

Auditing Course Material

Part 45 of 61 (Chapters 4401-4500)

13. Audit and Auditors

Every auditor of a company shall have following rights and duties.

- Every auditor of a company has a right of access at all times to the books, accounts and vouchers of the company whether kept at the head office of the company or elsewhere and also to the returns submitted by the branch office to the head office. Also, auditor of a holding company shall have access to the books of all of its subsidiary companies for the purpose of consolidation of financial statements of holding company and its subsidiaries.
- Right to require from the officers of the company necessary information and explanation to carry out his duties as auditors.
- The auditor shall make a report to the members of the company to state whether to the best of his information and knowledge, the accounts or financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year.
- Where any of the matters required to be included in the audit report is answered in the negative or with a qualification, the report shall state the reasons thereof.
- In the case of a Government company, the auditor so appointed shall submit a copy of the audit report to the CAGI (Comptroller and Auditor General of India).
- The accounts of branch office (if any) of the Company shall be audited either by the auditor of the company or by any other appointed person qualified for appointing as an auditor of the company.
- In case of a branch office outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor in accordance with the laws of that country. Such branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.
- Every auditor shall comply with the auditing standards.
- Any qualifications, observations or comments on financial transactions matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by members of the company.
- If an auditor of a company has reason to believe of committing of an offence of fraud of Rs. 1 Crore or above, by its officers or employees, the auditor shall report the matter to the Central Government within the prescribed time period.
- On completion of his work, an auditor is entitled to his remuneration.
- The auditor should give all possible assistance to the inspectors in case of an investigation of the affairs of the company.
- In case an existing company issues prospectus, it should contain a statement of profit & losses for the last 5 years showing the rate of dividends paid to each classes of shares for each year and a statement of assets & liabilities of the company. It is the duty of auditor to certify all these statements. In addition, the Statutory Auditor of the Company shall be liable, in case, there is any misstatement in prospectus of the Company.

Note that, the provisions of this section shall apply to Cost Audit and Secretarial Audit as well. Further, all notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

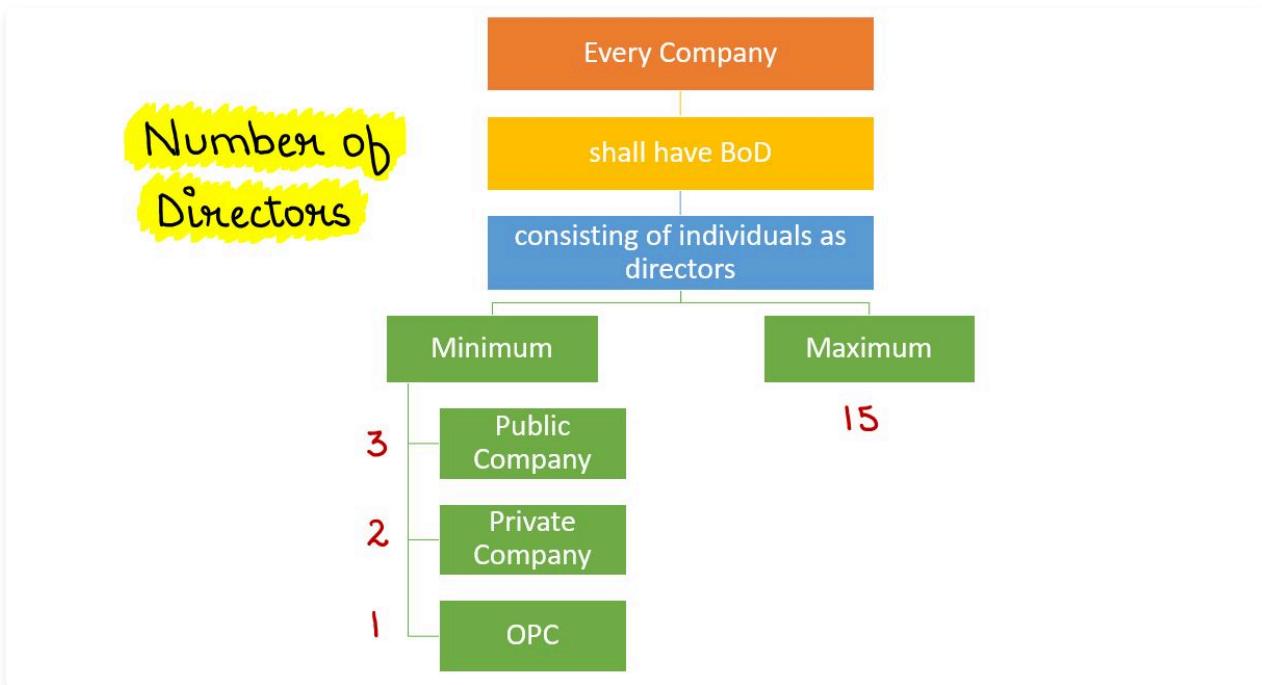
14. Appointment and Qualifications of Directors

Chapter XI (Sec. 149 to Sec. 172) of the Act deals with appointment and qualifications of Directors.

The relevant sections from Chapter XI are given next.

14. Appointment and Qualifications of Directors

Section 149 of the Act prescribes minimum and maximum number of Directors in a Company.



The law requires that every company must have at least:

- 3 directors in case of public limited companies,
- 2 directors in case of private limited companies, and
- 1 director in case of one person companies.

A company can have maximum 15 directors. The company could appoint more directors by passing the special resolution in its general meeting. However, the limit of maximum of 15 directors, and their increase in limit by special resolution shall not apply to Government and Section 8 Companies.

Further, every prescribed class of companies shall have at least one-woman director.

Number of Women Director

- At least one

Companies which require to have Women directors

- Every listed company;
- Every other public company having
 - ✓ Paid-up share capital of 100 crore rupees or more; or
 - ✓ Turnover of 300 crore rupees or more

Every company shall have at least 1 director who stays in India for a total period of not less than 182 days during the financial year; the number of days to be reduced proportionately for appointment of resident director in newly incorporated companies.

Every listed public company shall have at least 1/3rd of the total number of directors as independent directors (any fraction shall be rounded off as one) and the public companies with paid-up capital of Rs. 10 crores or more, or turnover of Rs. 100 crore or more, or total outstanding loans, deposits, and debentures of Rs. 50 crores or more need to appoint at least 2 independent directors.

Exemption

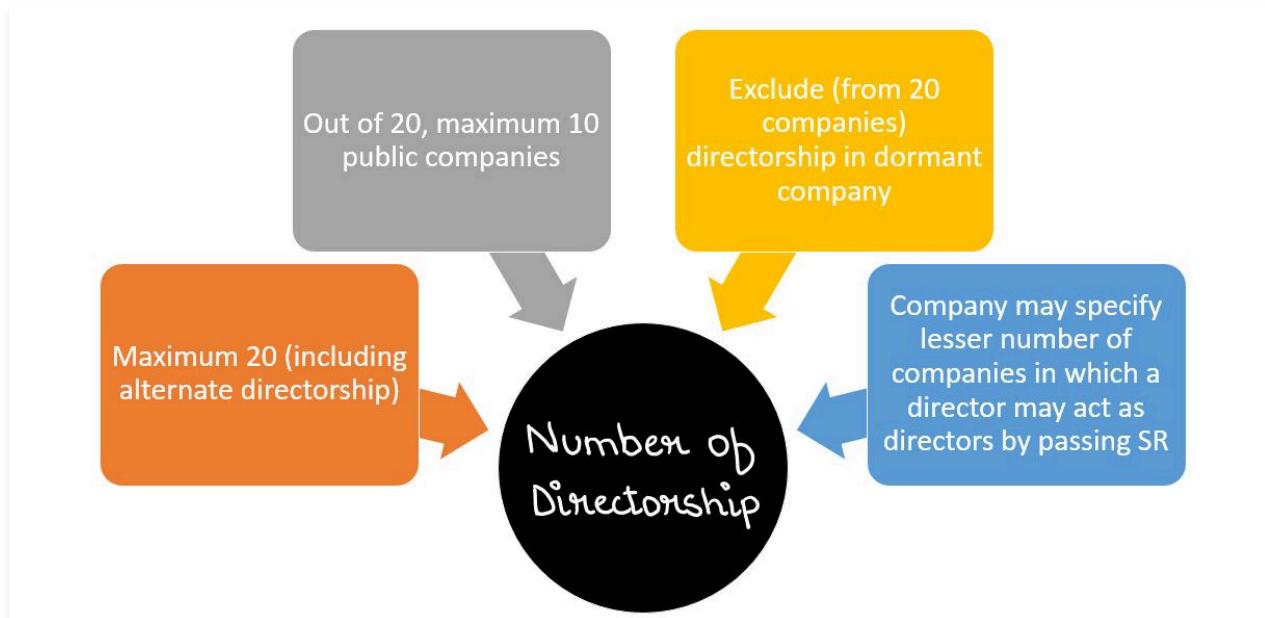
The following classes of unlisted public companies shall not be covered under aforesaid monetary stipulations, namely:

- (a) a joint venture;
- (b) a wholly owned subsidiary; and
- (c) a dormant company.

14. Appointment and Qualifications of Directors

Section 165 of the Act limits the number of directorships.

No person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time.



The maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included. For reckoning the limit of directorships of 20 companies, the directorship in a dormant company shall not be included.

14. Appointment and Qualifications of Directors

The different types of Directors are as follows.

Resident director (Sec. 149)

Resident Director

Who has stayed in India for not less than 182 days during Financial Year.

A director who has lived in India for at least 182 days is a residential director. A company should have one residential director.

Executive directors

The executive director is a full-time (whole time) working director of the company. They have a higher responsibility towards the organization. The company and its employees expect them to be efficient and careful in all the dealings.

Non-Executive Directors

These are non-working directors and are not involved in the everyday working of the company. They might take part in the planning or policy-making process.

Managing Directors (Sec. 196)

They have a substantial ability to make decisions, manage and direct other members of the company. All Listed Companies and every public company having paid-up share capital of Rs. 10 Crore or more must appoint Managing Directors.

Small Shareholder Directors (Sec. 151)

Small Shareholders Director	Compulsory	No
	Which company may appoint?	Listed company
	Number	One
	Who is Small Shareholder Director?	A shareholder holding shares of nominal value of not more than Rs. 20,000 or such other sum as may be prescribed
	How is SSD appointed?	<ul style="list-style-type: none">• By notice• Of not less than 1000 small shareholders; or• One-tenth of total number of such shareholders• Whichever is lower

A listed company may upon the notice of minimum 1000 small shareholders or 10% of the total number of the small shareholders, whichever is lower, shall have a director which would be elected by small shareholders. Small shareholder means a shareholder holding shares of nominal value of not more than Rs. 20,000 or as prescribed.

Women directors (Sec. 149)

The Listed companies or public company having a paid-up capital of Rs. 100 crores or turnover of Rs. 300 crore or more must have a woman director.

Additional Directors (Sec. 161)

Additional Directors appointment

AOA of a company may confer on its BoD the power to-

- Appoint any person as an additional director
- At any time

A person could be appointed as an additional director and can occupy his post until next AGM. In absence of the AGM, such term would conclude on the date on which such AGM should have been held.

Alternate director (Sec. 161)

Alternate Director (ALT. DIR)	Term of holding office	Till the period permissible to the original director
	Vacation	If & when the original director returns to India
	Automatic re-appointment	Apply to the original , and not to the alternate director

When a director is absent for more than 3 months; an alternate director comes on Board on his behalf. He acts as a director for a temporary period.

Nominee Director (Sec. 161)

NOMINEE DIRECTOR

Nominated by



These Directors are appointed by specific class of shareholders, Central Government (in case of oppression and mismanagement), banks and financial institutions (in case of loan agreement) and other third parties (through contracts) representing interest of entity which appointed them.

Independent Director (Sec. 149)

Independent directors are non-executive directors of a company and help the company to improve corporate credibility and enhance the governance standards. These are the Directors other than an MD or a WTD or a nominee director.

is a person of integrity and possesses relevant expertise & experience;

is/was not a promoter of:

- The company or
- Its holding, subsidiary or associate company;

not related to promoters/Directors

- In the company,
- Its holding,
- Subsidiary or,
- Associate company

Independent Director

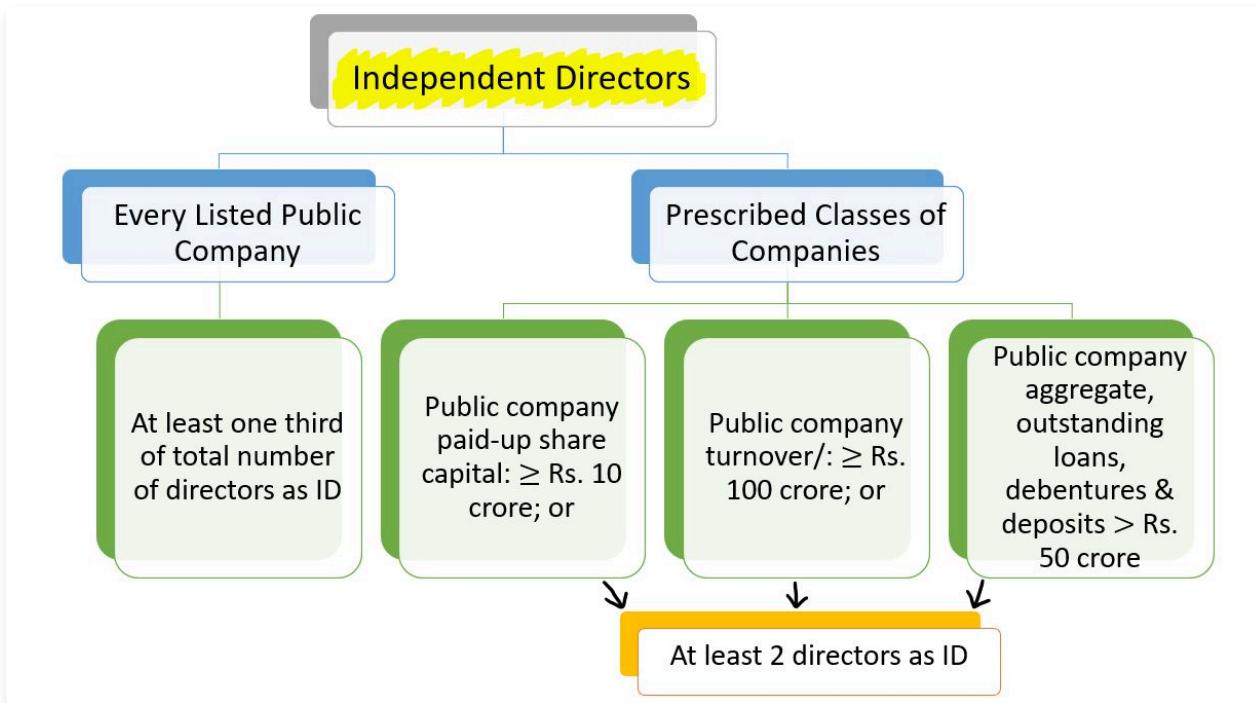
has/had no pecuniary relationship

- Other than remuneration
- Transaction not exceeding 10% of his total income
- With company, its holding, subsidiary or associate company, or their promoters or directors
- During 2 immediately PFY/during current FY

14. Appointment and Qualifications of Directors

Section 149 of the Act deals with provisions related to appointment and tenure of Independent Directors.

Every listed public company shall have at least 1/3rd of the total number of Directors as independent Directors and the Central Government may prescribe the minimum number of independent Directors in case of any class or classes of public companies.



Further, other than listed companies, the following class or classes of companies shall have at least 2 directors as independent directors:

- (i) the Public Companies having paid up share capital of Rs 10 crore or more; or
- (ii) the Public Companies having turnover of Rs 100 crore or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs 50 crore.

Tenure of Independent Directors

The Independent directors shall hold office for 5 consecutive years, however, they shall be entitled to reappointment by passing a special resolution with the disclosure in the Board's report.

Further, no independent director shall hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years of ceasing to become an independent director, provided that an independent director shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

An independent director shall not be entitled to any stock option but may receive remuneration by way of fee, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members. It is important to note that the provisions of retirement of directors by rotation shall not be applicable to appointment of independent directors.

14. Appointment and Qualifications of Directors

Section 166 of the Act provides following duties of Directors.

Duties of Directors

- | | |
|--|-----|
| Must act in accordance with the company's articles | (1) |
| Obligated to act in good faith, promoting the company's objects for the benefit of members | (2) |
| Must exercise their duties with due care, skill, and diligence | (3) |
| Prohibited from being involved in situations with direct or indirect conflicts | (4) |
| Must not seek undue gain or advantage | (5) |
| Cannot assign their office | (6) |

1. Directors **must act in accordance with the company's articles**.
2. Directors are **obligated to act in good faith, promoting the company's objects for the benefit of members**, and in the best interests of the company, employees, shareholders, the community, and the environment.
3. Directors **must exercise their duties with due care, skill, and diligence**, exercising independent judgment.
4. Directors are **prohibited from being involved in situations with direct or indirect conflicts** of interest with the company.
5. Directors **must not seek undue gain or advantage** for themselves, relatives, partners, or associates, and if found guilty, must repay the equivalent amount to the company.
6. Directors **cannot assign their office**, and any such assignment is void.

14. Appointment and Qualifications of Directors

Section 152 of the Act provides that in absence of any provision contained in AOA for the appointment of the first director, the **subscribers to the memorandum who are individuals shall be deemed to be the first directors** of the company, until the directors are duly appointed.

In case of OPC, an individual, being member shall be deemed to be its first director, until the director(s) are duly appointed by the member.

Unless provided otherwise, every director shall be appointed by the company in general meeting. No person shall be appointed as a director of a company unless he has been allotted DIN (Director Identification Number). Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his DIN and a declaration that he is not disqualified to become a director.

A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within 30 days of his appointment.

Directors liable to retire by rotation

Unless the articles provide for the retirement of all directors at every AGM, not less than 2/3rd of the total number of directors of a public company (excluding independent directors) shall be persons whose period of office is liable to be determined by retirement of directors by rotation.

At every subsequent AGM, after the first AGM, 1/3rd (or the number nearest to 1/3rd) of such directors who are liable to retire by rotation, shall retire from office. The directors to retire by rotation at every AGM shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall be determined by lot.

14. Appointment and Qualifications of Directors

If the office of any director appointed by the company in general meeting is vacated before his term of office expires, the resulting casual vacancy may be filled by the Board at Board Meeting which shall subsequently be approved by the members in the immediate next general meeting.

