules put forth by the agreement.

Though India had aligned its rule in accordance to TRIPS in the year 2005, still, there are many challenges and issues, that needs to be addressed to maximize the benefits. Thus getting and granting IP rights in India has become a matter of contention since 2005 and various stakeholders are interested in knowing India address these issues.

This article is an attempt to underline those challenges and issues that India is facing in offering **IP rights to companies in Indian jurisdiction**. Though, there are many challenges we will list only the top 6, that are of utmost importance.

Intellectual Property Rights (India): Top 6 Challenges

1. From Process to Product Patents- One of the binding point in TRIPS agreement is that all member countries are required to shift their patent regime from **"Process Patent"** to **"Product Patent."** The fundamental difference between a Process Patent regime and a Product Patent regime lies in the fact that the former protects for processes only while the latter products. It

becomes a contentious issue when it comes to getting IP rights on pharmaceuticals and food products.
Unlike developed countries where Capitalist Economic Model is working India has adopted a mixed development model striking a balance between Capitalism and Socialism. This approach was taken to safeguard the interest of ordinary people those are struggling for their basic needs including food and medicines. Developed countries are accusing countries like India and Brazil being protectionist when it comes to granting patents in pharmaceuticals and food sectors.

2. Section 3(d) of the Indian Patent Act– Another challenge that it is facing is the condemnation of section 3(d) of the Indian Patent Act. This section prevents multinational companies evergreening their patents simply by making minor changes. Implementation of 3(d) was exercised in challenging the patent of Novartis Glevac drug. The Court rules that multinational companies can't evergreen their patents simply by making minor changes in earlier patents and they need to show considerable **"Therapeutic Efficiency"** to get patent protection in already existing patents.

3. Compulsory licensing- With the provision of **compulsory licensing**, the Govt of India can compel the owner company or other companies to mass produce some drugs in emergency irrespective of who got the patent. Multinationals are accusing India of being opportunistic in their stand and are asking to abrogate this provision. However, Indian Govt is not willing to cancel this provision to safeguard the interests of mass.

4. Provision of Drug Price Control Order- With this provision companies can't charge an unfair price for drugs that they are producing. The price has to be justified regarding investments, and if someone plays foul, then the Govt has the right to intervene.

5. Food security and IPR- India is a land of farmers wherein most of the people are engaged in doing farming for their livelihood. In such a country Govt offers many subsidies to farmers. India's domestic support schemes are generally in the form of "minimum support price" for major agricultural commodities and "input" subsidies provided to farmers in the types of electricity, fertilizers, seeds, etc. However, for complete implementation of TRIPS agreements, these subsidies will have to be reduced or eliminated. Thus, the Indian Government is struggling to create a balance between food security and providing IP rights in India.

6. IPRs, Community property rights, & Indigenous knowledge- Traditional knowledge gives ready-made leads for pharmaceutical companies and then simply come up with the new formulation to show the efficacy of the general traditional understanding. The Indian Govt is bound to protect the rich source of traditional knowledge by not allowing multinationals to get patents on traditional culture. As a defensive mechanism, the Govt has created TKDL (Traditional Knowledge Digital Library) to challenge patenting traditional Indian understanding. Multinationals and developed countries are also opposing this move.
Intellectual Property Rights (India): Neglected Issues
Some of the highlighted issues that are facing negligence regarding implementation, for a long time are:

- Insufficiency of the regulations,

- Lack of awareness and respect for IPRs and access rules, and
- Lack of efficient application/control of these regulations.

Intellectual Property Rights (India): Some Recommendations To Follow

Some of our recommendations that can be followed are:

- Formulate comprehensive IPR Policies for various sectors and Academic Institutions
- Train personnel to manage IPR
- Provide access and training to use Patent information databases
- Create a consortium of IPR professionals to offer professional services for IPR work

Intellectual Property Rights (India): Milestones To Achieve

Though India technically has shifted from a process patent regime to a product patent regime, it is still struggling to balance the interest of companies as well as the masses. The country has technically incorporated the rules of TRIPS but also trying to level the playing field by adding clauses and provisions like compulsory licensing. Some of the milestones still to achieve, are:

- **Successful implementation of the TRIPs agreement:** The important ones being legal, administrative and institutional reforms, appropriate research investment, and first-rate science and technology capability. Provided the IPR protection is adequate and effective (worldwide), the TRIPs accord can promote innovation, transfer of technology, foreign direct investment, use of genetic resources and environmental protection.
- **Creation of patent cell in the ICAR:** Having a clear-cut intellectual property policy and promoting patent literacy among its scientists must be the next logical step.
- **Foster and reward entrepreneurship:** To maximize opportunities patent offices must evolve a regulatory environment conducive to technological innovation.
- **Indian must establish a lobby:** At the international level, in the WTO, India must lobby for creating a linkage between the Convention on Biological Diversity (CBD) and TRIPs, stating that it is the CBD which must have primacy over the TRIPs and not the other way round.

Sub Unit-11: Goods and Service Tax (GST)

9.11.1. Objective and main provision

- **Objective:**

1) Eliminate classification dispute between goods & services.
2) Uniformity of tax rates and automated compliances.
3) Ensuring availability of input tax credit across the value chain
4) Simplification of registration, filing of return, tax administration and compliance.
5) Harmonization of tax base, laws, and administration procedures across the country.
6) Minimizing tax rate slabs to avoid classification issues.
7) Prevention of unhealthy competition among states.
8) Increasing the tax base and raising compliance.
9) Removal of cascading effect.
10) Free movement of Goods across the country without any additional tax.

- **Main provision:**

Threshold Limit for Registration in case of **goods** (allover India*) except persons engaged in making Supplies in the state of Arunacahal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikim, Telengana, Tripura, Uttrakhanad – **Rs. 40 lakhs ***

Threshold Limit for Registration in case of **Services** *except persons engaged in making Supplies in the state of Arunacahal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikim, Telengana, Tripura, Uttrakhanad–* ***Rs. 20 lakhs***

Threshold Limit for Registration in case of **Goods & Services** *engaged in making Supplies in the state of Arunacahal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikim, Telengana, Tripura, Uttrakhanad –* ***Rs. 10 lakhs***

Composition Scheme- **

- For Trader, Manufacturer – Rs. 1.5 Crore
- For Restaurant Service – Rs. 1.5 Crore
- For Other Service Providers subject to threshold limit of turnover in the preceding Financial Year Rs. 50 lakhs – Rs. 1.5 Crore.
- **Rate –** For Trader, Manufacturer – 1%
  For Restaurant Service – 5%
  For Other Service Providers whose
  turnover in the preceding Financial Year Rs. 50 lakhs – 3% CGST & 3% SGST
- Supply with consideration – *treated as supply under GST*
- Supply without consideration except activity under schedule I – *not treated as supply under GST*

TCS Provisions-

For the purpose of determination of value of supply under GST, Tax collected at source under the provisions of **Income Tax Act, 1961** would not be includible as it an interim levy not having character of Tax

Example

Gold Ornaments – Rs. 5,00,000
Add – TCS @ 1% – Rs. 5,000

…………………………………………….
Rs. 5,05,000
Add – GST @ 3% – Rs. 15,000
……………………………………………..
Rs. 5,15,000

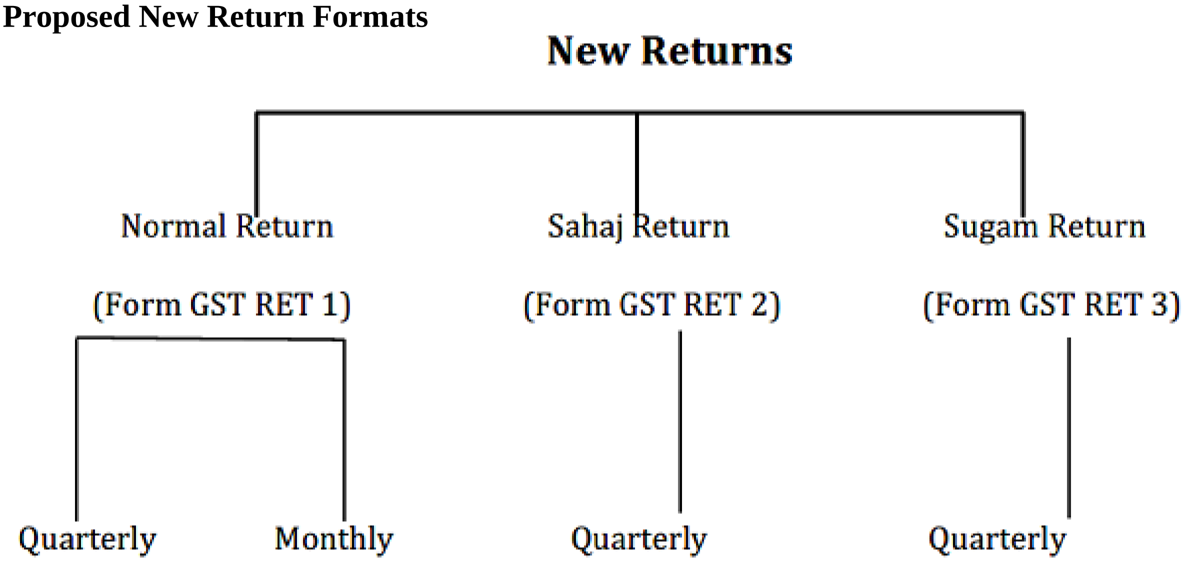
Threshold Limit for Registration in case of Goods- ***Rs. 40 lakhs*** **is not applicable in following cases-**

