

BBA
SEMESTER - 4
BBAR24402

Business and Industrial Laws



Message for the Students

Dr. Babasaheb Ambedkar Open (University is the only state Open University, established by the Government of Gujarat by the Act No. 14 of 1994 passed by the Gujarat State Legislature; in the memory of the creator of Indian Constitution and Bharat Ratna Dr. Babasaheb Ambedkar. We Stand at the seventh position in terms of establishment of the Open Universities in the country. The University provides as many as 54 courses including various Certificate, Diploma, UG, PG as well as Doctoral to strengthen Higher Education across the state.



On the occasion of the birth anniversary of Babasaheb Ambedkar, the Gujarat government secured a quiet place with the latest convenience for University, and created a building with all the modern amenities named 'Jyotirmay' Parisar. The Board of Management of the University has greatly contributed to the making of the University and will continue to this by all the means.

Education is the perceived capital investment. Education can contribute more to improving the quality of the people. Here I remember the educational philosophy laid down by Shri Swami Vivekananda:

“We want the education by which the character is formed, strength of mind is Increased, the intellect is expand and by which one can stand on one’s own feet”.

In order to provide students with qualitative, skill and life oriented education at their threshold. Dr. Babaasaheb Ambedkar Open University is dedicated to this very manifestation of education. The university is incessantly working to provide higher education to the wider mass across the state of Gujarat and prepare them to face day to day challenges and lead their lives with all the capacity for the upliftment of the society in general and the nation in particular.

The university following the core motto ‘स्वाध्यायः परमम् तपः’ does believe in offering enriched curriculum to the student. The university has come up with lucid material for the better understanding of the students in their concerned subject. With this, the university has widened scope for those students who

are not able to continue with their education in regular/conventional mode. In every subject a dedicated term for Self Learning Material comprising of Programme advisory committee members, content writers and content and language reviewers has been formed to cater the needs of the students.

Matching with the pace of the digital world, the university has its own digital platform Omkar-e to provide education through ICT. Very soon, the University going to offer new online Certificate and Diploma programme on various subjects like Yoga, Naturopathy, and Indian Classical Dance etc. would be available as elective also.

With all these efforts, Dr. Babasaheb Ambedkar Open University is in the process of being core centre of Knowledge and Education and we invite you to join hands to this pious *Yajna* and bring the dreams of Dr. Babasaheb Ambedkar of Harmonious Society come true.



Prof. Ami Upadhyay

Vice Chancellor,

Dr. Babasaheb Ambedkar Open University,
Ahmedabad.

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BUSINESS AND INDUSTRIAL LAWS

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BUSINESS AND INDUSTRIAL LAWS
BLOCK: 1

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1.1 Introduction

As a social being, man comes into contact with people in different capacities. He comes into contact, for example, with a landlord as a tenant, with Government as a taxpayer, with customers as a seller and with suppliers as a buyer. These contacts or associations are the inevitable consequence of modern civilization. In all these associations, he is expected to observe a code of conduct or a set of rules. The object of these rules is to make human associations possible and conducive to the welfare of the State and its people.

A man's perspective influences his notions about law and as such its meaning. It is, therefore, not possible to give a single, accurate definition of law. It is often preceded by an adjective to give it a more precise meaning, e.g., civil law, criminal law, mercantile law, industrial law, international law. However, in the legal sense with which we are concerned in this book 'law' includes- all the rules and principles which regulate our relations with other individuals and with the State.

The State regulates the conduct of its people by a set of rules. It ordains, directly or indirectly, implicitly or explicitly, a general course of conduct to be followed by the people. Such rules of conduct if recognized by the State and enforced by it on people, are termed as law. In this sense

Holland, a jurist, defines 'law' as rules of external human action enforced by the sovereign political authority. i.e., the State.

In the words of Salmond, "Law is the body of principles recognized and applied by the State in the administration of Justice." Woodrow Wilson has defined law as "that portion of the established habit and thought of mankind which has gained

distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government.' It represents a code of conduct which is established and enforced by the State. Law, in this sense, has a two-fold aspect: it is an abstract body of rules and also a social machinery for securing order in the community.