The person so appointed shall hold office only up to the day up to which the director in whose place he has been appointed, would have held office, if he had not vacated as aforesaid. Where a person appointed by the Board vacates his office, it is not a case of casual vacancy and cannot be filled by the Board in the place.

14. Appointment and Qualifications of Directors

A person shall not be eligible for appointment as a director of a company, if:

- (a) he is of **unsound mind** and stands so declared by a competent court;
- (b) he is an **undischarged insolvent**;
- (c) he has applied to be adjudicated as an **insolvent** and his application is pending;
- (d) he has been **convicted by a court** of any offence and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence.

Note that if a person has been sentenced to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company.

- (e) an **order disqualifying him** for appointment as a director has been **passed by a Court** or Tribunal and the order is in force;
- (f) he has **not paid any calls** in respect of any shares of the company held by him, whether alone or jointly with others, **and 6 months have elapsed** from the last day fixed for the payment of the call;
- (g) he has been **convicted of the offence dealing with related party transactions** at any time during the preceding 5 years;
- (h) he has **not complied with the requirement of DIN**;
- (i) he **accepts directorships exceeding the maximum number of directorships**.

Further, no person who is or has been a director of a company which (a) has not filed financial statements or annual returns for any continuous period of 3 financial years; or (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do so.

14. Appointment and Qualifications of Directors

Section 167 of the Act lists out the circumstances under which the office of a Director becomes vacant.

The office of a director shall become vacant in case:

- (a) he **incurs any of the disqualifications** specified;
 - (b) he **absents himself** from all the meetings of BOD held during a period of 12 months with or without seeking leave of absence of the Board;
 - (c) he **acts in contravention** of provisions of disclosure of interest;
 - (d) he **fails to disclose his interest** in any contract or arrangement in which he is directly or indirectly interested;
 - (e) he **becomes disqualified by an order** of a court or the Tribunal;
 - (f) he is **convicted by court** of any offence and sentenced to imprisonment for not less than 6 months;
 - (g) he is **removed** in pursuance of the provisions of this Act;
 - (h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, **ceases to hold such office** or other employment in that company.
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14. Appointment and Qualifications of Directors

Director may be giving a notice in writing to company

Board shall on receipt take note of the same

Company shall within 30 days from receipt, intimate the Registrar & post the information on its website, if any.

Company shall also place the fact of such resignation in BoD's Report laid in immediately following GM

Director may forward a copy of his resignation with reasons to Registrar within 30 days of resignation

A director may resign from his office by giving notice in writing to the company and the Board. Where all the directors of a company resign from their offices, or vacate their offices, the promoter or, in his absence, the Central Government shall appoint the required number of directors, who shall hold office till the directors are appointed by the company in general meeting.

14. Appointment and Qualifications of Directors

Section 169 of the Act provides that a company may, by ordinary resolution, remove a director before the expiry of the period of his office. This provision is applicable regardless of the way in which the director concerned was appointed and notwithstanding anything contained in AOA or any agreement with the director concerned.

An independent director re-appointed for 2nd term shall be removed by the company only by passing a special resolution.

15. Meetings of Board and its Powers

Chapter XII (Sec. 173 to Sec. 195) of the Act deals with Meetings of Board and its Powers.

The relevant sections from Chapter XII are given next.

15. Meetings of Board and its Powers

Holding of BM

First BM

Within 30 days of the date of its Incorporation

Subsequent BMs

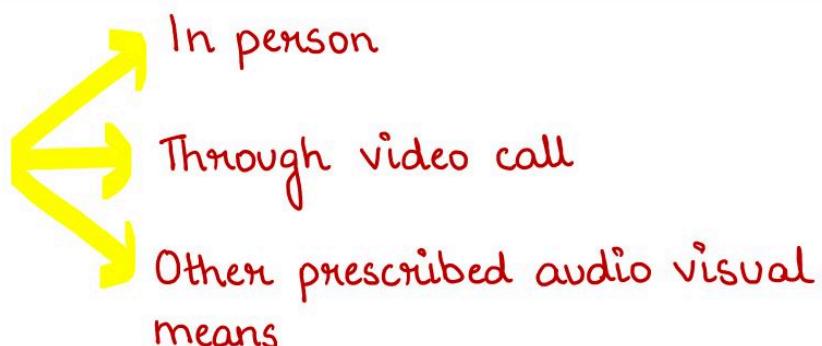
Thereafter hold minimum 4 meetings every year with not a gap of more than 120 days between two consecutive board meetings



The Act provides the following provisions in relation to frequency of Board Meetings.

- First Board meeting should be held within 30 days of the date of incorporation.
- Thereafter, there shall be minimum of 4 Board meetings every year and not more than 120 days shall intervene between 2 consecutive Board meetings.
- An OPC, small company and dormant company shall hold at least 1 Board Meeting in each half of a calendar year and the gap between the 2 meetings is not less than 90 days.
- OPC with only one director on its Board are exempted from the above provision.

Directors may attend BM



Notices of Meetings of the Board/ Committees

A meeting of the board shall be called by giving

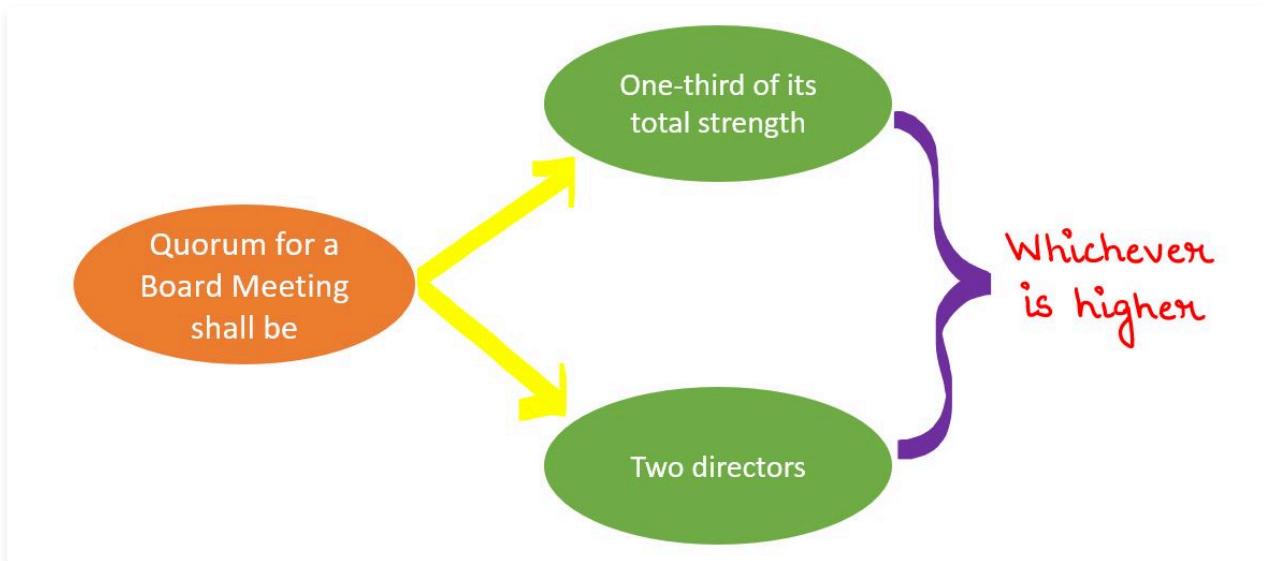
- Not less than seven days' notice in writing
- To all the directors at registered address
- Sent by hand delivery/by post/by electronic means

The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means. A meeting of the Board shall be called by giving not less than 7 days' notice in writing to every director at his address registered with the company.

However, if there's an urgent matter, a meeting can be called with shorter notice, but at least one independent director must be present. If independent directors are absent, decisions made at the meeting must be shared with all directors and will only be final after approval by at least one independent director.

15. Meetings of Board and its Powers

Section 174 of the Act deals with provisions related to quorum for Board Meetings.



Quorum for Board Meetings

The quorum for a meeting of the Board of Directors shall be 1/3rd of its total strength or 2 directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum.

The Act lays down only minimum number of directors to form a quorum, however the company by its articles can provide for a higher number of quorum. Further, it is to be noted that any fraction of a number shall be rounded off as one and "total strength" shall not include directors whose places are vacant.

Quorum in case Directors are interested

Where in a Company (other than a private company) at any time, the number of interested directors exceeds or is equal to 2/3rd of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than 2, shall be the quorum during such time.

Quorum for Section 8 Companies

For Section 8 Companies, the quorum for a meeting of the Board of Directors of a company shall be either 8 members or 25% of its total strength, whichever is less. The quorum shall not be less than 2 members.

Unless the articles of the company otherwise provide,

the meeting shall automatically stand adjourned

- to the same day
- at the same time & place
- in the next week,

if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time & place

Where a meeting of the Board could not be held for want of quorum, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

What if adjourned meeting also lacks quorum

If the Board Meeting is adjourned for want of quorum and at the adjourned Board meeting also no quorum is present, meeting stands dissolved. Adjourned Board meetings are the continuation of the original Board Meeting. Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

Exemption

OPC with only one director on its Board are exempted under this section.

15. Meetings of Board and its Powers



The Board may delegate any of its powers to committees consisting of such member(s) of its body as it thinks fit.

A committee, so appointed, may elect a chairman of its meetings and, if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the meeting, the members present may choose one of their members to be chairman of the meeting.

Monetary Thresholds for constituting Committees of the Board in different types of companies is given in the table.

Type of Company	CSR Committee	Audit Committee	Nomination and Remuneration Committee
Listed Company	Mandatory in all types of companies meeting below criteria: • Net worth of Rs. 500 Crores or more OR • Turnover of Rs. 1000 Crores or more OR • Net profit of Rs. 5 Crores or more	In Listed Companies - No threshold; Both Audit Committee and Nomination & Remuneration Committee mandatorily required	
Public Limited Companies		All public limited companies* having: • Paid-up Capital of Rs. 10 Crores or more OR • Outstanding loans/ deposits /debentures of Rs. 50 Crores or more OR • Turnover of Rs. 100 Crores or more should constitute Audit Committee and Nomination & Remuneration Committee	
Private Limited Companies		In private companies – No Requirement of Audit Committee and Nomination & Remuneration Committee	
<p>*Companies covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014. Also, these Companies must have 2 Independent Directors on their Board.</p>			

Audit Committee (Sec. 177)

The Audit Committee shall consist of a minimum of 3 directors with independent directors forming majority and also majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand the financial statement.

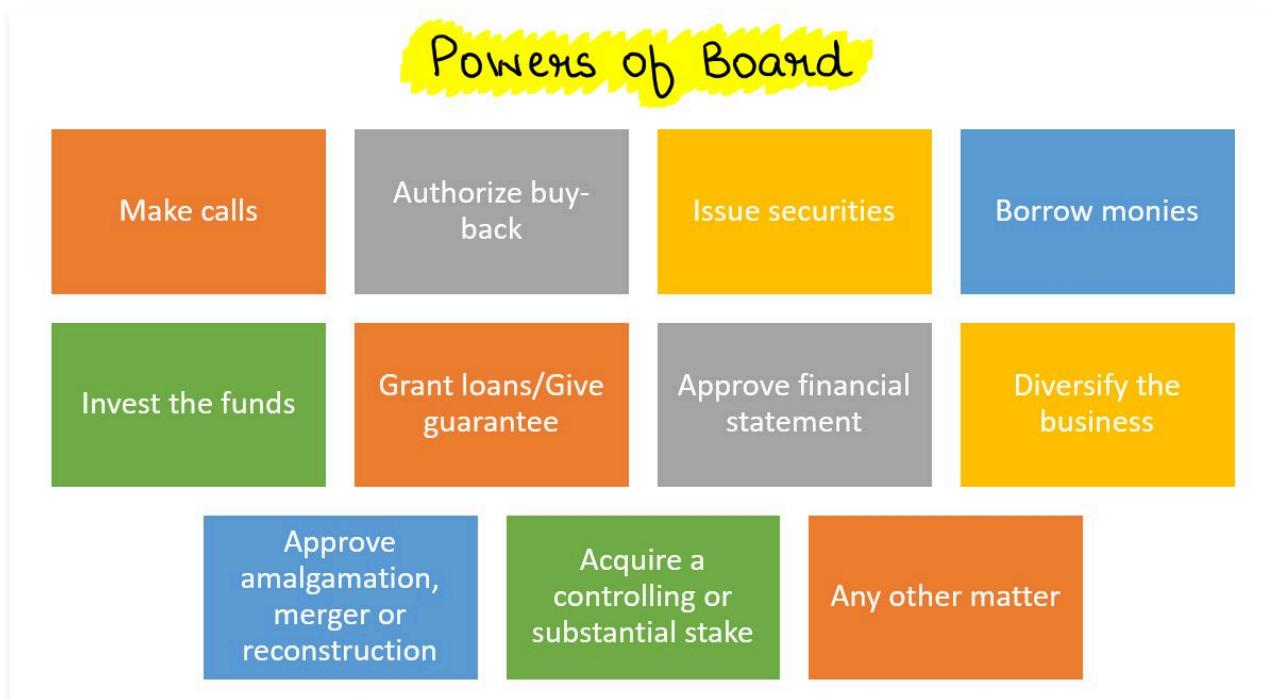
Nomination and Remuneration Committee (Sec. 178)

It shall consist of 3 or more non-executive directors out of which not less than ½ shall be independent directors. The chairperson of the company (whether executive or non-executive) may be appointed as a member of this Committee but shall not chair such Committee.

The company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute such committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. The Committee shall consider and resolve the grievances of security holders of the company.

15. Meetings of Board and its Powers

Section 179 of the Act lays down that the Board may by Board Resolution, delegate its powers to any committee of directors, MD, the manager or any other principal officer of the company.



The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise buy-back of securities;
- (c) to issue securities, including debentures, whether in or outside India;
- (d) to borrow monies (except in case of banking Companies);
- (e) to invest the funds of the company;
- (f) to grant loans or give guarantee or provide security in respect of loans;
- (g) to approve financial statement and the Board's report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;
- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed.

16. Appointment and Remuneration of Managerial Personnel

Chapter XIII (Sec. 196 to Sec. 205) of the Act deals with the provisions related to Appointment and Remuneration of Managerial Personnel.

The relevant sections from Chapter XIII are given next.

16. Appointment and Remuneration of Managerial Personnel

Section 196 of the Act puts restriction on the simultaneous appointment of MD and a Manager in a company.

Company shall not appoint/employ at the same time a MD and a Manager

So appoint either
MD / Manager

Tenure → Max 5 yrs.

Further, no company shall appoint or re-appoint any person as MD, WTD or manager for a term exceeding 5 years at a time and no such reappointment shall be made earlier than 1 year before the expiry of his term.

Disqualification of MD/ WTD/ Manager

The Act provides that no company shall appoint or continue the employment of any person as MD, WTD or Manager who:

- (a) is below the age of 21 years or has attained the age of 70 years (in case of appointment of person above 70 years, passing of Special Resolution is necessary).
- (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (c) has at any time suspended payment to his creditors, or
- (d) has at any time been convicted by a court of an offence and sentenced for more than 6 months.

Limits on overall managerial remuneration in a public company

Conditions	Maximum remuneration in any Financial Year	Conditions when remuneration can exceed
Overall limit	115 of net profits of the company for that financial year	Company in GM may authorize payment of remuneration exceeding 11% subject to provisions of Sch. V
If there is 1 MD/ WTD/ Manager	5% of the net profits of the company for that year	With the approval of the company in GM by SR, this limit may be exceeded
If there is more than 1 MD/ WTD/ Manager	10% of the net profits	
If there are directors who are neither MD nor WTDs	1% of the net profits of the company, if there is a MD or a WTD	Approval of the company in GM by SR is required
If there are directors who are neither MD nor WTDs	3% of the net profits of the company, if there is no MD or a WTD	

According to Section 197 of the Act which provides for Overall Maximum Managerial Remuneration and Managerial Remuneration in case of absence or inadequacy of profits, the total managerial remuneration payable by a public company, to its directors, including MD and WTD, and its manager for any financial year shall not exceed 11% of the net profits for that financial year.

However, the company in general meeting may authorize the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V.

Except with the approval of the company in general meeting by a special resolution:

- the remuneration payable to any one MD, WTD or manager shall not exceed 5% of the net profits of the company and
- if there is more than 1 such director, remuneration shall not exceed 10% of the net profits to all such directors and manager taken together;
 - the remuneration payable to directors who are neither MDs nor WTDs shall not exceed:
 - 1% of the net profits of the company, if there is a MD or WTD director or manager;
 - 3% of the net profits in any other case.
- Where a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any MD or WTD or manager, by way of remuneration any sum (excluding any fees payable to directors for attending company's meetings) except in accordance with the provisions of Schedule V.
- A director may receive sitting fees for attending meetings not exceeding Rs. 1 Lakh per meeting.
- A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or both.
- The director drawing remuneration in excess of the prescribed limits without approval is required to refund such sums to the company within 2 years.

16. Appointment and Remuneration of Managerial Personnel

The KMP includes MD or CEO or Manager and in their absence, WTD, CS and CFO.



The Act makes it abundantly clear that only certain prescribed classes of companies (having paid up share capital of Rs. 10 crore or more) are mandatorily required to appoint whole-time KMP. But it does not mean that any other company cannot appoint KMP.

16. Appointment and Remuneration of Managerial Personnel

Companies that
are required to
conduct
Secretarial Audit

- Every listed company
- Every public company having a paid-up share capital of Rs. 50 crore or more; or
- Every public company having a turnover of Rs. 250 crore or more
- Every company having outstanding loans or borrowings from banks or public financial institutions of 100 crore rupees or more

Every listed company and a public company having paid-up share capital of Rs. 50 Crore or more OR turnover of Rs. 250 Crore or more or every company having outstanding loans or borrowings from banks or public financial institutions of Rs. 100 crore or more shall annex with its Board's report, a secretarial audit report, given by CS in practice, in prescribed form.

17. Winding up of Companies

The procedures for Winding up of companies are provided under Chapter XX of the Companies Act, 2013 and Insolvency and Bankruptcy Code of India, 2016 (IBC).

Winding up of Companies

Under Companies Act, 2013

- Winding up by Tribunal (Section 270-303)

Under Insolvency & Bankruptcy Code, 2016

- Liquidation process during or after Corporate Insolvency Resolution Process (Section 33-54)
- Voluntary Liquidation (Section 59)

Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. 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. Winding up does not necessarily mean that the company is insolvent. A perfectly solvent company may be wound up by the approval of members in a general meeting.