- Persons required to take compulsory registration under section 24(Example – Online Sale , E-Commerce Operator)
- Persons engaged in supply of Ice Cream and other edible ice, whether or not containing cocoa, Pan Masala, Tobacco and manufactured tobacco substitutes.

**** Applicability of Composition Scheme-**

- Not engaged in making any supply which is not leviable to tax under the CGST Act.
- Not engaged in making any inter state outward supply.
- Neither a Casual Taxable Person nor a **Non Resident Taxable Person**
- Not engaged in making any supply through an e-commerce operator who is required to collect tax at source under section 52
- Shall not collect any tax from the recipient on supplies made by him nor shall be entitled to any credit of ITC
- Shall issue Bill of Supply instead of Tax Invoice
- The registered person under composition scheme shall mention the following words at the top of the bill of supply namely ***–"Taxable Person paying tax in terms of Notification No. 2/2019 –Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies"*** *[Newly Notified]*

Proposed New Return Formats



- If turnover up to Rs. 5 Crore in preceding Final Year , then Taxpayers can opt for submitting return quarterly using Form GST RET 1 or Form GST RET 2 or Form GST RET 3.

- Quarterly Return submission using Form GST RET 1- ITC on Missing Invoices **can** be availed.
- Quarterly Return submission using Form GST RET 2 & GST RET 3 – ITC on Missing Invoices **cannot** be availed.
- Quarterly Return submission using Form GST RET 3- Outward Supply under **B2C & B2B category and inward supplies attracting reverse charge** are to be informed in this return.
- Quarterly Return submission using Form GST RET 2- Outward Supply under **B2C category and inward supplies attracting reverse charge** are to be informed in this return.

9.11.2. Benefits of GST

1. GST provide comprehensive and wider coverage of input credit setoff, you can use service tax credit for the payment of tax on sale of goods etc.
2. CST will be removed and need not pay. At present there is no input tax credit available for CST.
3. Many indirect taxes in state and central level included by GST, You need to pay a single GST instead of all.
4. Uniformity of tax rates across the states
5. Ensure better compliance due to aggregate tax rate reduces.
6. By reducing the tax burden, the competitiveness of Indian products in international market is expected to increase and there by development of the nation.
7. Prices of goods are expected to reduce in the long run as the benefits of less tax burden would be passed on to the consumer.

9.11.3. Implementation mechanism:

GST is a destination base indirect tax collected by central as well as State Government to meet the public expenditure as a part of important mechanism of fiscal system of a nation. India is a federal country, where both the center and the state have been assigned the powers to levy and collect taxes through respective legislations. Along with the amendment in the constitution to empower, the Centre and the States to levy and collect the GST, four legislations were given assent by the President on12th April, 2017, which include

- The Central GST Act, 2017
- The integrated GST Act, 2017
- The GST (Compensation to States) Act, 2017
- The Union territory GST Act, 2017

9.11.4. Working of dual GST

Dual GST means, the proposed model will have two part called-
1.CGST – Central goods and service tax for levied by central Govt. 2. SGST – State goods and service tax levied by state Govt. There would have multiple statute one CGST statute and SGST statute for every state. 9. Salient features of the GST