Law is not static. As circumstances and conditions in a society change, laws are changed to fit the requirements of the society. As such, law prevailing in a society at any point of time must be in conformity with the general sentiments, customs and aspirations of its people. It is a living phenomenon having a real existence in relation to the facts of human affairs.

- **object of law**

The object of law is order, and the result of order is that men are enabled to look ahead with some sort of security as to the future. Although human actions cannot be reduced to the uniformities of nature, men have yet endeavoured to reproduce by law something approaching to this uniformity.

In the context of new emerging India, the main object of law is considered to be "to establish socioeconomic justice and remove the existing imbalance in the socio-economic structure". Law, in this context has to play a special role in the task of achieving the various socio-economic goals enshrined in our Constitution.

In a society like ours law has to serve as a vehicle of social change and as a harbinger of social justice. A great part of law is designed principally to bring about all round welfare and improvement of the community and through welfare, well-being of the citizens individually and collectively from material, moral and spiritual standpoints.

With the attainment of freedom, the people of India have a far greater need than they had before to know their law in the sense of being acquainted with its content and purpose and with the manner in which it serves their requirements and regulates their activities and their relations with one another. This is because it is now their law and is made not merely for them but by them through their representatives.

In the pre-independence era, the principal concern of the government was limited to the maintenance of law and order in the country. But the situation has changed now and the fundamental task of broadening the horizons of the Welfare State is being pursued by the Legislature by enacting social welfare legislation covering the entire gamut of social activity.

- **Need for the knowledge of law**

'Ignorantia Juris not excusat' is a familiar maxim. This means ignorance of law is no excuse. Although it is not possible for a layman to learn every branch of law, yet it is to the advantage of each member of the community to know something of rules and regulations by which he is governed and as such he must acquaint himself with the general principles of the law of the country.

The law now-a-days is a matter of great intricacy. As such no sound businessman would attempt to solve important legal questions affecting his business interest without expert legal advice. However, there are certain elements of law which stand out, as it were, like finger-posts, or rather, like danger signals, and indicate where difficulty is likely to arise and where legal advice is desirable. A general

knowledge of some of the more important, legal principles and how they apply to certain problems will certainly help a businessman in avoiding conflict with the persons with whom he comes into business contacts.

- **Nature of Mercantile Law**

The term 'Mercantile Law' is used to denote that branch of law which is concerned with such matters as are usually the subject of what may be called mercantile transactions, Le., It deals with contractual situations and the right and obligations arising out of mercantile transactions between mercantile persons. A mercantile person may be a single individual, a partnership, or a joint stock company. The term 'Mercantile Law' is also used to denote the aggregate body of those legal rules which are connected with trade, industry and commerce.

- **Sources of Mercantile Law**

The bulk of the Indian Mercantile Law is based on, and follows, the English Mercantile Law. In the absence of any specific law, usage or custom on a particular point arising before a Court, rules of the English Law, Le., of justice, equity and good conscience. are applied. The Courts in India are, however, selective in the application of the English Law.

❖ **The important sources of the Indian Mercantile Law are as follows:**

1. **English Mercantile Law.** This is the most important source of the Indian Mercantile Law. The principal source of the English Mercantile Law is the Common Law of England as modified and supplemented by Equity and Statute Law.
 - (a) **Common Law.** It refers to a system of law based upon English customs, usages and traditions which were developed over centuries by the English Courts. It is unwritten and its principles are applied whenever subsequent disputes of similar nature arise. This practice came to be known as deciding cases by following precedent.
 - (b) **Equity.** It refers to that branch of the English Law which developed separately from the Common Law. It is based upon concepts of justice developed by the judges whose decisions became precedents. These precedents now constitute Equity Law. It is also unwritten and it grew as a system of law supplementary to the Common Law. In a sense, Equity covered the deficiencies of the Common Law, especially where the Common Law worked harshly. The distinction between them was abolished by the Judicature Acts of 1873 and 1875, so that the Common Law and Equity are now applied to all cases.
 - (c) **Statute Law.** The Statute Law refers to the law laid down in the Acts of Parliament. It is superior to and overrides any rule of the Common Law of Equity.