According to 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, as applicable.

Winding up vis-a-vis Dissolution

There are differences between winding up and dissolution. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

17. Winding up of Companies

Winding-up is the process by which management of a company's affairs is taken out of its directors' hands, its assets are realized by a liquidator and its debts are realized and liabilities are discharged out of proceeds of realization and any surplus of assets remaining is returned to its members or shareholders.

Cases for Winding Up by Tribunal

- If company, by SR, resolved to wound up by Tribunal
- If company acted against interests of sovereignty/ integrity of India
- If Tribunal is of opinion that affairs of company conducted in fraudulent manner & that company be wound up
- If company made default in filing with ROC, its financial statements / annual returns for immediately preceding 5 consecutive FY
- If Tribunal opines that it is just and equitable that company should be wound up

At the end of the winding up, the company will have no assets or liabilities and it will, therefore, be simply a formal step for it to be dissolved, that is, for its legal personality as a corporation to be brought to an end.

Grounds for compulsory winding up

A company on petition may be wound up by the Tribunal in following cases (Sec. 271):

- If the company has, by special resolution, resolved to be wound up by the Tribunal;
- If the company has acted against the interests of the sovereignty and integrity of India;
- If on an application made by the Registrar or any other person authorized by the Central Government, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner and that it is proper that the company be wound up;
- If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding 5 consecutive financial years; or
- If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Any petition filed by the company shall be accompanied by its statement of affairs.

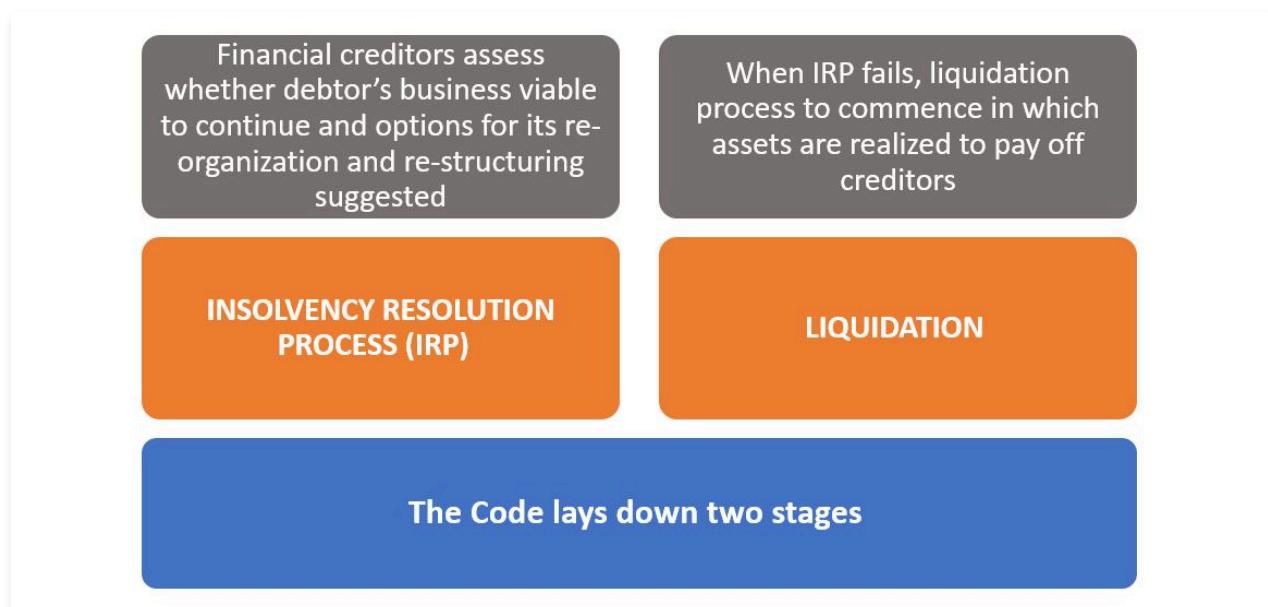
A copy of the petition shall also be filed with the Registrar.

Who can file petition for winding up

For commencing proceedings, petition is to be made to Tribunal by any of the following persons (Sec. 272):

- the company;
 - any contributory or contributories;
 - all or any of the persons specified in clauses (a) and (b);
 - the Registrar (with previous approval of Central Government);
 - any person authorised by the Central Government in that behalf; or
- (f) in case company has acted against the interests of the sovereignty and integrity of India, by the Central Government or a State Government.

17. Winding up of Companies



The Insolvency and Bankruptcy Code (IBC), 2016 consolidates the existing framework by creating a single law for insolvency and bankruptcy and to provide for time bound insolvency resolution mechanism. The Code applies to companies, partnerships, LLPs, individuals and any other body, which the central government may specify. IBC received Presidential assent on 28th May, 2016.

Following points are noteworthy, in this respect.

- IBC consists of 5 parts and 11 Schedules. Part 2 deals with insolvency resolution and liquidation for corporate persons (and not the Companies Act, 2013).
- Financial service providers are not included in the ambit of IBC.
- To ensure a formal and time bound insolvency resolution process, the Code creates a new institutional framework consisting of the **Insolvency and Bankruptcy Board of India (IBBI)**, **Adjudicating Authorities (AAs)**, **Insolvency Professionals (IPs)**, **Insolvency Professional Agencies (IPAs)** and **Information Utilities (IUs)**.
- The Code provides for the constitution of a new insolvency regulator i.e., the Insolvency and Bankruptcy Board of India (IBBI). Its role includes overseeing the functioning of insolvency intermediaries as well as regulating the insolvency process. The members of the Board include representatives from the Central Government as well as the Reserve Bank of India.
- The Code proposes **2 tribunals** to adjudicate insolvency resolution cases. In the case of insolvency of companies and LLPs, the adjudication authority is **National Company Law Tribunal (NCLT)**, while the cases involving individuals and partnership firms are handled by the **Debts Recovery Tribunals (DRTs)**.
- To initiate an insolvency process for corporate debtors, the default should be at least Rs. 1,00,00,000.
- In resolution process for corporate persons, the Code proposes 2 independent stages:
 - **Insolvency Resolution Process**, during which the creditors assess the viability of debtor's business and the options for its rescue and revival.
 - **Liquidation**, in case the insolvency resolution process fails or financial creditors decide to wind up and distribute the assets of the debtor.
- A **financial creditor** (for a defaulted financial debt) or an **operational creditor** (for an unpaid operational debt) can initiate an Insolvency Resolution Process (IRP) against a corporate debtor, who has defaulted in payment of debts. The defaulting corporate debtor, its shareholders or employees, may also initiate voluntary insolvency proceedings.
- The Code provides for a **time bound IRP for Corporate Debtors**, which is required to be completed within 180 days (subject to a one-time extension by 90 days) and mandatorily be completed within 330 days from insolvency commencement date. If the resolution plan does not get finalized or is rejected by NCLT on technical grounds, then assets of debtor are sold to repay his outstanding dues.
- Section 59 in Chapter V of Part 2 of IBC provides for the initiation of **voluntary liquidation** proceedings by a corporate debtor which has not defaulted on any debt due to any person. Thus, in order to initiate voluntary liquidation proceedings under Chapter V of Part 2 of the Code, a corporate person who intends to liquidate itself voluntarily, must have not committed any default.

17. Winding up of Companies

It is to be noted that IBBI (Voluntary Liquidation Process) Regulations, 2017 shall apply to the voluntary liquidation of corporate persons under Part 2 of IBC. Further, MCA has notified Companies (Winding-Up) Rules, 2020 on 24th January, 2020. These rules shall apply to winding-up under the Companies Act, 2013. These rules will come into force from 1st April, 2020.

The Rules are applicable to companies going into winding-up for the circumstances mentioned under Section 271 as well as summary procedure for winding-up of companies having specified thresholds.

These rules allow following classes of companies to close their business by making a winding-up application to Central Government without going to NCLT.

- Companies accepting deposit and having total outstanding deposits up to Rs. 25 Lakhs.
- Companies having total outstanding loan including secured loan up to Rs. 50 Lakhs.
- Companies having total turnover up to Rs. 50 Crores.
- Companies with paid-up capital up to Rs. 1 Crore.

In addition, Companies having book value of assets up to Rs.1 Crore, can also approach Central Government for liquidation.

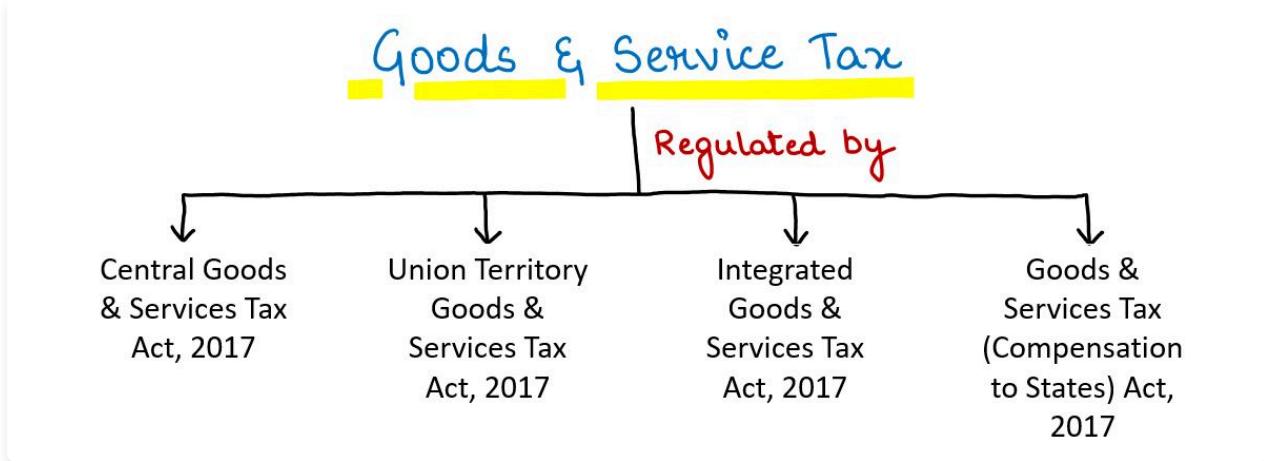
18. List of Schedules to the Act

List of Schedules to the Act is as follows.

SCHEDULE I	Memorandum of Association & Article of Association
SCHEDULE II	Useful lives to compute depreciation
SCHEDULE III	General instruction for preparation of Balance Sheet or Statement of Profit & Loss of a Company
SCHEDULE IV	Code for Independent Directors
SCHEDULE V	Conditions to be fulfilled for the appointment of a Managing or WTD or a Manager without the Approval of Central Government
SCHEDULE VI	Infrastructural Projects or Infrastructural Facilities
SCHEDULE VII	Activities which may be included by Companies in their CSR Policies

1. Introduction

The Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM) recommended in 2005 introduction of a comprehensive tax on all goods and service replacing Central level VAT (Value Added Tax) and State level VATs. It recommended replacing all indirect taxes except the customs duty with VAT on all goods and services with complete set off in all stages of making of a product. With effect from 1st July, 2017, Goods and Service Tax (GST) was introduced, which was extended to Jammu and Kashmir on 8th July, 2017.



In this respect, the Parliament enacted 4 Acts:

- (i) The Central Goods and Services Tax Act, 2017 (CGST Act);
- (ii) The Union Territory Goods and Services Tax Act, 2017 (UTGST Act);
- (iii) The Integrated Goods and Services Tax Act, 2017 (IGST Act); and
- (iv) The Goods and Services Tax (Compensation to States) Act, 2017.

2. Concept of GST

GST is a value-added tax imposed on the supply, encompassing the manufacture or sale of goods and the provision of services.

It establishes an inclusive and uninterrupted chain of tax credits, extending from the producer's or service provider's stage to the retailer's or consumer's level. This ensures that taxation occurs solely on the value added at each stage of the supply chain. Suppliers at each level can credit the GST paid on their purchases against the GST they owe on the goods and services they supply.

Consequently, only the final consumer bears the GST from the last supplier, enjoying set-off benefits at preceding stages. The GST system avoids tax on tax or the cascading of taxes.

Let us understand this with the help of an example.

Manufacturer (Rs)	Distributor (Rs)	Retailer (Rs)	Consumer (Rs)
Cost = 1,00,000 GST @ 18% = 18,000	Cost = 1,00,000 Profit = 11,200 Sale Price = 1,11,200 GST @ 18% = 20,016	Cost = 1,11,200 Profit = 24,640 Sale Price = 1,35,840 GST @ 18% = 24,451.20	Cost = 1,60,291.20 (1,35,840 + 24,451.20)
Input Tax Credit = Nil	Input Tax Credit = 18,000	Input Tax Credit = 20,016	Input Tax Credit = Nil
Paid to Government GST = 18,000	Paid to Government GST = 2,016 (Output tax – Input tax)	Paid to Government GST = 4,435.20 (Output tax – Input tax)	Tax borne by Consumer 18,000 + 2,016 + 4,435.20 = 24,451.20
Value addition = 1,00,000 GST @ 18% = 18,000	Value addition = 11,200 GST @ 18% = 2,016	Value addition = 24,640 GST @ 18% = 4435.20	Value addition = Nil

3. Objectives and Benefits of GST

GST is a value-added tax imposed on goods and services, aiming to consolidate various indirect taxes into a unified taxation system. The primary objectives include broadening the tax base, eliminating tax cascading, enhancing compliance, reducing economic distortions due to interstate tax variations, and simplifying tax procedures.

GST specifically benefits small traders and entrepreneurs through increased registration thresholds, a single-state registration requirement, composition scheme advantages, and the creation of a seamless national market, enabling small enterprises to expand nationally with minimal investment.

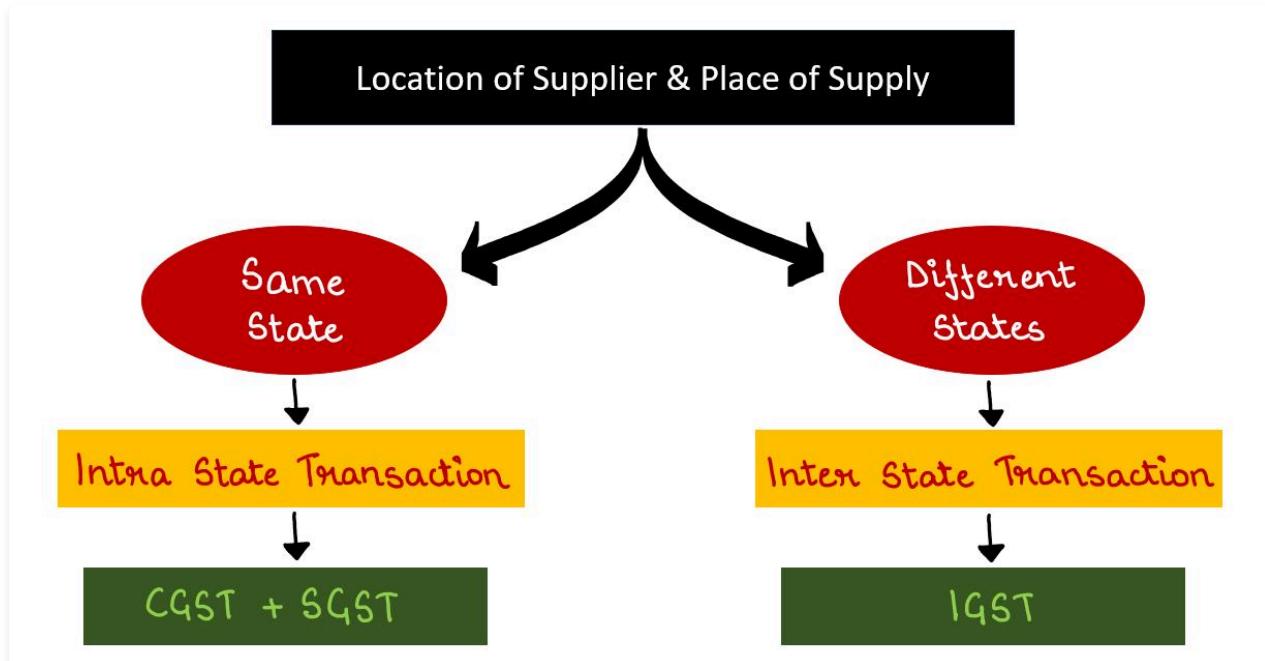
4. Working of Dual GST

India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. India has adopted a Dual GST model in view of the federal structure of the country.

GST is a destination-based tax applicable on all transactions involving supply of goods or services or both for a consideration subject to exceptions thereof.

GST in India comprise of:

- Central Goods and Services Tax (CGST) - levied and collected by Central Government
- State Goods and Services Tax (SGST) - levied and collected by State Governments/ Union Territories with Legislatures
- Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without Legislatures, on intra-state supplies of taxable goods and /or services.



Intra-state supply of Goods or services

As a general rule, where the location of the supplier and the place of supply of goods or services are in the same State/ Union territory, it is treated as intra-State supply of goods or services, respectively.

Inter-state supply of Goods or services

Further, where the location of the supplier and the place of supply of goods or services are in (i) 2 different states, or (ii) 2 different Union Territories, or (iii) a state and a Union Territory, it is treated as inter-State supply of goods or services, respectively.

Inter-State supply of taxable and /or goods are subject to Integrated Goods and Services Tax (IGST).

IGST is the sum total of CGST and SGST/ UTGST and is levied by the Centre on all inter-State supplies.

5. Legislative Framework

Power to levy Goods and Services Tax (GST) has been conferred by **Article 246A** of the Constitution which was introduced by **the Constitution (101st Amendment) Act, 2016**.

Further, **Article 269A** of the Constitution stipulates that Goods and Services Tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the GST Council. The amount so apportioned to a State shall not form part of the Consolidated Fund of India.

5. Legislative Framework

There is single legislation CGST Act, 2017 for levying CGST.

Similarly, Union Territories without Legislatures (i.e. Andaman and Nicobar Islands, Lakshadweep, Ladakh, Dadra and Nagar Haveli & Daman and Diu and Chandigarh) are governed by UTGST Act, 2017 for levying UTGST.

States and Union territories with their own legislatures (i.e. Delhi, Jammu and Kashmir and Puducherry) have their own GST legislation for levying SGST.