1.2 Contract

On a daily basis we enter into lots of transactions, whether, from buying toothpaste to paying bills in hotels. To satisfy our daily wants and desires we enter into agreements which may be oral or written, expressed or implied which all results in contracts.

The Indian Contract Act, 1872 is an act which specifies and deals with the principles of the Law of Contract. This Act was enacted on 25th April, 1872 and subsequently came into force on the first day of September 1872. It is important to note here that ever since the enactment of this act in 1872, it has never been amended and thus the law that was made back in 1872 still stands good.

It extends to the whole of India except to the State of Jammu and Kashmir. The Act was passed by British India and is based on the principles of English Common Law.

This Act describes different stages in the formation of a contract, its performance, essential elements, breach of contract and remedies for the breach of contract. The Act deals with a number of limiting principles subject to which the parties to the contract may create certain rights or duties for themselves.

- **Definition of contract.**

A contract is an agreement made between two or more parties which the law will enforce. Section 2 defines contract as “an agreement enforceable by law”.

Sir William Anson defines a contract as "a legally binding agreement between two or more persons by which rights are acquired by one or more to act or forbearance (abstaining from doing something) on the part of the others.

Pollock defines it is "every agreement and promise enforceable at law is a contract."

According to **Salmond**, a contract is "an agreement creating and defining obligations between the parties."

Halsbury defines a contract to be "an agreement between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act".

American Law defines contract in the following manner -A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

Features of the law of contracts

1. **The act is not exhaustive:** The Indian contract act does not provide to be complete and exhaustive code. It deals with the general principles of contract and with some special contracts only. The law of contract differs from other branches of law in an important respect. The law contract does not define precisely to the parties as to, how a contract is to be done. It rather demarcates certain dos and don'ts or which can be defined as limiting factors, within which the parties to a contract are supposed to create a contract. As long as the parties to a contract do not infringe these set of prohibitions, they are free to create any contract and terms of contract as they feel free. This means that the parties to the contract create the laws for themselves. They can make what rules they like in respect of the subject matter of the agreement, and the law will give effect to their decisions.
2. **The law off contract is not the whole of agreement nor the whole law obligations:** There are several agreements which do not give rise to legal obligations. They are, therefore, not contracts. Similarly, there are certain obligations which do not necessarily spring from an agreement. For example, civil wrong, quasi-contracts judgements of courts etc. Salmond has rightly observed that the law contract is "not the whole law of agreements, or the whole law obligations.

It is the law of those agreements which create obligations, and those obligations which have their sources in agreements." It excludes from its purview all those obligations which are not contractual in nature and agreements which are social in nature.

3. **Law of contract creates Jus in Personam, as distinguished from Jus in Rem:** Jus in Rem means a right against or in respect of a thing. Jus in Personam means a right against court in respect of a specific person. A Jus in rem is available against the world at large; Jus in Personam is available only against a particular person.
4. **Agreement and its enforceability:** If we analyse the definitions of a contract, we find that a contract essentially consists of two elements (1) and agreements, and (2) its enforceability by law. An agreement is defined as "every promise and every set of promises, forming consideration for each other." "When the person to whom a proposal is made, signifies his assent there to, the proposal is it to be accepted. A proposal when expected, becomes a promise." This, in other words, means, that an agreement is an accepted proposal. To form an agreement, there must be a proposal or offer by one party and its acceptance by the other.

To sum up: **Agreement = Offer + Acceptance**

5. **Consensus ad idem:** The essence of an agreement is the meeting of the minds of the parties in full and final agreement; there must, in fact, be *consensus ad idem*. That order could be an agreement between two parties, that must be consensus ad idem. This means that the parties to the agreement must have agreed about the subject matter of the agreement in the same sense, and at the same time. Unless there is consensus ad idem, there can be no contract.
6. **Obligations:** An agreement to become a contract, must give rise to a legal obligation or duty. The term obligation is defined as a legal tie which imposes upon a definite person or persons. The necessity of doing or abstaining from doing a definite act or acts. It may relate to social or legal matters. An agreement which gives rise to a social obligation is not a contract. The rise to a legal obligation in order to become a contract.
7. **Agreement is a very wide term:** An agreement may be a social agreement or a legal agreement. If A invites B to a dinner and B accepts the invitation, it is a social agreement. A social agreement does not give rise to contractual obligations and is not enforceable in a court of law. It is only those agreements which are enforceable in a court of law, which are contracts.

To conclude: **Contract = Agreement + Enforceability by law.**

- **Essential elements of a contract**

According to section 10 of the contract act, all agreements are contracts if they are made by the *free consent of parties competent to contract*, for a *lawful consideration*, with a *lawful object* and are not expressly *declared to be void*. Hence as already discussed earlier the law contract is not an exhaustive code and it does not define how a contract should be made but rather defines a few limiting principles or as we can say some dos and don'ts regarding the contract. If an agreement abides by all the essential elements, it is possible for a person to create any contract and terms therein and the law will enforce them. Following are the essential elements of a valid contract.

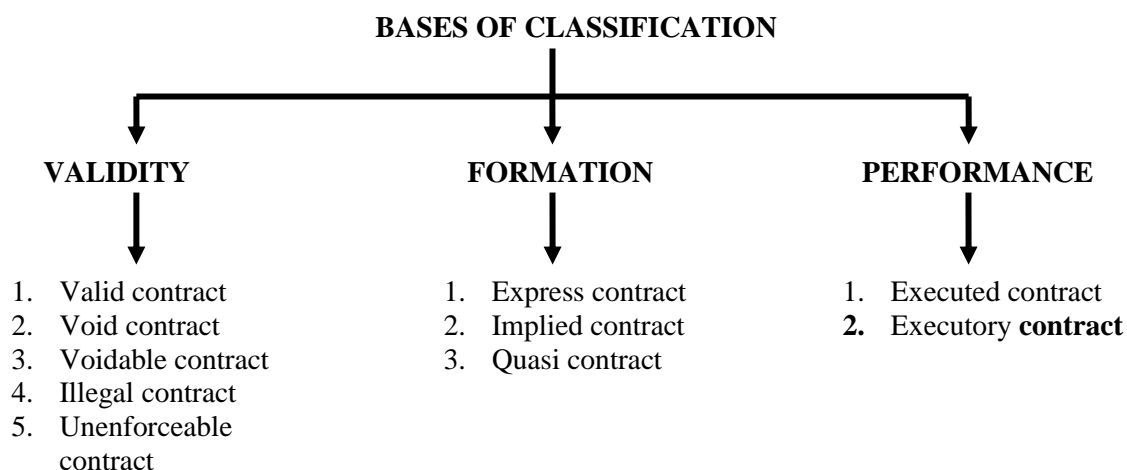
- (1) **Offer and Acceptance:** there must be an offer and the said offer must have been accepted, which means there must be a minimum of two parties to an agreement,

that is, one party making the offer and the other accepting it. The terms of an offer must be definite and unambiguous and the acceptance of the offer must be absolute and unconditional. The acceptance must also be according to the mode prescribed and must be communicated to the offerer. A partial or a conditional acceptance is no acceptance. Likewise in an offer wherein the meaning of which is either ambiguous or vague can not constitute an offer.