In spite of multiple SGST legislations, the basic features of law are uniform in all SGST legislations to preserve the essence of dual GST.

5. Legislative Framework

Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST.

Taxes subsumed at Central level

At the central level, following taxes are being subsumed under GST:

- Central Excise Duty;
- Duties of Excise (Medicinal and Toilet Preparations);
- Additional Duties of Excise (Goods of special Importance);
- Additional Duties of Excise (Textiles and Textile Products);
- Additional Duties of Customs (commonly known as CVD);
- Special Additional Duty of Customs (SAD);
- Service Tax;
- Cesses and surcharges in so far as they relate to supply of goods or services.

Taxes subsumed at State level

At the state level, following taxes are being subsumed under GST

- State VAT
- Entertainment Tax (except those levied by local authorities)
- Central Sales Tax
- Octroi and Entry Tax
- Purchase Tax
- Luxury Tax
- Taxes on lottery, betting and gambling
- Entry Tax (all forms)
- Taxes on advertisement

Taxes not subsumed

GST has not subsumed the following taxes within its ambit.

- Basic Customs Duty: These are protective duties levied at the time of Import of goods into India.
- Exports Duty: This duty is imposed at the time of export of certain goods which are not available in India in abundance.
- Road & Passenger Tax: These are in the nature of fees and not in the nature of taxes on goods and services.
- Toll Tax: These are in the nature of user fees and not in the nature of taxes on goods and services.
- Property Tax
- Stamp Duty
- Electricity Duty.

5. Legislative Framework

Implementation of GST in many countries was coupled with increase in inflation and the prices of the commodities. This happened in spite of the availability of the tax credit. This was happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering. National

The **Anti-profiteering Authority (NAPA)** was constituted under GST by the Central Government to examine the complaints of non-passing the benefit of reduced tax incidence.

Now NAPA has ceased to exist from December 2022 and all such matters will now be examined by the Competition Commission of India (CCI).

6. Definition of Goods and Services

The CGST Act defines Goods and Services as follows.

Goods

Goods means every kind of moveable property other than money and securities but includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Services

Services means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. Services include facilitating or arranging transactions in securities.

6. Definition of Goods and Services

GST is levied on all goods and services, **except** alcoholic liquor for human consumption and petroleum crude, diesel, petrol (motor spirit), ATF (Aviation Turbine Fuel) and natural gas.

Note that tobacco is subject to GST as well as central excise duty. Similarly, opium, Indian hemp and other narcotic drugs and narcotics are subject to GST as well as State excise duties.

However, real estate sector has been kept out of ambit of GST, i.e., GST will not be levied on sale/purchase of immovable property.

The concept of 'declared goods of special importance' under the Constitution is done away with. Presently, certain restrictions are placed on the powers of States in regard to tax on such goods.

6. Definition of Goods and Services

HSN (Harmonised System of Nomenclature) is used for classifying the goods under the GST. Chapters referred in the Rate Schedules for goods are the Chapters of the First Schedule to the Customs Tariff Act, 1975. A new Scheme of classification of services has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff).

SAC (Services Accounting Code) is used for classifying the services under the GST like HSN for goods.

6. Definition of Goods and Services

Apart from providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on essential goods and/or services.

7. GST Council



The GST council is the key decision-making body that will take all important decisions regarding the GST. The council will have representation from the central governments as well as all the state governments.

The Goods & Services Tax Council (GST Council) has been created in September 2016 under Article 279-A of the Constitution of India. It has its Secretariat office in New Delhi.

Composition of Council

The Council shall consist of the following members, namely:

- (a) the Union Finance Minister - Chairperson;
- (b) the Union Minister of State in charge of Revenue or Finance - Member;
- (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government - Members.

One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

8. Registration

Registration is the first step towards becoming GST compliant. Without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him.

Under GST, a supplier is normally required to obtain single registration in a State/ UT. However, where he has multiple places of business in a State/ UT, he has the option either to get a single registration for said State / UT [wherein it can declare one place as principal place of business (PPoB) and other branches as additional place(s) of business (APoB)] or to get separate registrations for each place of business in such State/ UT.

Further, Registration under GST is not tax specific, which means that there is single registration for all the taxes, i.e., CGST, STGST/ UTGST, IGST and GST compensation cess.

Every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply, if his aggregate turnover exceeds the threshold limit during a financial year.

Different threshold limits have been prescribed for various States and Union Territories depending upon the fact whether the supplier is engaged exclusively in supply of goods, or exclusively in supply of services or in supply of both goods and services.

The threshold limit of aggregate turnover prescribed for various States/UTs are as follows.

Threshold Limit	States
States with threshold limit of Rs. 10 Lakh for supplier of goods and/or services	Manipur, Mizoram, Nagaland, Tripura
States with threshold limit of Rs. 20 Lakh for supplier of both goods and/or services	Arunachal Pradesh, Meghalaya, Sikkim, Uttarakhand, Puducherry, Telangana
States with threshold limit of Rs 20 Lakh for exclusive supplier of services/ both goods and services and threshold limit of Rs 40 Lakh for exclusive supplier of goods making only intra-state supplies	All other states

However, in certain specified cases mandatory registration is required under GST irrespective of the quantum of aggregate turnover.

9. Input Tax Credit

Input Tax Credit (ITC) is considered to be the lifeline of the GST regime. It is the provisions of ITC which essentially make GST a value added tax, i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points. The scheme is designed to avoid cascading effect of taxes and make GST a destination-based tax. In other words, Input Tax Credit is the tax that a business pays on a purchase and that it can use to reduce its tax liability when it makes a sale. Thus, businesses can reduce their tax liability by claiming credit to the extent of GST paid on purchases.

Broadly, ITC is available on all inputs, input services and capital goods used for purposes of business of a taxable person. The exception is 'blocked credit', where ITC is not available, even when these goods or services are used for purposes of businesses. A business under 'composition scheme' cannot avail of input tax credit. ITC cannot be claimed for personal use or for goods that are exempt.

Every registered person shall be entitled to ITC charged on inward supply of goods and / or services. ITC will be available on goods and/or services which are used or intended to be used in the course or furtherance of the business. ITC will be credited in Electronic Credit Ledger.

Order of utilization of credit

There is a specified order in which ITC should be utilized. First IGST credit should be utilized towards IGST payment, and then towards payment of CGST and SGST/UTGST in any order and in any proportion.

After entire ITC of IGST is utilized, ITC of CGST should be utilized for payment of CGST and IGST in that order. Thereafter, ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order.

Credit of To be utilized for the payment of Utilized further for the payment of

IGST	IGST	CGST then, SGST/UTGST
CGST	CGST	IGST
SGST/UTGST	SGST/UTGST	IGST

It may be noted that **ITC of CGST cannot be utilized for payment of SGST/UTGST and vice versa**. Also, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully.

10. GST Common Portal

GSTIN

It refers to the unique GST Identification Number. Every taxpayer will be allotted a 15-digit GSTIN. Having PAN is mandatory to register under GST. The GSTIN is issued by Central Board of Indirect Taxes & Customs (CBIC)

Goods and Services Tax Network (GSTN) has been set up by the Government as a private company under erstwhile Section 25 of the Companies Act, 1956.

The GSTN would provide 3 front end services to the taxpayers namely,

1. registration,
2. payment and
3. return.

Besides providing these services to the taxpayers, GSTN would be developing back-end IT modules for States who have opted for the same. Infosys has been appointed as Managed Service Provider (MSP). The Central Government holds 24.5% stake in GSTN, while the state government holds 24.5% stake. The remaining 51% are held by non-Government financial institutions like HDFC Bank, ICICI Bank, NSE, LIC.

A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.

The functions of the GSTN include facilitating registration, forwarding the returns to Central and State authorities, computation and settlement of IGST, matching of tax payment details with banking network, providing various MIS reports to the Central and the State Governments based on the taxpayer return information, providing analysis of taxpayers' profile.

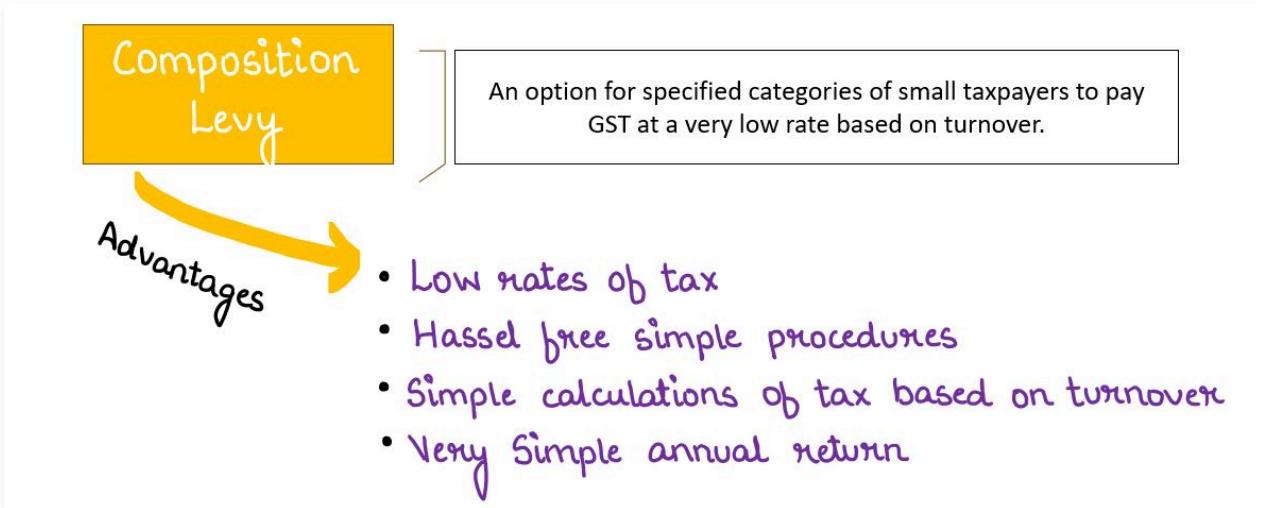
However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in (managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India). E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

Further, Invoice Registration Portal (IRP) is the website for uploading/ reporting of e-invoices by the notified persons (i.e., all registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than Rs. 10 crore are required to issue e-invoices).

IRP is managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.

11. Composition Scheme

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is upto a prescribed limit. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers.



Initially, the scheme was designed to benefit the small traders, manufacturers and restaurant service providers (not supplying alcoholic liquor for human consumption). However, subsequently, suppliers availing composition scheme were permitted to supply other services also, though only upto a small specified value.

Under this scheme, suppliers of goods have the option to pay tax at the concessional rate of 1% (CGST + SGST/UTGST) of the turnover and restaurant service providers (not supplying alcoholic liquor for human consumption) have the option to pay @ 5% (CGST + SGST/UTGST) of the turnover.

A registered person opting for composition levy for services shall pay tax @ 6% (CGST + SGST/UTGST) of the turnover of supplies of goods and services in the State or UT.

Turnover Limit for Composition Scheme for Goods

The aggregate turnover limit of Rs. 50 lakhs (in preceding year) has been provided to a registered person opting for composition scheme for goods. However, the Government has been empowered to increase the said limit of Rs. 50 Lakhs up to Rs. 1.5 crore, on the recommendation of the GST Council. In pursuance of the same, the turnover limit for Composition Scheme has been increased from Rs. 50 lakhs to Rs. 1.5 crore in March 2019.

The turnover limit for composition levy shall be Rs. 75 Lakhs in respect of 8 of the **Special Category States** namely Arunachal Pradesh, Uttarakhand, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim & Tripura.

In case of Special Category States of Assam, Himachal Pradesh and Jammu and Kashmir, the turnover limit will be Rs 1.5 crore only.

Thus, if the aggregate turnover of a supplier in a State/ UT other than Special Category States (except Assam, Himachal Pradesh and Jammu and Kashmir) is upto Rs 1.5 crore in the preceding financial year, said supplier is eligible for composition scheme for goods. Further, the aggregate turnover is computed on all India basis for a person having PAN.

Turnover Limit for Composition Scheme for Services

Similarly, a registered person opting for composition scheme for services should have an aggregate turnover up to Rs. 50 Lakh in the preceding FY and he can avail the benefit of said scheme in the current FY till the time his aggregate turnover in the current FY does not exceed Rs. 50 Lakh.

12. E-way bill

E - WAY BILL SYSTEM

29AAACL2836L1Z8-LAWREL NAVIGATION MAURITIUS LTD

Print Consolidated E-Way Bill Form

1. Consolidated E-Way Bill Details

Consolidated E-Way Bill No	171000000115
Date:	05/09/2017
Transporter ID	29AAACL2836L1Z8
Vehicle No	AB12AB1234
From	BANGALORE-KARNATAKA

2. Item Details

S.No.	E-WayBill No. & Date	E-WayBill By	Document No. & Date	Value	To
1.	121000000839 - 05/09/2017	29AAACL2836L1Z8	123 - 05/09/2017	1000.00	ASDFG - KARNATAKA - 560064
2.	181000000840 - 05/09/2017	29AAACL2836L1Z8	1234 - 05/09/2017	1000.00	ASDFG - KARNATAKA - 560032

Print Exit

E - Way Bill

E-way bill is an electronic document generated on the GST portal evidencing movement of goods. The Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre, Ministry of Electronics & Information Technology].

It is generated online, under the GST system, when goods of the value of more than Rs. 50,000 are shipped inter-state or intra-state. The E-way bill must be raised before the goods are shipped and should include details of the goods, their consignor, recipient and transporter. The transporter has to carry the invoice and the copy of the E-way bill as support documents for the movement of goods. He can also carry the E-way bill number, mapped to an RFID (Radio Frequency Identification Device).

13. GSPs/ ASPs



GSTN has selected certain IT enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs develop applications to be used by taxpayers for interacting with the GSTN.

They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services. They customize products that address the needs of different segment of users. GSPs may take the help of Application Service Providers (ASPs), who act as a link between taxpayers and GSPs.

14. Accounts and Records

Assessment in GST is mainly focused on self-assessment by the taxpayers themselves. Every taxpayer is required to self-assess the taxes payable and furnish a return for each tax period, i.e., the period for which return is required to be filed. The compliance verification is done by the Department through scrutiny of returns, audit and/or investigation.

Every registered person shall keep and maintain all records at his principal place of business. Responsibility has been casted on the owner or operator of warehouse or godown or any other place used for storage of goods and on every transporter to maintain specified records even if they are not registered under GST.

It is not mandatory to maintain the accounts in electronic form. Further, there is no prescribed format for maintaining the accounts.

E-ledgers

The introduction of E-ledgers is a unique feature under the GST regime.

E-ledgers are of two types. **One set** is prepared and updated by the Tax payer – Electronic Cash Ledger and Electronic Credit Ledger. **Second set** is ‘Electronic Liability Register’ prepared and updated on the basis of returns furnished by the Registered Person or the amount of tax, interest, penalty or any other amount payable as determined.

Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash and Input Tax Credit Ledger) and an electronic tax liability register will be automatically opened and displayed on his dashboard at all times.

Note that CGST Act, 2017 provides for deduction of tax at source in certain circumstances, specifically listing the deductors who are mandated by Central Government to deduct tax at source, the rate of tax deduction and the procedure for remittance of the tax deducted. Similarly, the Act provides for collection of tax at source in certain circumstances, specifically listing the tax collecting persons who are mandated by the Central Government to collect tax at source, the rate of collection and the procedure for remittance of the tax collected.

The amount of tax deducted/ collected is reflected in the Electronic Cash Ledger of the deductee/ supplier, respectively.

15. Compensation Cess



A GST Compensation Cess at specified rate has been imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply.

Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of GST. Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force. However, its levy and collection has been extended till 31st March 2026.

The Goods and Services Tax (Compensation to States) Act, 2017 provides for compensation to the States for the loss of revenue arising on account of implementation of the goods and services tax.

Compensation will be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force. The growth rate of revenue for a State during the five-year period is assumed to be 14% per annum.

The base year tax revenue consists of the states' tax revenues from:

- (i) State Value Added Tax (VAT),
- (ii) central sales tax,
- (iii) entry tax, octroi, local body tax,
- (iv) taxes on luxuries,
- (v) taxes on advertisements, etc.

16. Taxable Event

Before levying any tax, taxable event needs to be ascertained.

Taxable Event under GST

Supply of goods or services or both made for consideration in the course of furtherance of business.

A taxable event is any transaction or occurrence that results in a tax consequence. GST Law, by levying tax on the 'supply' of goods and/or services, departs from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Law, i.e., sale, manufacture and service, respectively.

Thus, taxable event under GST law is supply of goods or services or both. It means **no supply, no GST**.

16. Taxable Event

Generally the supplier of goods or services is liable to pay GST.

Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. Under reverse charge mechanism, the statutory liability to deposit GST and undertaking compliance requirements, i.e., to obtain registration under GST, deposit tax with the Government, filing returns, etc., shifts from supplier to recipient.

Note that **forward charge** means where supplier is liable to pay tax.

16. Taxable Event

CGST Act states that supply includes all forms of supply of goods or services of both. Supply of anything other than goods or services like money, securities etc. does not attract GST.

Parameters

Supply should be in the course or furtherance of business of goods and services for consideration

Further, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for consideration in the course or furtherance of business.

Features of 'supply' under GST

Supply should have the following features under GST.

1. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory.

Note that the goods or services which are supplied free of cost (without any consideration) shall not be treated as 'supply' except in case of activities mentioned in Schedule I of the CGST Act.

In addition, section 7(1A) of the Act classified certain activities/ transactions constituting supply, either as supply of goods or supply of services.

Schedule II to the CGST Act contains the list of activities or transaction which have been classified either as supply of goods or supply of service.

Schedule III to the specifies transactions/ activities which shall neither treated as supply of goods nor as supply of services. Thus, the activities / transactions specified under this schedule can be termed as Non-supplies under the GST regime. In a way, it is a 'negative list' for the purposes of taxation in GST.

Deemed Supply

Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration (Schedule 1 of CGST Act).

In the following 4 cases, supplies made without consideration, will be treated as supply:

- (a) Permanent Transfer/Disposal of Business Assets and input tax credit has been availed on such assets.
- (b) Supply between related person or distinct persons will qualify as supply provided it is made in the course or furtherance of business.
- (c) Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal.
- (d) Import of services by a taxable person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business.

Note that services provided by the club/association to its members for consideration is a supply. Further, import of goods or services shall be treated as inter-state supplies and would be subject to IGST.