- (2) **Legal Relationship:** When a transaction or agreement happens between two parties, there needs to be an intention on the side of both the parties to enter into a legal relationship. Legal relationship means nothing else but an intention where the parties are willing to accept legal solutions through the process of law in case of disputes. Every commercial transaction by default creates legal relationship irrespective of the parties to the contract mentioning it in words written or spoken. Agreements of social and domestic nature do not create legal relationship and as such they are not contracts.
- (3) **Lawful Consideration:** Consideration specifically means "something in return". Every contract creates a right and obligation on the part of the parties to a contract. Wherein the right of one becomes the obligation of the other. A contract without consideration is no contract. This means that every party to a contract must give something and get something in return. Consideration can be present, past or future, the respective of its proportion and it can also be an act of abstinence, that is a promise to not do something. But it must be real and lawful.
- (4) **Capacity of Parties:** according to law a contract can only be done between parties who are capable to contract. Any person who does not possess the capacity to contract cannot create a legal contract and a legal relationship with any other person. As such every citizen of India is considered capable to contract except three people (a) a minor – a person who has not attained 18 years of age; (b) a person of unsound mind - any person with permanent or temporary unsoundness of mind is not considered capable to contract; and (c) people disqualified by law - a person disqualified by law to which he is subject to. If a party to a contract bears any one of these flaws in capacity, the contract is not enforceable by law.
- (5) **Free and Genuine Consent:** When two or more persons agree upon something in the same sense and at the same time there is said to be consent between. The parties to the contract have to be of the same mind on all the material terms of the contract. Consents between parties are generally considered to be free and genuine by law as long as they are not given under five circumstances, that is coercion, undue influence, fraud, misrepresentation and mistake.
- (6) **Lawful Object:** An agreement of which the object or consideration is unlawful is void. Object means the purpose or design of the contract. Implies the intentions with which the parties to an agreement come together. Any object to a contract which is illegal, immoral or opposed to any public policy cannot be considered a valid object and hence cannot result into a valid contract.
- (7) **Agreement Not Declared Void:** The agreement must not have been expressly declared void by any law in force in the country. All agreements may not be enforceable at law, only those agreements which fulfil the essentials laid down in section 10 of the Contract Act can be enforced. An agreement that suffers from a flaw pertaining to any one of the essential elements of a contract like consideration, capacity of the party, object of contract etc. Are considered void and not enforceable by law and hence not contracts.

- (8) **Certainty and Possibility of Performance:** The agreement must be certain and not vague or indefinite. If it is vague and it is not possible to ascertain its meaning, it cannot be enforced. An agreement to perform an impossible act or over an agreement based on an uncertain event cannot mature into a contract.
- (9) **Legal Formalities:** An oral contract is as valid as written one and in the eyes of law both are treated equally. It is however, in the interests of the parties that the contract should be writing as it is easier to prove in the court of law in case of disputes. This means that a contract whether oral or written is equally enforceable by law. The law necessitates certain contracts to fulfil certain legal formalities for example in case of contracts of sale, mortgage, lease, negotiable instruments etc. The law requires them to be in writing. In case of purchase and sale of immovable properties the law requires the contracts to be registered. Certain contracts like registered marriages also require witnesses when the contract is being signed and the process is required to be carried out at the marriage registrar's office. Hence, such contracts where the law has defined certain legal formalities to be carried out have to be fulfilled for the contract to be valid.

- **Classification of Contracts.**



1.3 Offer And Acceptance

- **Offer**

At the Inception of every agreement, there must be a definite offer by one person to another and its unqualified acceptance by the person to whom the offer is made. An offer is a proposal by one party to another to enter into a legally binding agreement with him. A person is said to have made a proposal, when he "signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence." [Sec. 2 (a)]. For example-, A says to B, -Will you purchase my car for Rs. 5,000 ?"A in this case, is making an offer to B as he signifies to B his willingness to sell his car to B for Rs. 5,000 with a view to obtaining B's assent to purchase the car.

The person making the offer is known as the offeror, proposer, or promisor and the person to whom it is made is called the offeree or proposee. When the offeree accepts the offer, he is called the acceptor or promisee [Sec. 2 (c)].

- **Legal Rules As To Offer**

- 1. Offer must be such as in law is capable of being accepted and giving rise to legal, relationship.**

A social invitation, even if it is accepted, does not create legal relations because it is not so intended. An offer, therefore, must be such as would result in a valid contract when it is accepted.

- 2. Terms of-offer must be definite, unambiguous and certain and not loose and vague.**

If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.

- 3. An offer may be distinguished from**

- (i) A declaration of intention and an announcement A declaration by person that he intends to do something gives no right of action to another. Such a declaration only means that an offer will be made or invited in future and not that an offer is made now. An advertisement for a concert or an auction sale does not amount to an offer to hold such concert or auction sale [Executive Engineer, Sundargarh v. Mohan Prasad Sift" A-I.R (1990) Ori. 261.

- (ii) An invitation to make an offer or do business. Display of goods by a shopkeeper in his window, with prices marked on them, is not an offer but merely an invitation to the public to make an offer to buy the goods at the marked prices. Likewise, quotations, catalogues, advertisements in a newspaper for sale of an article, or circulars sent to potential customers do not constitute an offer. They are instead an invitation to the public to make an offer. A person, in case the prices of the goods are marked, cannot force the seller to sell the goods at those prices. He can, at the most, ask the seller to sell the goods to him, in which case he would be making an offer to the seller and it is up to the seller to accept the offer or not.

- 4. Offer must be communicated.**

An offer, to be complete, must be communicated to the person to whom it is made. Unless an offer is communicated to the offeree by the offeror or by his duly authorised agent, there can be no acceptance of it.

An acceptance of an offer, in Ignorance of the offer, is no acceptance and does not confer any right on the acceptor.

- 5. Offer must be made with a view to obtaining the assent.**

The offer to do or not to do something must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.

- 6. Offer should not contain a term the noncompliance of which may be assumed to amount to acceptance.**

Thus, a man cannot say that if acceptance is not communicated by a certain time, the offer Would be considered as accepted.

7. A statement of price is not an offer.

A mere statement of price is not construed as an offer to sell [Harvey v. Facey, (1893) App. Cas 5521].

8. Revocation of offer

A proposal or offer may be revoked at any time before the communication of its acceptance is complete. The revocation of a proposal is complete when it comes to the knowledge of the person to whom the proposal was made. It can be done by the proposer himself or through his authorized agent. However, the revocation must be communicated to the offeree in a reasonable manner and before the acceptance is complete. Once the acceptance is complete, the proposal cannot be revoked.

• Acceptance

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offeree to an offer. In other words, it is the manifestation by the offeree of his willingness to be bound by the terms of the offer. It is "to an offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled, or undone". This means when the offeree signifies his assent, to the offeror, the offer is said to be accepted. An offer when accepted becomes a promise (See. 2 (b)).

Acceptance may be express or implied. It is express when it is communicated by words spoken or written or by doing some required act. It is implied when it is to be gathered from the surrounding circumstances or the conduct of the parties.

• Legal Rules As To Acceptance

The acceptance of an offer is the very essence of a contract. To be legally effective, it must satisfy the following conditions

1. It must be absolute and unqualified, i.e., it must conform with the offer.

An acceptance, in order to be binding, must be absolute and unqualified [Sec. 7 (1)] in respect of all terms of the offer, whether material or immaterial, major or minor. If the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract'.

2. It must be communicated to the offeror.

To conclude a contract between the parties' the acceptance must be communicated in some perceptible form. A mere resolve or mental determination on the part of the offeree to accept an offer, when there is no external manifestation of the intention to do so, is not sufficient [Bhagwan Dass Kedia v. Girdhari Lal, A.I.R (1966) S.C. 543]. In order to result in a contract, the acceptance must be -a "matter-of fact".

3. It must be according to the mode prescribed or usual and reasonable mode.

If the acceptance is not according to the mode prescribed, or some usual and reasonable mode (where no mode is prescribed) the offeror may intimate to the offeree within a reasonable time that the acceptance is not according to the mode prescribed and may insist that the offer must be accepted in the prescribed mode only. If he does not inform the offeree, he is deemed to have accepted the acceptance [Sec. 7 (2)].