Composite Supply



It consists of 2 or more supplies naturally bundled in conjunction with each other, one of which is principal supply. For example, charger supplied alongwith mobile phones.

Tax liability in case of composite supply shall be rate of principal supply.

Mixed Supply

It consists of 2 or more supplies for a single price not naturally bundled. Though such supplies can be supplied independently, still they are supplied together. For example, a gift pack comprising of chocolates, candies, sweets and balloons.



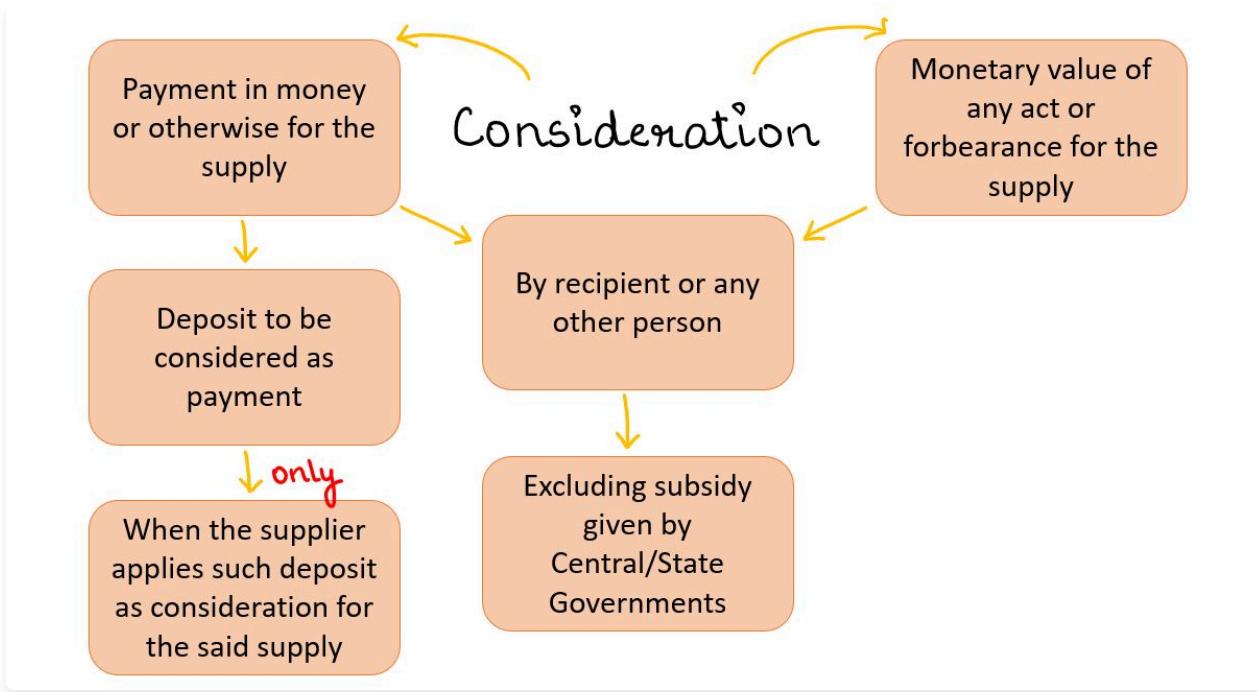
Tax liability in case of mixed supply shall be the rate applicable to the supply that attracts highest rate of tax.

Taxable Supply

For a supply to attract GST, the supply must be taxable. Taxable supply means any supply of goods or services or both which is liable to tax under the GST law. On the other hand, exempt supply means supply of any goods or services or both which attract nil rate of tax or which may be wholly exempt from tax.

16. Taxable Event

Consideration need not always be in the form of money. It can be money or in kind. It covers anything which might be possibly done, given or made in exchange for something else.



Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central or State Government is not considered as consideration.

In case of gift of donation, GST is not leviable where all the following 3 conditions are satisfied namely:

1. Gift or donation is made to a charitable organization
2. Payment has the character of gift of donation
3. Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.

16. Taxable Event

GST is a destination-based consumption tax, i.e., the tax is levied on the consumption of supply at the destination thereof or at the point of consumption of such supply.

Place of Supply

The 'place of supply' denotes the place where the supply is consumed. Thus, place of supply determines the jurisdiction where the tax revenue should reach.

The determination of 'place of supply' and the 'location of supplier' is essential to ascertain the nature of supply, i.e., whether a supply is intra-state or inter-state. In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/ Union Territory or else would attract IGST, if it is an inter-State supply.

Further, the general rule provides that the place of supply of services made to a registered person is the location of the person receiving the services. Since the supplier has the GSTIN of the person receiving the service, the location of such GSTIN is the place of supply.

However, if the service is supplied to an unregistered person, the place of supply is:

- (a) the location of such unregistered person, if the address of the unregistered person is available in the records of the supplier;
- (b) the location of the supplier of service, in other cases.

Time of Supply

Time of supply means the point in time when goods/services are considered supplied or when the liability to pay tax arises. A supply consists of elements that can be separated in time, like purchase order/ agreement, despatch (of goods), delivery (of goods) or provision or performance (of services), entry in the records, payment, and entry of the payment in the records or deposit in the bank. Therefore, it is important to know that at what point of time in the aforesaid transaction, GST becomes payable.

The CGST Act provides separate provisions for time of supply for goods and services and the Act also provides for the method of determining the time of supply, in case, there is a change in the rate of tax on supply of goods or services.

Events like issuing of invoices, receipt of payment, provision of service, receipt of services as recorded in books of account need to be analysed to determine the time of supply when the tax on supply is payable under 'forward charge'.

When the tax on supply is payable under 'reverse charge', events like date of receipt of goods, date of making payment, date of issue of invoice etc., need to be analysed to determine the time of supply. The provisions relating to time of supply essentially fix the tax collection event to the earliest possible time.

Value of Supply

Value of supply is important because GST is calculated on the value of the sale. In other words, in GST, tax is payable on *ad-valorem basis*, i.e., percentage of value of the supply of goods or services. If the value is calculated incorrectly, then the amount of GST charged is also incorrect.

The amount collected by the seller from the buyer is the value of supply. The CGST Act supplemented with Rules thereon, prescribes the provisions for determining the value of supply of goods and services made in different circumstances and to different persons.

Note that in most of the cases of regular normal trade, the invoice value (i.e., transaction value) is the taxable value under CGST. When value cannot be determined for certain specific transactions, the value is determined by separate rules.

17. GST Rates

GST rates for Goods and Services are given below.

GST Rates for Goods

Rates of CGST are rates as may be notified by the Government on the recommendations of the GST Council.

Broadly, 6 rates of CGST have been notified for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9% and 14%. SGST/ UTGST at the equivalent rate is also applicable. Maximum rate of CGST can be 20%.

With regard to IGST, broadly 6 rates have been notified for goods, viz., 0.25%, 3%, 5%, 12%, 18% and 28%. Certain specified goods have been exempted from tax. Maximum rate of IGST can be 40%. Certain specified goods have been exempted from tax.

GST Rates for Services

Broadly, 6 rates of CGST have been notified for services, viz., 0.75%, 2.5%, 3.75%, 6%, 9% and 14%. Equivalent rate of SGST/UTGST will also be levied.

For IGST, 6 rates have been notified for services, viz., 1.5%, 5%, 7.5%, 12%, 18% and 28%. For certain specified services, NIL rate of tax has been notified.

Services of gambling, services by way of admission to (a) casinos or race clubs or any place having casinos or race clubs or (b) sporting events like IPL, services provided by a race club by way of totalisator or a license to bookmaker in such club, gambling etc. attract the highest rate of 28% (CGST @ 14% and SGST @ 14% or IGST @ 28%).

A number of services are subject to a lower rate of 5% (CGST @ 2.5% and SGST @ 2.5% or IGST @ 5%). For instance, GTA (Goods Transport Agency) service is taxed @ 5% subject to the condition that credit of input tax charged on goods/services used in supplying said service has not been taken. Similarly, tax rate for supply of restaurant service, other than at 'specified premises', is 5% without any input tax credit. Specified premises means premises providing 'hotel accommodation' services having declared tariff of any unit of accommodation above Rs 7,500 per unit per day or equivalent.

Services not covered under any specific heading are taxed at the rate of 18% (CGST @ 9% and SGST @ 9% or IGST @ 18%).

18. GST Returns

Under the GST Laws, the correct and timely filing of returns is of utmost importance because of two reasons.

Firstly, a taxpayer is required to estimate his tax liability on “self-assessment” basis and deposit the tax amount along with the filing of such return.

Secondly, filing of returns not only determines the tax liability of the person filing the same, but it also has a huge bearing on determination of tax liability of other persons with whom the former has entered into taxable activities.

Mode of filing Returns

All the returns under GST laws are to be filed electronically. Taxpayers can file the statements and returns by various modes. Firstly, they can file their statement and returns directly on the GST common portal online. However, this may be tedious and time consuming for taxpayers with large number of invoices. For such taxpayers, offline utilities have been provided by GSTN that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the common portal. GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the common portal.

Some of the important returns under present GST system are as follows:

GSTR-1

GSTR-1 is the return to be furnished for reporting details of all outward supplies of goods and services made, or in other words, sales transactions made during a tax period, and also for reporting debit and credit notes issued.

Any amendments to sales invoices made, even pertaining to previous tax periods, should be reported in the GSTR-1 return. GSTR-1 is to be filed by all normal taxpayers who are registered under GST. It is to be filed monthly, except in the case of small taxpayers with turnover up to Rs.1.5 crore in the previous financial year, who can file the same on a quarterly basis.

Further, for **B2B supplies**, all invoices need to be uploaded in GSTR-1 irrespective of whether they are intra-State or inter- State supplies. This is so because the recipient will take ITC basis such invoices.

For **B2C supplies**, uploading in general is not required as the buyer will not be taking ITC. However, still in order to implement the destination-based principle, invoices of value more than Rs 2.5 lakh in inter-State B2C supplies need to be uploaded. For inter-State invoices upto Rs 2.5 lakh, State wise summary is sufficient and for all intra-State invoices, only consolidated details need to be given.

GSTR-3B

GSTR-3B is a monthly self-declaration to be filed, for furnishing summarized details of all outward supplies made, input tax credit claimed, tax liability ascertained and taxes paid. GSTR-3B is to be filed by all normal taxpayers registered under GST.

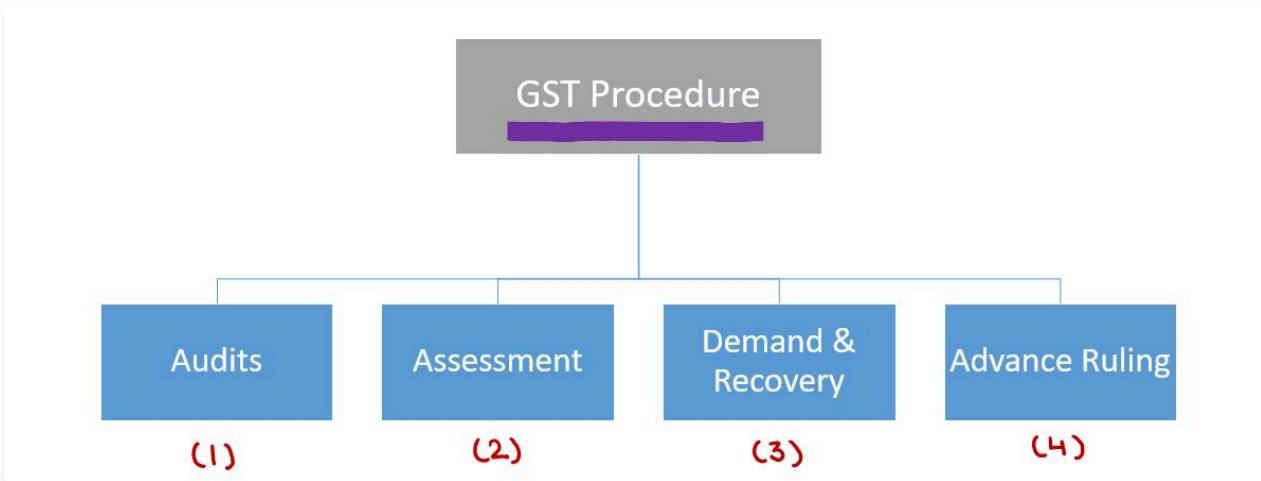
GSTR-9

GSTR-9 is the annual return to be filed by taxpayers registered under GST. It will contain details of all outward supplies made, inward supplies received during the relevant previous year under different tax heads, i.e., CGST, SGST & IGST and HSN codes, along with details of taxes payable and paid. It is a consolidation of all the monthly or quarterly returns filed during that year.

New GST Return System

Note that GST Council in its 31st Meeting, recommended introduction and implementation of new GST Return System in a phased manner from October 2019 to facilitate taxpayers. Under the new system, there are 3 main return forms – Normal (RET-1), Sahaj (RET-2) and Sugam (RET-3). The type of return to be filed and the filing frequency is determined based on the turnover of a business.

19. GST Procedure



Broadly, the GST Procedures can be listed as (i) Audits (ii) Assessment (iii) Demand and Recovery (iv) Advance Ruling.

1. Audits

Audit under GST is the examination of records maintained by a registered dealer. The aim is to verify the correctness of information declared, taxes paid and to assess the compliance with GST.

Audit of Registered Dealer/ Taxable Person

Every registered dealer whose turnover during a financial year exceeds Rs. 2 crores has to get his accounts audited by a CA (Chartered Accountant) or a CMA (Certified Management Accountant).

Audit by GST Tax Authorities

The audit by GST Tax authorities can be classified as follows.

General Audit: The commissioner or on his orders an officer may conduct an audit of any registered dealer.

Special Audit: The department may conduct a special audit due to the complexity of the case and considering the interest of revenue. The CA or a CMA will be appointed to conduct the audit.

2. Assessment

Assessment under GST means the determination of tax liability under GST and has been divided into 5 types:

(i) **Self-Assessment** - Under GST, every registered taxable person shall assess the taxes payable by them on their own and furnish a return for each tax period. This is called self-assessment.

(ii) **Provisional Assessment** - A registered dealer can request the officer for provisional assessment, if he is unable to determine the value of goods or rate of tax. The proper officer can allow the assessee to pay tax on a provisional basis at a rate or a value specified by him.

(iii) **Scrutiny Assessment** - A GST officer can scrutinize the return to verify its correctness. The officer will ask for explanations on any discrepancies noticed in the returns.

(iv) **Summary Assessment** - Summary Assessment is done when the assessing officer comes across sufficient grounds to believe any delay in showing a tax liability which can harm the interest of the revenue. To protect the interest of the revenue, he can pass the summary assessment with the prior permission of the additional/joint commissioner.

(v) **Best Judgement Assessment** - (1) *Assessment of non-filers of returns* - If a registered taxable person does not file his return even after getting a notice, the proper officer will assess the tax liability to the best of his judgment using the available relevant material. (2) *Assessment of unregistered persons* - This assessment is done when a taxable person fails to obtain registration even though he is liable to do so. The officer will assess the tax liability of such persons to the best of his judgement.

3. Demand and Recovery

Demand and recovery provisions are applicable when a registered dealer has paid tax incorrectly or not paid tax at all. It is also applicable, when an incorrect refund or ITC is claimed by the dealer.

The demand can arise in the following cases:

- Unpaid or short paid tax or wrong refund.
- Tax collected but not deposited with the Central or a State Government.
- CGST/SGST paid when IGST was payable and vice versa.

If demand is not paid, the GST authority starts recovery proceedings.

4. Advance Ruling

Advance Ruling under GST means seeking clarifications from GST authority on certain tax matters before starting the proposed activity. This helps to reduce costly litigation. An advance ruling is a written decision given by the tax authority to an applicant on queries related to the supply of goods/services.

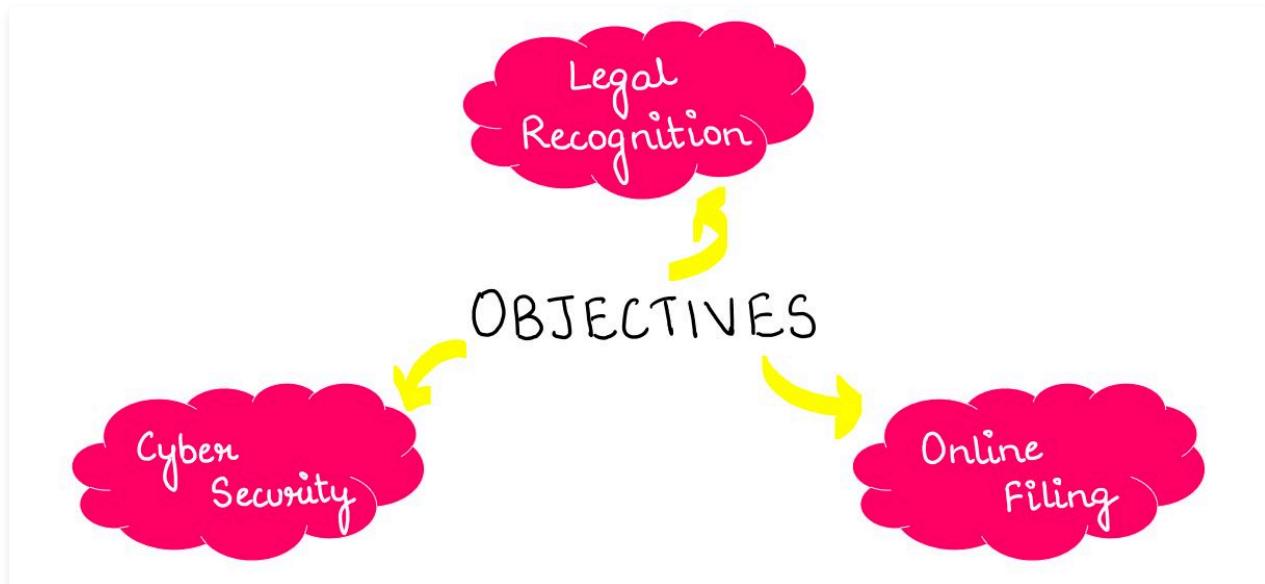
1. Introduction



The Information Technology Act, 2000 was enacted based on the 1997 resolution of General Assembly of the United Nations on the Model Law on Electronic Commerce. This is referred to as the UNCITRAL Model Law on E-Commerce. Following the United National Resolution, India passed the Information Technology Act, 2000 in May 2000, which came into force on October 17, 2000.

The Information Technology Act, 2000 provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies.