4. **It must be given within a reasonable time.**
If any time-limit is specified, the acceptance must be, given within that time. If no time limit is specified, it must be given within a reasonable time.
5. **It cannot precede an offer.** If the acceptance precedes an offer, it is not a valid acceptance and does not result in a contract.
6. **It must show an intention on the part of the acceptor to fulfil terms of the promise. If no such intention is present, the acceptance is not valid**
7. **It must be given by the party or parties to whom the offer is made.**
8. **It must be given before the offer lapses or before the offer is withdrawn.**
9. **It cannot be implied from silence.** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has by his previous conduct indicated that his silence means that he accepts.

1.4 Consideration

Consideration is one of the essential and most important factors of valid contract. It is made compulsory to have consideration to formulate a valid contract. In the law, it is used in the sense of “quid-pro-quo” i.e., something in return. This something becomes a base or the essence for a contract. a contract is always created for mutual benefits of the parties to it consideration enables the parties to avail such benefits. This something, that is why, must be present into every contract. It is primarily a price at which, the promise of the other is bought for a reciprocal promise. This consideration with a view to satisfy the contract must move from either of the parties to the other. It is the price paid by promisee for the obligation of the promisor. E.g.: - if Mr. A promises to deliver a car to Mr. B for Rs.250000. Car is the consideration for the promise of Mr. B to pay Rs.250000 and that amount is the consideration for the promise of Mr. A to hand over the car to Mr. B.

- **Definition**

Sec.2 (d) of the Indian Contract, Act defines consideration as, “When at the desire of the promisor or any other person, has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstains or promise is called consideration for the promise.

According to justice Lush, “In the sense of law, consideration consists in some rights, advantages, interest or benefit accruing to one party and some loss, detriment or responsibility given, suffered and undertaken by the other. It must result into some benefit to the plaintiff or loss to the dependant.

- **Necessity of Consideration:**

Presence and movement of consideration is made compulsory in every contract by the law. A contract without consideration shall not be enforceable in any case as such as a “Nudum Pactum: i.e., a wide contract which does not offer any remedy under the law. The loss looks with disfavour to those agreements made without consideration as gratuitous promise are often made rashly. Without due deliberation. So, with a view to protecting every partly, a doctrine is laid down that, “No consideration no contract”. Accordingly, consideration must be present and moved from either of the parties to the other in a contract.

- **Essential Elements Or Legal Rules As To Consideration**

1. **It must be move at the desire of the promisor:** To be a valid consideration, it must move at the desire or request or intention of the promisor himself and none else, if it is moved at the desire not of promise even though the promise is benefited from consideration, the reciprocal promise made by him shall not be enforceable in law as such consideration is invalid.
2. **It may move from promisee for, any other person:** In English, law, consideration, while moving at the desire of the premieres, must move from promises only and none else. Indian law differs in the respect and provides that consideration may move either from the promises or any other person. According to the law, in the background of India circumstances, so long as consideration is present and moved at the desire of the promisor, it is immaterial who has finished it. So , consideration is present and move from 3rd party also.
3. **Uncertain Form:** The form of the consideration provided in a contract is not fixed or certain. As indicated by Sec.2(d). it may be formed into either an act (doing something) or abstinence (refraining from doing something) or a promise to do or not to do. Any type of consideration is considered as valid by the law and unless in contract, a party cannot insist for a particular form of consideration.
4. **It may be past, present of future:** The words of Sec.2(d) are. “Has done or abstained from doing (past) or does or abstains from doing (present) or promises to do or to abstain from doing (future).” These clearly means that consideration may not necessarily be present. When a consideration is moved for something which has been done earlier or when a consideration is moved for a promise to be fulfilled later on, all this are valid consideration.
5. **It need not be adequate:** It is provided by the law that something must be given and obtained by the parties in a contract. This something however, need not necessarily be adequate or equal to something given. The law is not concerned with adequacy on inadequacy of the consideration, so long as consideration is present is moved at the desire of the premieres and so far as it has some value in the eyes of the law. This value may not be equal for a reciprocal promise. The logic behind such a stand by the law is that it is the parties to decide and to contemplate regarding consideration and its value at the time of formation of a contract and it is not up to the court to determine when it is sought to be enforced. If the parties are satisfied with an under-value consideration. Courts do not have any role to play in the matter the courts are not here to repair bad bargains of the parties. However, in adequacy of consideration can be treated by the court to determine the free contents of parties in a contract.
6. **It must not be illusory:** If a person is already bound to do some act or abstinence under his legal or contractual obligation, that act or abstinence would not form a consideration for a fresh promise. That means as it is the duty of the person to fulfil the obligation, he cannot expect another promise from the other party to satisfy his legal or contractual obligation.
7. **It must be lawful:** To be enforceable consideration must be lawful consideration. If it is unlawful, there shall not be any enforcement. Consideration is unlawful it is either illegal or immoral or oppose to public policy or is of such a nature to contravene one or more provisions of any law in the country or if permitted it