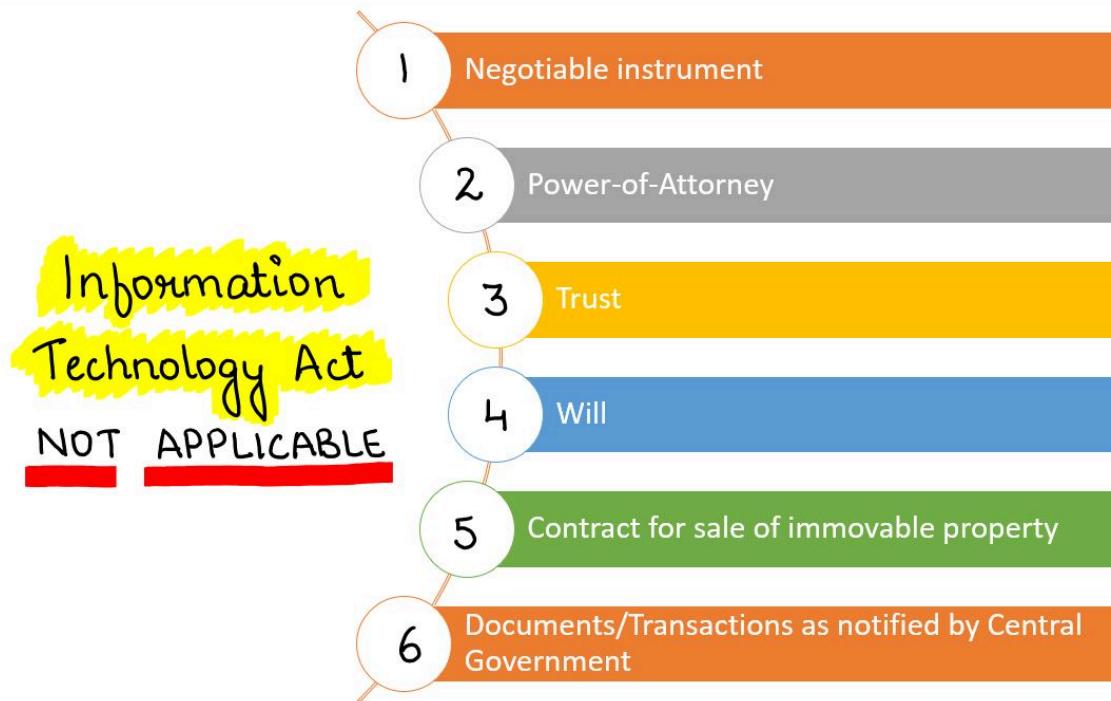
2. Objectives of the Act



The Information Technology Act, 2000 was made applicable in India with following objectives:

1. To give legal recognition to any transaction which is done electronically or use of internet.
 2. To give legal recognition to digital signature for accepting any agreement via computer.
 3. To provide facility of filling document online relating to school admission or registration in employment exchange.
 4. To provide legal recognition for storage in electronic format.
 5. To stop computer crime and protect privacy of internet users.
 6. To give legal recognition for keeping books of accounts by bankers and other companies in electronic form.
 7. To amend the Indian Penal Code, Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934.
-

3. Applicability of the Act



The Act shall extend to the whole of India.

Information Technology Act, 2000 is NOT applicable to:

- (a) A negotiable instrument;
- (b) A power-of-attorney;
- (c) A trust;
- (d) A will;
- (e) Any contract for the sale or conveyance of immovable property or any interest in such property;
- (f) Any such class of documents or transactions as may be notified by the Central Government.

4. Definitions

Some key definitions under the Information Technology Act 2000, are as follows.

Appropriate Government

Appropriate Government is the State Government for any State law enacted under List II and List III of the 7th schedule to the Constitution, and Centre Government for all other cases.

Access

Access means gaining entry into computer, computer system or computer network.

Originator

Originator means a person who sends, generates, stores or transmits any electronic message.

Digital signature

Digital signature means authentication of any electronic record by a subscriber by means of an electronic method.

A digital signature is used to authenticate the origin and integrity of digital messages. It involves creating a unique digital fingerprint of the content using a private key, which can only be verified by the corresponding public key. Digital signatures provide assurance of the signer's identity and ensure that the information has not been tampered with during transmission.

Certifying Authority

Certifying Authority means a person who has been granted a licence to issue an electronic signature Certificate under.

Controller

Controller means the Controller of Certifying Authorities.

Asymmetric crypto system

Asymmetric crypto system means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature.

Private key

Private key means the key of a key pair used to create a digital signature. Public key means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate.

Key pair

Key pair means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key.

Verify

Verification in relation to a digital signature, electronic record or public key, means to determine whether:

(a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber.

(b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

Computer contaminant

Computer contaminant means to modify, destroy, record, transmit data or programme.

Computer database

Computer database means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video etc.

Computer virus

Computer virus means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer.

Cyber security

Cyber security means protecting information, equipment, devices, computer, computer resource, communication device and information.

Data

Data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner.

Damage

Damage means to destroy, alter, delete, add, modify or rearrange any computer resource by any means.

Secure system

Secure system means computer hardware, software, and procedure that:

- (a) are reasonably secure from unauthorised access and misuse
- (b) provide a reasonable level of reliability and correct operation
- (c) are reasonably suited to performing the intended functions
- (d) adhere to generally accepted security procedures.

Addressee

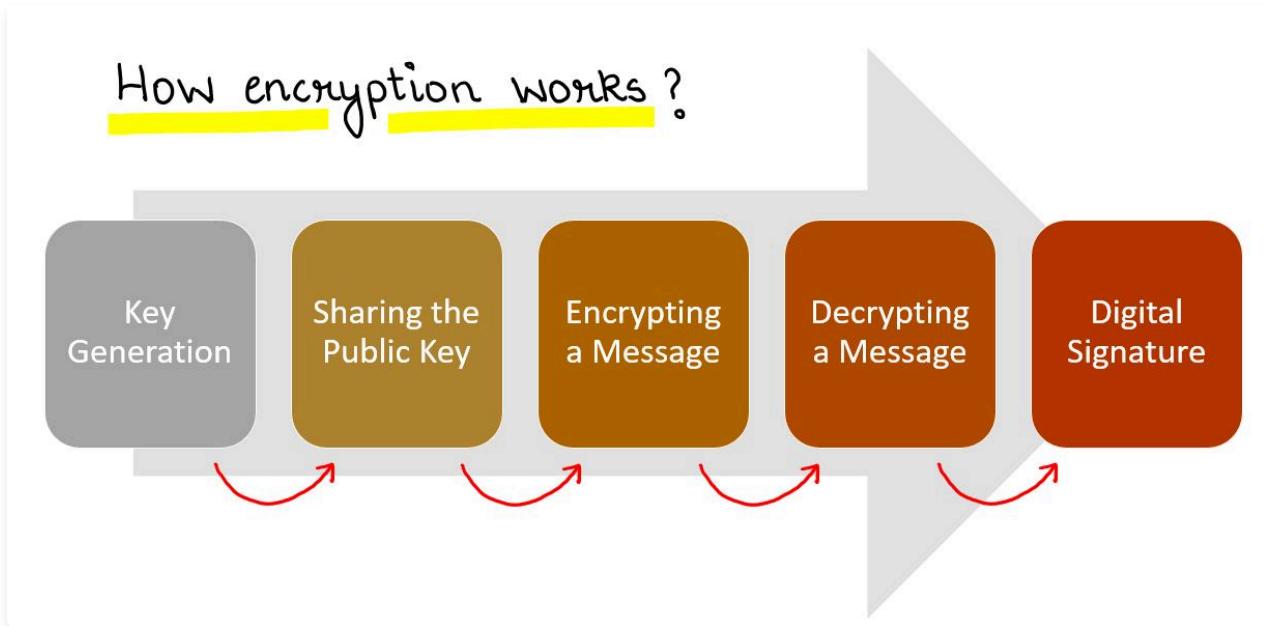
Addressee means a person who is intended to receive the electronic record but does not include any intermediary.

Intermediary

Intermediary means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.

5. How encryption works

Encryption is a method of securing information by converting it into a coded form that is difficult for unauthorized parties to decipher. Public-key encryption, a widely used technique, involves the use of two distinct keys – one for encryption and another for decryption.



Let us understand this with an example.

1. Key Generation

A user generates a pair of keys – a public key and a private key. These keys are mathematically related but cannot be derived from each other.

2. Sharing the Public Key

The user shares their public key widely, often through a digital certificate that verifies the authenticity of the public key. This certificate can be obtained from a trusted directory.

3. Encrypting a Message

Sender A wants to send a confidential message to Receiver B.

A requests B's digital certificate (containing B's public key) from a trusted directory. A uses B's public key to encrypt the message before sending it.

4. Decrypting the Message

Only B, possessing the corresponding private key, can decrypt the message. Even if intercepted during transmission, the encrypted message remains unreadable without the private key.

5. Digital Signature

A can also digitally sign the message using their own private key, providing a unique identifier that the message is genuinely from A.

B, upon receiving the message, can verify A's signature by obtaining A's digital certificate and using it to authenticate the digital signature.

In this way, public-key encryption ensures secure communication by utilizing pairs of keys – one for encoding (public key) and the other for decoding (private key). It also enables message authentication through digital signatures, enhancing the overall security of digital communication.

5. How encryption works

The steps of using digital signature are explained below.

STEP 1 - The signatory is the authorized holder a unique cryptographic key pair;

STEP 2 - The signatory prepares a data message (for example, in the form of an electronic mail message) on a computer;

STEP 3 - The signatory prepares a "message digest", using a secure hash algorithm. Digital signature creation uses a hash result derived from and unique to the signed message;

STEP 4 - The signatory encrypts the message digest with the private key. The private key is applied to the message digest text using a mathematical algorithm. The digital signature consists of the encrypted message digest,

STEP 5 - The signatory typically attaches or appends its digital signature to the message;

STEP 6 - The signatory sends the digital signature and the (unencrypted or encrypted) message to the relying party electronically;

STEP 7 - The relying party uses the signatory's public key to verify the signatory's digital signature. Verification using the signatory's public key provides a level of technical assurance that the message came exclusively from the signatory;

STEP 8 - The relying party also creates a "message digest" of the message, using the same secure hash algorithm;

STEP 9 - The relying party compares the two message digests. If they are the same, then the relying party knows that the message has not been altered after it was signed. Even if one bit in the message has been altered after the message has been digitally signed, the message digest created by the relying party will be different from the message digest created by the signatory;

STEP 10 - Where the certification process is resorted to, the relying party obtains a certificate from the certification service provider (including through the signatory or otherwise), which confirms the digital signature on the signatory's message. The certificate contains the public key and name of the signatory (and possibly additional information), digitally signed by the certification service provider.

6. Main provisions of IT Act 2000

The main provisions of the IT Act 2000 are given next.

6. Main provisions of IT Act 2000



Any subscriber may authenticate an electronic record by affixing his digital signature. The digital signature ensures the authenticity of the signer. Any changes made to the document after it is signed invalidate the signature, thereby protecting against signature forgery and information tampering.

In India, recognition to digital signature has been given by Income Tax Act, 1961 and Companies Act, 2013.

Any subscriber may authenticate an electronic record by affixing his digital signature. Thus,

- there will be Legal recognition of such electronic records.
 - there will be Legal recognition of such electronic signatures.
 - the use of electronic form will be considered equally recognised as paper based, for filling forms, applications, receipt of money etc.
-

6. Main provisions of IT Act 2000

The appropriate Government may, direct the service provider to set up, maintain and upgrade the computerized facilities for delivery of government services.

Who is a service provider

Here the service provider means anyone who has been granted permission by the appropriate Government to offer services through electronic means in accordance with the policy governing such service sector.

The appropriate Government may also authorize the service provider to collect service charges.

6. Main provisions of IT Act 2000



The documents, records or information shall be retained for any specific period, as required.

There will be provision of audit of electronic records.

Nothing shall confer a right upon any person to insist that any Government body should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

6. Main provisions of IT Act 2000

An electronic record shall be attributed to the originator:

- (a) if it was sent by the originator himself;
- (b) by a person who had the authority to act on behalf of the originator; or
- (c) by an information system programmed by or on behalf of the originator.

Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

The dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. The time of receipt of an electronic record shall be determined, when the electronic record enters the designated computer resource.

6. Main provisions of IT Act 2000

An electronic signature shall be deemed to be a secure electronic signature if:

- (i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
- (ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed.

Here the "signature creation data" means the private key of the subscriber.

6. Main provisions of IT Act 2000

The Central Government may appoint a Controller of Certifying Authorities (known as CCA) for the purposes of this Act.

Functions of Controller

The Controller may perform all or any of the following functions, namely:

- (a) exercising supervision over the activities of the Certifying Authorities;
- (b) certifying public keys of the Certifying Authorities;
- (c) laying down the standards to be maintained by the Certifying Authorities;
- (d) specifying the qualifications and experience for employees of the Certifying Authority;
- (e) specifying the conditions subject to which the Certifying Authorities shall conduct their business;
- (f) specifying the contents of written, printed or visual materials and advertisements that may be distributed or used in respect of a electronic signature Certificate and the public key.

There is provision of the Recognition of foreign Certifying Authorities.

Fees to obtain License

The Controller is responsible for issuances of licences to Certifying Authorities with a due application process. Maximum fees, to be submitted along with the application for licence is Rs 25,000. A maximum fee for renewal is Rs. 5,000 (paid within 45 days of expiry of validity of earlier licence). The Controller has powers of suspending the licence, with a due process.

6. Main provisions of IT Act 2000

Any person may make an application to the Certifying Authority for the issue of an electronic signature Certificate. Maximum fees can be Rs 25000, to be submitted along with application.

Suspension → Temporary Cessation

Revocation → Permanent Termination

Grounds for suspension of DSC

The Certifying Authority may suspend such Digital Signature Certificate:

- (a) on receipt of a request to that effect from the Subscriber;
- (b) if it is of opinion that the Digital Signature Certificate should be suspended in public interest;

A Digital Signature Certificate shall not be suspended for a period exceeding 15 days unless the subscriber has been given an opportunity of being heard.

Grounds for revocation of DSC

A Certifying Authority may revoke a Digital Signature Certificate:

- (a) where the subscriber makes a request to that effect
- (b) upon the death of the subscriber
- (c) upon the dissolution of the firm or winding up of the company where the subscriber is a firm or a company
- (d) where the subscriber has provided false information in the application.

6. Main provisions of IT Act 2000

The screenshot shows the India.gov.in homepage with a search bar and navigation links for Topics, Services, My Government, People Groups, and India at a Glance. Below the header, a banner for the Cyber Appellate Tribunal is displayed with the text "Cyber Appellate Tribunal". The main content area shows the "Website of Cyber Appellate Tribunal" with a brief description of its establishment under the Information Technology Act, 2000. There are also "Related Links" to the "Organizations of Ministry of Electronics & Information Technology".

As per the Information Technology Act 2000, there was a provision for establishment of Cyber Appellate Tribunal. Any person aggrieved by an order made by controller or an adjudicating officer under this Act could prefer an appeal to a Cyber Appellate Tribunal (within 45 days).

But, as per the last amendment to the Information Technology Act, made in 2017 through the Finance Bill 2017, it merged the Cyber Appellate Tribunal with the Telecom Disputes Settlements and Appellate Tribunal (TDSAT).

Composition of Cyber Appellate Tribunal (merged with TDSAT)

The Cyber Appellate Tribunal shall consist of a Chairperson and such number of other Members, as the Central Government may appoint, with the Chief Justice of India.

A person shall not be qualified for appointment as a Chairperson of the Cyber Appellate Tribunal unless he is qualified to be a Judge of a High Court. The Members of the Cyber Appellate Tribunal, except the Judicial Members, shall be from amongst persons, having special knowledge of, and professional experience in, information technology, telecommunication, industry, management or consumer affairs.

A person shall not be appointed as a Member, unless he has held the post of Additional Secretary for a period of not less than 1 year or Joint Secretary for a period of not less than 7 years.

The Judicial Members of the Cyber Appellate Tribunal shall be from amongst persons who has been a member of the Indian Legal Service and has held the post of Additional Secretary for a period of not less than 1 year or Grade I post of that Service for a period of not less than 5 years.

Term of office

The Chairperson or Member shall hold office for a term of 5 years or until he attains the age of 65 years, whichever is earlier. He may resign by writing to the Centre Government.

An officer of the Government shall have to retire from service before joining as such Chairperson or Member.

Appeal against the order of Cyber Appellate Tribunal

Any person aggrieved by any decision or order of the Cyber Appellate Tribunal could file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Cyber Appellate Tribunal.

7. Cyber Crimes and Penalties

The provisions related to penalties, compensation and adjudication are give under Section 43 to 47 of the Act. The relevant provisions are given below.

Section 43: If any person without permission of the owner, accesses/downloads/damages/disrupts the IT system, he shall be liable to pay damages by way of compensation- maximum limit is Rs 1 Crore.

Section 43-A: If a body corporate is negligent in implementing and maintaining reasonable security practices for data protection, such body corporate shall be liable to pay compensation to the person - maximum limit is Rs 5 Crore.

Section 44: Failure to furnish information/report to the Controller of the Certifying Authority- penalty not exceeding 150000 rupees for each such failure.

Section 44: Failure to file returns/books/documents (as per specified time in regulations) - penalty not exceeding 5000 rupees for every day of failure.

Section 44: Failure to maintain books of account or records - penalty not exceeding Rs. 10000 for every day of failure.

Whosoever contravenes any rules/regulations made under this Act, for the contravention of which no penalty has been separately provided- Compensation not exceeding Rs. 25000 to the person affected or a penalty not exceeding Rs. 25000.

Appointment of Adjudicating officer

The Central Government shall appoint Director level officer (or equivalent at state governments) to be an "adjudicating officer" for holding an inquiry, to find out, whether any person has committed a contravention of any of the provisions of this Act.

The adjudicating officer shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees 5 crore. If it exceeds 5 Crores, the jurisdiction shall vest with the Competent Court.

7. Cyber Crimes and Penalties

The provisions related to offences are covered under Section 65 to 78 of the Act. These are given below.

Section 65

Tampering with computer source documents (if computer is required to be kept or maintained by law for the time being in force) - Imprisonment up to 3 years, or with fine up to Rs 2 lakh, or both.

Section 66

If any person without permission of the owner, accesses/downloads/damages/disrupts the IT system (as per provisions in Sec 43)- Imprisonment up to 3 years, or with fine up to Rs. 5 lakh, or both.

Section 66-A

Punishment for sending offensive messages through electronic communication service, etc - Imprisonment up to 3 years, or with fine.

Note that **Section 66-A of the Information Technology Act, 2000 was declared unconstitutional** by the Supreme Court in its landmark decision in *Shreya Singhal v. Union of India* in 2015. Section 66A violates Fundamental Rights guaranteed by the Constitution of India. In the Shreya Singhal judgement, the Supreme Court held that "it is clear that section 66A arbitrarily, excessively and disproportionately invades the right of free speech and upsets the balance between such right and the reasonable restrictions that may be imposed on such right."

Section 66-B

Punishment for dishonestly receiving stolen computer resource or communication device- Imprisonment up to 3 years, or with fine up to Rs 1 lakh rupees, or both.

Section 66-C

Punishment for identity theft (fraudulently make use of the electronic signature, password etc.) - Imprisonment up to 3 years, or with fine up to Rs 1 lakh rupees.

Section 66-D

Punishment for cheating by personation by using computer resource- Imprisonment up to 3 years, or with fine up to Rs 1 lakh rupees.

Section 66-E

Punishment for violation of privacy (publishes or transmits the image of a private area of any person without his or her consent) - Imprisonment up to 3 years, or with fine up to Rs. 2 lakh, or both.

Section 66-F

Punishment for cyber terrorism – (threaten the unity, integrity, security or sovereignty of India or to strike terror) - Imprisonment for life.

Section 67

Punishment for publishing or transmitting obscene material in electronic form- Imprisonment up to 3 years, or with fine up to Rs 5 lakh, or both. Second or subsequent conviction of same- Imprisonment up to 5 years, or with fine up to Rs 10 lakh.

Section 67-A

Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form- Imprisonment up to 5 years, or with fine up to Rs. 10 lakh, or both. Second or subsequent conviction of same- Imprisonment up to 7 years, or with fine up to Rs. 10 lakh.

Section 67-B

Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form- Imprisonment up to 5 years, or with fine up to Rs. 10 lakh, or both. Second or subsequent conviction of same- Imprisonment up to 7 years, or with fine up to Rs. 10 lakh.

For the purposes of this section, "children" means a person who has not completed the age of 18 years.

Section 67-C

Failure of intermediaries to preserve and retain the information as prescribed by the Government- Imprisonment up to 3 years, or with fine.

Section 68

Failure of Certifying Authority to comply order of the Controller- Imprisonment up to 2 years, or with fine up to Rs. 1 lakh, or both.

Section 69

The Government has Powers to issue directions for interception or monitoring or decryption of any information through any computer resource. The subscriber or intermediary or any person who fails to assist the Government in this - Imprisonment up to 7 years, or with fine.

Section 69-A

The Government has Powers to issue directions for blocking public access of any information through any computer resource- The intermediary who fails to assist the Government in this - Imprisonment up to 7 years, or with fine.

Section 69-B

The Government has Powers to authorize any agency to monitor and collect traffic data or information through any computer resource for cyber security- The intermediary who fails to assist the Government in this - Imprisonment up to 3 years, or with fine.

Section 70

The appropriate Government may declare any computer resource, which directly or indirectly affects the facility of Critical Information Infrastructure, to be a protected system. Any person who secures access or attempts to secure access to a protected system – Imprisonment up to 10 years, or with fine.

Section 70-B

Any service provider, intermediaries, data centres, body corporate or person who fails to provide the information called for or comply with the direction of the "Indian Computer Emergency Response Team"- Imprisonment up to 1 year, or with fine up to Rs. 1 lakh, or both.

Section 71

Misrepresentation to, or suppressing any material fact from the Controller or the Certifying Authority for obtaining any licence or electronic signature Certificate, respectively- Imprisonment up to 2 years, or with fine up to Rs. 1 lakh, or both.

Section 72

Punishment for Breach of confidentiality and privacy (securing access to any electronic record, book, register, correspondence, information, document or other material without the consent) – Imprisonment up to 2 years, or with fine up to Rs. 1 lakh, or both.

Section 72-A

Punishment for disclosure of information in breach of lawful contract (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) – Imprisonment up to 3 years, or with fine up to Rs. 5 lakh, or both.

Section 73

Punishment for publishing FALSE Electronic Signature Certificate in any particulars- Imprisonment up to 2 years, or with fine up to Rs 1 lakh or both.

Section 74

Uses Electronic Signature Certificate for any fraudulent or unlawful purpose- Imprisonment up to 2 years, or with fine up to Rs 1 lakh, or both.

The provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

Offences with 3 years' imprisonment to be Bailable

The offence punishable with imprisonment of 3 years and above shall be Cognizable and the offence punishable with imprisonment of 3 years shall be bailable.

Offences with 3 years' imprisonment or less, are also compundable.

Intermediaries Not to Be Liable in Certain Cases

An intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

National nodal agency

The Central Government may designate any organisation of the Government as the national nodal agency in respect of Critical Information Infrastructure Protection.

Indian Computer Emergency Response Team

The Central Government shall appoint an agency of the Government to be called the Indian Computer Emergency Response Team.

The Team shall serve as the national agency for performing the following functions in the area of cyber security:

- (a) collection, analysis and dissemination of information on cyber incidents;
 - (b) forecast and alerts of cyber security incidents;
 - (c) emergency measures for handling cyber security incidents;
 - (d) coordination of cyber incidents response activities;
 - (e) issue guidelines, advisories, vulnerability notes and white papers relating to information security practices, procedures, prevention, response and reporting of cyber incidents;
 - (f) such other functions relating to cyber security as may be prescribed.
-

8. Constitution of Advisory Committee

The Central Government shall constitute a Committee called the Cyber Regulations Advisory Committee.

The Committee shall advise:

- (a) the Central Government either generally as regards to rules or for any other purpose connected with this Act;
 - (b) the Controller in framing the regulations under this Act.
-

9. List of Schedules

The Information Technology Act, 2000 has following Schedules.

First Schedule

List of documents or transactions to which the act shall not apply.

Second Schedule

Technique and process of Electronic Signature or electronic Authentication.

Third Schedule

Omitted by the Information Technology (Amendment) Act, 2008.

Fourth Schedule

Omitted by the Information Technology (Amendment) Act, 2008.

10. Amendment Bill 2018

The Information Technology (amendment) Bill, 2018 was introduced in the Rajya Sabha in 2018, to protect players, especially children against dangerous gaming resources, from any undesirable effects of online games.

Following are the key proposed provisions of the said Bill.

Punishment for publishing or transmitting material repugnant to cultural ethos (Section 67 BA)- Imprisonment up to 6 months, or with fine up to Rs 2 lakh. Second or subsequent conviction- Imprisonment up to 2 years, or with fine up to Rs 5 lakh.

Punishment for hosting dangerous online gaming resource. (Section 67BB)- Imprisonment up to 1 year, or with fine up to Rs 2 lakh. Second or subsequent conviction- Imprisonment up to 3 years, or with fine up to Rs 5 lakh.

1. Introduction

The Intellectual Property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce. The Intellectual Property Rights (IPR) protect the interests of creators by giving them property rights over their creations.

It generally includes the following forms:

Patents

A patent is a statutory right granted by the government to an inventor for a novel invention.

It provides exclusive rights to make, use, sell, or import the invention for a limited period, usually 20 years, in exchange for public disclosure.

Trademarks

A trademark (commonly called a brand name) is a distinctive visual symbol, such as a word, logo, label, design, or combination of colours, that identifies and distinguishes the goods or services of one enterprise from another.

It helps consumers recognize the source or origin of products or services.

Copyrights

Copyright protects original literary, artistic, musical, and dramatic works, along with films and sound recordings.

It grants creators a bundle of exclusive rights, including reproduction, distribution, communication to the public, adaptation, and translation.

Trade Secrets

Trade secrets refer to confidential business information that provides a competitive advantage, such as manufacturing methods, supplier lists, or marketing strategies.

Protection does not require registration and lasts as long as the information remains secret.

Geographical Indications (GIs)

A GI tag identifies products originating from a specific geographical region that possess unique qualities, reputation, or characteristics linked to that area.

Examples are Kanchipuram Silk Saree, Nagpur Orange, Kolhapuri Chappal, Agra Petha, Bikaneri Bhujia.

Industrial Designs

Industrial design protection covers the aesthetic or ornamental aspects of a product — its shape, pattern, or configuration.

It does not protect functionality but ensures that the visual design of a product cannot be copied for commercial use.

2. WIPO

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations, established by the WIPO Convention in 1967. Its primary goal is to promote a balanced and accessible international intellectual property (IP) system that encourages creativity and innovation for the benefit of all nations.

India joined WIPO in 1975. The headquarters are in Geneva, Switzerland.

Key Conventions Administered by WIPO are:

Berne Convention (1886)

- Deals with copyright protection for creators such as authors, musicians, poets, and painters.
- Ensures that their literary and artistic works are protected in all member countries.

Paris Convention (1883)

- Concerns industrial property rights, including patents, trademarks, and industrial designs.
- Protects inventions and industrial innovations internationally.

Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (PCT) provides a cost-effective and simplified system for companies and inventors to seek patent protection in multiple countries. A single PCT application has the same legal status as filing separate patent applications in each Contracting State.

- Currently, the PCT has around 158 Contracting States.
- It facilitates the processing, examination, and sharing of patent information among national and regional patent offices.
- It also provides the public with access to technical information and innovation disclosures contained in international patent applications.

WIPO's **PATENTSCOPE** database offers free public access to:

- Full-text international PCT applications on their publication date
- Patent documents from participating national and regional offices
- Non-patent literature relevant to innovation and research

Madrid System

The Madrid System is an international system for the registration and management of "trademarks". It offers a convenient and cost-effective mechanism for trademark owners to protect their marks in multiple countries through a single application process.

Under this system, an applicant can file one international trademark application, pay one set of fees, and seek protection in around 131 member countries (Contracting Parties) that are part of the Madrid Agreement and the Madrid Protocol.

The Global Brand Database provides access to the collections of International trademarks under the Madrid System.

Hague System

The Hague System for the International Registration of Industrial Designs provides a simple, practical, and cost-effective mechanism for protecting "industrial designs" in multiple countries through a single international application.

Through the Hague System, an applicant can register up to 100 designs in as many as 99 member countries by filing one application, in one language, and paying one set of fees.

Lisbon System

The Lisbon System provides a practical and cost-effective mechanism for the international registration of Appellations of Origin (AOs) and Geographical Indications (GIs). It allows producers to secure protection for their region-specific products in multiple countries through a single application process and one set of fees.

Currently, the system offers protection in 44 Contracting Parties, covering up to 73 countries.

WIPO dispute resolution options

The WIPO dispute resolution options are as follows:

- *Mediation:* An informal consensual process in which the mediator assists the parties in reaching a settlement of their dispute, based on the parties' respective interests.

- *Arbitration and Expedited Arbitration:* A procedure in which the parties submit their dispute to one or more arbitrators, for a binding and final decision (award).
 - *Expert Determination:* A procedure in which the parties submit a specific matter (e.g., technical question, valuation of IP assets, establishment of royalty rates) to one or more experts who make a determination on the matter.
-

2. WIPO

The Berne Convention, adopted in 1886, deals with the protection of works and the rights of their authors. It provides creators such as authors, musicians, poets, painters etc. with the means to control how their works are used, by whom, and on what terms. The Convention rests on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries.

The 3 basic principles are the following:

1. Works originating in one of the contracting States must be given the same protection in each of the other contracting States as the latter grants to the works of its own nationals.
2. Such protection must not be conditional upon compliance with any formality.
3. Such protection is independent of the existence of protection in the country of origin of the work.

The Convention also provides for "moral rights," that is, the right to claim authorship of the work and the right to object to any mutilation or deformation or other modification of, or other derogatory action in relation to, the work, which could be prejudicial to the author's honor or reputation.

The general rule is that protection must be granted until the expiration of the 50th year after the author's death. There are, however, exceptions to this general rule. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release"). In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of such a work.

3. TRIPS

With the establishment of the world trade Organization (WTO), the importance and role of the intellectual property protection has been crystallized in the Trade-Related Intellectual Property Systems (TRIPS) Agreement. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994.

TRIPS Agreement covers 5 main areas:

- i. Application of general WTO principles to international intellectual property.
- ii. Setting minimum protection standards for all types of IPRs.
- iii. Establishing enforcement procedures within member countries.
- iv. Providing dispute settlement mechanisms for IPR issues among WTO members.
- v. Outlining transitional arrangements for gradual implementation of TRIPS provisions.

The TRIPS Agreement encompasses, in principle, all forms of intellectual property and aims at harmonizing and strengthening standards of protection and providing for effective enforcement at both national and international levels. It addresses applicability of general GATT principles as well as the provisions in international agreements on IP (Part I). It establishes standards for availability, scope, use (Part II), enforcement (Part III), acquisition and maintenance (Part IV) of Intellectual Property Rights. Furthermore, it addresses related dispute prevention and settlement mechanisms (Part V). Formal provisions are addressed in Part VI and VII of the Agreement, which cover transitional and institutional arrangements, respectively.

The TRIPS Agreement is based on key principles similar to GATT and GATS, emphasizing non-discrimination in trade and IP protection.

- *National Treatment*: Foreign nationals must be treated no less favorably than a country's own citizens.
- *Most Favoured Nation (MFN) Treatment*: No discrimination among trading partners.

It builds on earlier WIPO agreements:

- *Paris Convention (1883)*: Protection of industrial property (patents, designs, trademarks, etc.)
- *Berne Convention (1886)*: Protection of literary and artistic works (copyright).

Let us discuss them briefly one by one.

Copyright

- Protects the rights of authors over their literary and artistic works, and also includes related rights of performers, producers, and broadcasters.
- Computer programs are protected as literary works; databases also receive copyright protection.
- Expands rights to include rental rights — authors and producers can prohibit commercial rental of software, films, and sound recordings.
- Performers' rights: Protects against unauthorized recording, reproduction, or broadcasting of live performances for at least 50 years.
- Sound recordings: Producers can prevent unauthorized copying for 50 years from publication.

Trademarks

- TRIPS defines minimum standards for trademark protection and rights.
- Service marks get the same protection as trademarks for goods.

Geographical Indications (GIs)

- GIs identify products with qualities linked to a specific place of origin (e.g., Champagne, Scotch Whisky, Darjeeling Tea).

Industrial Designs

- Protects the ornamental or aesthetic features of a product, not technical aspects.
- Must be original or new and protected for at least 10 years.

Patents

- Patent protection must cover all fields of technology for 20 years, for inventions that are new, inventive, and industrially applicable.

- Exclusions: Diagnostic, therapeutic, and surgical methods; plants and animals (except micro-organisms).
- Allows compulsory licensing (e.g., for essential medicines) under specific conditions.
- Process patents also protect products made through that process.

Layout Designs of Integrated Circuits

- Protects the topography or layout of integrated circuits (microchips).
- Based on the Washington Treaty (1989) under WIPO.
- Protection must last at least 10 years.

Trade Secrets

- Covers trade secrets and test data that have commercial value and are kept confidential.
 - Protection is against unauthorized use or disclosure.
-

3. TRIPS

Transitional Arrangements under TRIPS are as follows:

- *Developed countries*: 1 year (till 1996) to implement TRIPS provisions.
 - *Developing countries / Transition economies*: 5 years (till 2000).
 - *Least-developed countries (LDCs)*: Initially 11 years (till 2006), now extended to 1 July 2034. LDCs are exempted from granting patents or exclusive marketing rights during this transition period.
 - *Pharmaceutical patents & undisclosed information*: Further extension for LDCs till 1 January 2033 or until they graduate from LDC status.
-

3. TRIPS

The Council for TRIPS is the main body administering the TRIPS Agreement under the WTO. It monitors implementation, reviews national IP laws, and serves as a forum for discussion among members.

4. Intellectual Property Protection in India

In India, the Patent Act was introduced in the year 1856 which remained in force for over 50 years. It was subsequently modified and amended in 1911 and was called the Indian Patents and Designs Act, 1911. After Independence a comprehensive bill on patent rights was enacted in the year 1970 and was called the **Patents Act, 1970**.

The current law on trademarks is the Trade Marks Act, 1999. It repealed the earlier Trade & Merchandise Marks Act, 1958.

The law relating to copyright is governed by the Copyright Act, 1957 which was last amended in 2012.

The Industrial Designs are covered under the Designs Act, 2000, and Geographical Indications under the Geographical Indications of Goods (Registration and Protection) Act, 1999.

The Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) comes under the Department of Industrial Policy and Promotion (DIPP), now renamed as Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry. Of late, the office of the Controller General has also been known as Intellectual Property Office (IPO). This office is responsible for the administration of Patents Act, 1970, Designs Act, 2000, Trade Marks Act, 1999 and Geographical Indications of Goods (Registration and Protection) Act, 1999.

The administration of Copyright Act, 1957 has been transferred from the Ministry of HRD (now renamed Ministry of Education) to the Department for Promotion of Industry and Internal Trade (DPIIT). Thus, now Copyright Office (which handles registration of copyrights) is under the CGPDTM and not under Ministry of Education anymore.

The office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) is located at Mumbai. The Patent Information System (PIS) and National Institute of Intellectual Property Management (NIIPM) located at Nagpur also come under the superintendence of CGPDTM.

A specialized forum called Intellectual Property Appellate Board (IPAB) was constituted by the Central Government in 2003 to hear and adjudicate appeals against the decision of Controller of Patents (under the Patents Act, 1970), and Registrar of Trade Marks (under the Trade Marks Act, 1999) and Geographical Indication cases (under the Geographical Indication & Protection Act, 1999). The Copyright Board was also subsumed under IPAB since 2017.

However, in August 2021, the Government passed Tribunals Reforms Act, 2021, pursuant to which the Intellectual Property Appellate Board (IPAB) was abolished. Going forward, all appeals against the decisions of the Registrar of Trade Marks, the Controller of Patents, and the Registrar of Geographical Indications, will need to be filed before the High Courts instead of the now defunct IPAB. Likewise, all appeals against the decisions of the Registrar of Copyright, will need to be filed before the Commercial Courts or the High Courts exercising jurisdiction.

5. Recent Updates

The recent expansion of the Internet and e-commerce has led to many patents being applied for and being granted for business methods implemented in software and the question of whether business methods are statutory subject matter is a separate issue from the question of whether software is.

The Indian Patent Act as of now excludes only 'computer programs per se' from patentability. The issue of whether computer programs tied to certain hardware can be patented is a controversial one. Most countries place some limits on the patenting of invention involving software, but there is no legal definition of a software patent. Most of the jurisprudence relating to software patents emanate from US, which is considered as the cradle of software patents.

The Indian Patent Law does not contain any specific provision regarding the protection of computer software. Computer software on the other hand is protected by copyright as applicable to literary and aesthetic works.

After information technology, biotechnology is increasingly recognized as the next wave in the knowledge based economy. Progress in the field of molecular biology, biotechnology and molecular medicine has highlighted the potential of biotechnology for the pharmaceutical industry. TRIPS Agreement obliges member states to patent micro-organisms. The Indian Patent Act has now a specific provision regarding patenting of microorganisms and microbiological processes. It is now possible to get a patent for a microbiological process and also products emanating from such processes.

The advancement in technology postured new challenges to the current copyright laws, as the law was primarily developed in the regime of print media that slowly evolved its protective works to include creative works, paintings, drawings, sculptures, which later expanded to photography and cinema as well. The age old legislations and their core concepts in copyright law should be re-entered, so as to make digital societal record a progress. The technical copiers or recorders have made the digital data easily available with the increase in use of the internet , which could lead to manipulation of the work vis a vis a free flow of information in society, as the moment this digital record is placed in the public domain on the internet the author loses all control.

5. Recent Updates

The International Intellectual Property Index is released by US Chamber of Commerce's Global Innovation Policy Centre (GIPC). As per the 2024 Index, India ranked 42nd out of 55 countries.

5. Recent Updates

GII is developed by the World Intellectual Property Organization (WIPO) together with top business Universities like Cornell University, INSEAD etc. It measures the innovative capacity and outputs of around 139 countries. As per GII 2025, India's rank was 38 among 139 countries. Switzerland stood first followed by Sweden and United States.

5. Recent Updates

The National IPR Policy 2016 was adopted in May 2016. It is a vision document that aims to create and exploit synergies between all forms of Intellectual Property (IP), concerned statutes and agencies. The Department for Promotion of Industry and Internal Trade (DPIIT) has been appointed as the nodal department to coordinate, guide and oversee the implementation and future development of IPRs in India. The 'Cell for IPR Promotion & Management (CIPAM)', setup under the aegis of DPIIT, is to be the single point of reference for implementation of the objectives of the National IPR Policy.

Objectives

Seven objectives of IPR Policy are as follows:

- *IPR Awareness*: To create public awareness about the economic, social and cultural benefits of IPRs.
- *Generation of IPRs*: To stimulate the generation of IPRs.
- *Legal and Legislative Framework*: To have strong and effective IPR laws, which balance the interests of owners with larger public interest.
- *Administration and Management*: To modernize and strengthen service oriented IPR administration.
- *Commercialization of IPRs*: Get value for IPRs through commercialization.
- *Enforcement and Adjudication*: To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- *Human Capital Development*: To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

The national IPR Policy will endeavor for a Creative India; Innovative India.

1. Indian Patent Act 1970

A Patent is an official document given to an inventor by the government allowing him to exclude anyone else from commercially exploiting his invention for a limited period. A patent is an exclusive right granted by a country to the owner of an invention to make, use, manufacture and market the invention, provided the invention satisfies certain conditions stipulated in the law.

The law relating to patents contained in the Patents Act, 1970.

List of Amending Acts is:

1. The Repealing and Amending Act, 1974
2. The Delegated Legislation Provisions (Amendment) Act, 1985
3. The Patents (Amendment)Act, 2002
4. The Patents (Amendment) Act, 2005
5. The Tribunals Reforms Act, 2021
6. The Jan Vishwas (Amendment of Provisions) Act, 2023

Conditions of Patentability

Not all inventions are patentable. To qualify for a patent, an invention must satisfy certain legal and technical requirements known as the conditions of patentability. These conditions ensure that only genuine and useful innovations receive patent protection.

1. Novelty

An invention is considered novel if it has not been disclosed, published, or known to the public before the date of filing.

- "Prior art" refers to all existing public knowledge, publications, or disclosures before the filing date.
- Novelty ensures patents are granted only for truly new inventions.

2. Inventive Step (Non-Obviousness)

An invention must include an inventive step, showing technical advancement or economic significance compared to existing knowledge.

- It must not be obvious to a person skilled in that particular field of technology.
- This condition ensures that patents protect real innovations, not routine modifications.

3. Industrial Applicability (Utility)

The invention must be capable of industrial application, meaning it is practical and useful. It must meet three cumulative criteria:

- It can be made or manufactured.
 - It can be used in at least one field of human activity.
 - It can be reproduced consistently with the same characteristics each time.
-

2. Chapter II - Inventions not Patentable

The inventions that are not patentable have been stipulated under Section 3 of the Patents Act. The following are not inventions within the meaning of the Patents Act, 1970:

- (a) Frivolous inventions or those contrary to natural laws.
 - (b) Inventions whose use or commercial exploitation would be against public order or morality, or harmful to life, health, or the environment.
 - (c) Mere discovery of a scientific principle, abstract theory, or natural substance.
 - (d) New forms of known substances without enhanced efficacy.
 - (e) Simple admixtures of known ingredients showing only aggregate properties.
 - (f) Mere arrangement or duplication of known devices working independently.
 - (g) Methods of agriculture or horticulture.
 - (h) Processes for medical or veterinary treatment, surgery, or therapy.
 - (i) Plants, animals, seeds, and biological processes (except micro-organisms).
 - (j) Computer programs per se, unless linked with specific hardware or industrial application.
 - (k) Artistic, literary, musical, or cinematographic works (protected by copyright, not patent).
 - (l) Mere schemes, rules, or methods for mental acts or games.
 - (m) Simple presentation of information.
 - (n) A mathematical or business method or a computer programme per se or algorithms.
 - (o) Inventions based on traditional knowledge or duplication of its known properties.
 - (p) Inventions related to the production or use of atomic energy.
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3. Chapter III - Applications for Patents

The Patents Act lays down who can apply for a patent, how it must be filed, and what documents are required. These sections ensure that every patent application is clear, complete, and legally valid.

Persons Entitled to Apply (Section 6)

An application for a patent may be made by:

- The true and first inventor of the invention.
- The assignee of the true and first inventor (i.e., a person to whom rights are transferred).
- The legal representative of a deceased inventor entitled to apply.
- Applications can be made individually or jointly by eligible persons.

Form of Application (Section 7)

- Each application must be for one invention only and in the prescribed form.
- Applications are filed in the Patent Office.
- International applications filed under the Patent Cooperation Treaty (PCT) designating India are treated as Indian applications.
- Proof of right to apply (assignment deed) must be furnished if applicable.
- The application must include the name of the true and first inventor and a declaration from the applicant.
- It must be accompanied by either a provisional or a complete specification (except for convention or PCT filings).

Provisional and Complete Specifications (Section 9)

- A provisional specification is filed when the invention is not yet fully developed.
- A complete specification must be filed within 12 months; otherwise, the application is deemed abandoned.
- Multiple provisional specifications can be combined into one complete specification if they relate to a single invention.
- The filing date of the earliest provisional is treated as the priority date.

Priority Dates (Section 11)

- Each claim in a complete specification has a priority date, determining its protection timeline.
- Normally, the priority date is the filing date of the provisional or complete specification on which the claim is based.
- When multiple filings exist, the earliest relevant filing date is considered.
- In process patents, if multiple dates apply, the earliest date is used as the priority date.

The process of filing the application has been described in the First Schedule.

4. Chapter IV - Publication and Examination of Patent Applications

After a patent application is filed, it goes through several important stages before the patent is granted. These include publication, examination, consideration of objections, and ensuring that the invention is novel and non-infringing.

Publication of Applications (Section 11A)

- Every patent application is published after a prescribed period (usually 18 months from the filing date).
- Publication includes details such as the application number, filing date, applicant's name, and abstract.
- From the date of publication till grant, the applicant enjoys provisional rights similar to those of a patentee but cannot sue for infringement until the patent is officially granted.

Request for Examination (Section 11B)

- An application will be examined only after a formal request is made by the applicant or an interested person.
- If no request is made within the prescribed time, the application is treated as withdrawn.

Examination of Application (Section 12)

- Once the request is received, the Controller refers the application to an examiner.
- The examiner checks whether:
 - The application and documents comply with the law.
 - There are grounds for objection.
 - Any similar invention already exists (via Section 13 investigations).

Search for Anticipation (Section 13)

- The examiner searches to ensure the invention has not been previously published, claimed, or known in India or elsewhere.
- If amendments are made before grant, the amended specification is also re-examined.

However, this process does not guarantee validity of the patent — it only ensures due diligence.

Consideration of Examiner's Report (Section 14)

- If the examiner raises objections, the Controller communicates them to the applicant.
- The applicant is given a chance to amend the application or be heard before a decision is made.

Power to Refuse or Amend (Section 15)

- If the application or specification does not meet requirements, the Controller may refuse the application or require amendments.
- Failure to comply may result in rejection of the application.

Division of Application (Section 16)

- If the application includes more than one invention, the applicant may divide it into separate applications.
- The divided application is treated as filed on the same date as the original.

Dating of Application (Section 17)

- The Controller may post-date an application (change its filing date) if requested, up to six months later than the original date.
- If amendments are made, the new date of compliance may be taken as the effective filing date.

Anticipation (Section 18)

- If the invention has already been published or claimed elsewhere, the Controller may refuse the application unless:
 - The applicant proves an earlier priority date, or
 - Amends the specification satisfactorily.
- References to related patents may be added as a notice to the public.

Potential Infringement (Section 19)

- If the invention could infringe another existing patent, the Controller may add a reference to that patent in the specification.
- This reference may be deleted later if the other patent becomes invalid or expires.

Substitution of Applicants (Section 20)

- If the rights in an invention are transferred by assignment or inheritance, the Controller can substitute the new owner's name in place of the original applicant.
- In case of disputes among joint applicants, the Controller may decide how the application should proceed.

Time for Putting Application in Order for Grant (Section 21)

- The applicant must comply with all requirements and objections within the prescribed period after receiving the first examination report (FER).
 - Failure to do so results in the application being deemed abandoned.
 - Extensions may be granted if an appeal is pending before the High Court.
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5. Chapter V - Opposition to the Patent

After an application is published and before or after a patent is granted, any person can oppose the grant on certain legal grounds. This process ensures transparency and prevents wrongful patents.

Pre-Grant Opposition (Section 25(1))

- *When:* After publication of the application but before grant of the patent.
- *Who can file:* Any person (no restriction).
- *How:* By submitting a written opposition to the Controller.
- *Grounds include:*
 - Invention wrongfully obtained by the applicant.
 - Invention published earlier in India or abroad.
 - Invention already claimed in another Indian patent.
 - Invention publicly known or used in India before the filing date.
 - Invention lacks inventive step or is obvious.
 - Subject matter not patentable under the Act.
- *Controller's role:* May hear the opponent and decide whether to refuse, amend, or proceed with the application.

Post-Grant Opposition (Section 25(2))

- *When:* Within one year from the date of publication of the grant.
- *Who can file:* Only a person interested (someone affected or engaged in the same field).
- *Grounds:* Same as pre-grant opposition.
- *Procedure:*
 1. Controller notifies the patentee of the opposition.
 2. An Opposition Board is constituted to examine the case.
 3. The Board submits recommendations to the Controller.
 4. After hearing both parties, the Controller may:
 - Maintain the patent as it is,
 - Maintain it with amendment, or
 - Revoke the patent.
- The Controller will not consider secret use or secret documents while deciding.

Inventions Wrongfully Obtained (Section 26)

- If it is proved that the invention was obtained from the opponent, the Controller may:
 - Transfer the patent in the opponent's name, or
 - Require the applicant to remove that part of the invention.
 - The opponent's priority date may also be protected in such cases.
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6. Chapter VI - Anticipation

The concept of anticipation in patent law refers to situations where an invention is not considered new because it was already known, published, or used before the patent application was filed. However, the Act provides several exceptions where prior publication or use will not destroy the novelty of an invention.

The Act lists situations where such disclosure does not destroy novelty.

- Prior publication does not count if it occurred without the inventor's consent, before 1912, or due to rights violation — unless the invention was commercially worked before filing.
 - Disclosure to the Government for testing or investigation does not affect patentability.
 - Display or presentation at an official exhibition or learned society is not anticipation if the application is filed within 12 months.
 - Public working for reasonable trial within a year before filing is not anticipation.
 - Use or publication after filing a provisional or convention application does not affect novelty.
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7. Chapter VII - Provisions for Secrecy of Certain Inventions

This chapter ensures that inventions relevant to national defense or security are kept confidential and not disclosed publicly.

Secrecy Directions (Section 35 and 36)

If an invention is relevant to defense purposes, the Controller may issue directions to prohibit or restrict publication. The Central Government reviews such inventions and may revoke secrecy directions if publication is no longer harmful.

The Government must review secrecy orders every six months and revoke them if the invention no longer affects defense interests.

8. Chapter VIII - Grant of Patents and Rights Conferred

This chapter explains how patents are granted, the rights they provide, and related conditions.

Grant of Patent (Section 43)

When an application meets all requirements, the Controller grants the patent, enters it in the register, and publishes it for public inspection.

Date of Patent (Section 45)

A patent is dated from the filing date of the application. No infringement action can be taken for acts before publication.

Form and Effect (Section 46)

A patent applies throughout India and is granted for one invention only.

Conditions of Grant (Section 47)

Patents are subject to conditions allowing:

- Government use or import for official purposes.
- Experimental or educational use.
- Import of patented medicines by the Government for public institutions.

Rights of Patentee (Section 48)

The patentee has the exclusive right to prevent others from:

- Making, using, selling, or importing a patented product.
- Using or selling a product made by a patented process.

Co-owners of Patents (Section 50)

Co-owners share equal rights unless agreed otherwise. A co-owner cannot assign or license without others' consent.

Term of Patent (Section 53)

Every patent is valid for 20 years from the filing date. It lapses if renewal fees are not paid, and after expiry, the invention enters the public domain.

9. Chapter IX - Patents of Addition

This chapter deals with patents granted for improvements or modifications of an already patented invention, called patents of addition.

Patent of Addition (Section 54)

- When a person makes an improvement or modification to an invention for which they already hold or have applied for a patent, they may apply for a patent of addition.
- The Controller can revoke the separate patent for improvement and issue it as a patent of addition instead.
- The filing date of the patent of addition must be same or later than that of the main invention.
- It cannot be granted before the main patent is granted.

Term of Patent of Addition (Section 55)

- It remains valid for the same term as the main patent and expires when the main patent expires.
 - If the main patent is revoked, it may become an independent patent for the remaining term.
 - No separate renewal fee is payable unless it becomes an independent patent.
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10. Chapter X - Amendment of Applications and Specifications

This chapter explains how patent applications or specifications can be amended by applicants or patentees and under what conditions.

Amendment before Controller (Section 57)

- Applicants or patentees may request amendments to their patent application, specification, or related documents.
 - Such amendments cannot be made if a court case or revocation proceeding is pending.
 - The application must specify the nature and reason for amendment.
 - Amendments made after grant may be published, allowing others to oppose them.
 - Amendments can also include changes in priority date of claims.
 - Applicants may amend documents as per Controller's directions before grant.
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11. Chapter XI - Restoration of Lapsed Patents

This chapter explains how a lapsed patent (one that has expired due to non-payment of renewal fees) can be restored and what rights apply after restoration.

Application for Restoration (Section 60)

- If a patent lapses because the renewal fee was not paid in time, the patentee or legal representative may apply for its restoration.
- The application must be made within 18 months from the date the patent ceased to have effect.
- It must include a verified statement explaining why the payment was missed.

Procedure for Restoration (Section 61)

- The Controller must be satisfied that the failure to pay was unintentional and that there was no undue delay.
 - The application is then published, allowing others to oppose it on grounds such as (a) the failure to pay was intentional, or (b) the delay was excessive.
 - After considering any opposition, if the Controller rules in favor of the applicant, the patent is restored upon payment of pending and additional fees.
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12. Chapter XII - Surrender and Revocation of Patents

This chapter explains how a patentee may voluntarily surrender a patent and under what circumstances the Government or courts may revoke it.

Surrender of Patents (Section 63)

- A patentee may offer to surrender the patent by giving notice to the Controller.
- The offer is published, and all persons with an interest in the patent are notified.
- Any interested person may oppose the surrender within a prescribed period.
- After hearing both sides, if the Controller is satisfied, the patent is revoked.

Revocation of Patents (Section 64)

A patent may be revoked by the High Court—either on a petition by any interested person, by the Central Government, or on a counter-claim in a suit for infringement—on any of the following grounds:

- The invention was already claimed in a valid earlier patent having an earlier priority date in India.
- The patent was granted to a person not entitled to apply under the Act.
- The invention was obtained wrongfully from another person.
- The subject matter of any claim is not an invention as per the Act.
- The invention is not new or has been publicly known, used, or published before the priority date.
- The invention is obvious or lacks inventive step, considering prior knowledge or use.
- The invention is not useful.
- The complete specification does not sufficiently describe the invention or the best method of performing it.
- The claims are not clearly or fairly based on the disclosed matter.
- The patent was obtained on a false suggestion or representation.
- The subject matter is not patentable under the Act.
- The invention was secretly used in India before the priority date (except for reasonable trials or government-authorised use).

Revocation for Atomic Energy Inventions (Section 65)

- If the Central Government finds that a patent relates to an invention connected with atomic energy, for which patents cannot be granted, it may direct the Controller to revoke the patent.
- The patentee may be allowed to amend the specification instead of losing the patent completely.

Revocation in Public Interest (Section 66)

- The Central Government may revoke a patent if it finds that the patent or its working is mischievous to the State or against public interest.
 - Before revocation, the patentee must be given a chance to be heard.
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13. Chapter XIII - Register of Patents

This chapter deals with the maintenance, transfer, correction, and inspection of the Register of Patents maintained by the Patent Office.

Register of Patents (Section 67)

The Patent Office maintains a Register of Patents containing:

- Names and addresses of patent holders.
- Notifications of assignments, extensions, and revocations.
- Other details affecting ownership or validity.

Public Inspection of Register (Section 72)

- The register is open to public inspection, and certified copies are available on payment of a fee.
- The register is *prima facie* evidence of the facts it contains.
- Digital access to the register or its printouts also fulfills inspection requirements.