involves a moral turpitude, in such cases, the consideration as well the contract and not be enforceable.

- **Exceptions To the Doctrine “No Consideration No Contract.” Or Nudum Pactum**

Consideration, the most important element of a valid contract, must always be present into a contract to be enforceable. If the consideration is not present into a contract. According to the Sec.25 of the Act. The contract becomes a void agreement i.e, it is void ab initio and no right shall be conferred over either of the part under the contract. That is why the saying. “No Consideration No Contract” is always applicable in each case. Under the Roman Law an agreement without consideration is called *nudum pactum* (a naked agreement) and was not enforceable and the action cannot be held to be binding upon the parties. However applicable in each case this doctrine is also subject to certain exemptions under Sec. 25 and 185, that means if any case comes up under any of the party. These exemptions are all follows:

1. **Natural Love and Affection:** According to Sec.25, if a contract is entered into, in a written form and is registered under the laws of registration of the country between the parties who stand into near relations with each other, on account of natural Love and Affection between them, such a contract shall be enforceable even though it is without consideration. The section gives a list of relations, only which are permitted for these exceptions the list is:

Father – Son Father – Daughter Mother – Son Mother – Daughter

Even though the list is permitted to be taken up but there must be a proof of natural Love and Affection between the parties. The court cannot presume such a state because it is indicated by the section that nearness of relations does not necessarily impact natural Love and Affection between the parties. As such, if it is not proved, the rule of “No consideration No contract” shall be applicable. For e.g., A husband after having referred to persistent quarrel and disagreement with his wife, agreed to pay a monthly maintenance, later on he refused to do so. It was held by the court that by referring quarrel and disagreement he has disproved natural Love & Affection for his wife and as such the wife could not sustain the suit. [Rajlukhy Vs. Bhoothnath].

2. **Promise to compensate for a voluntary service:** A promise to compensate, wholly or in part, another person for any service rendered, act done or abstains carried on by him in past voluntarily, shall be enforceable even though that promise is not reciprocated by consideration. Thus if Mr. A brings up child of Mr. B, Mr. B, may give an enforceable promise later on to compensate Mr. A. for the service rendered by him. However, to enforce such promise following conditions must be satisfied:

- ❖ The act or the service or the abstains must have been made up voluntarily by the promises.
- ❖ The promisor,
- ❖ now promises to compensate the promise.
- ❖ The act done must have been a legal obligation of the promisor.
- ❖ The promisor must be in existence when the act was carried on.
- ❖ The act must have been a lawful one.

3. **Promise to pay a time barred debt:** A promise to pay a time barred debt can enforceable by the creditor even though no fresh consideration is provided by him for such a promise. According to Indian Law of limitation, a debt becomes a time barred debt when it remains unpaid or unclaimed, wholly or part, for successive period of 3 years. On the expiry of 3rd year such debts becomes legally irrecoverable and the contract between the parties becomes to an end and creditors shall not have any remedy. To enforce such a promise, however, the following conditions must be satisfied.
- ❖ The debt must have been actually a time barred debt
 - ❖ The debtor must provide the promise after expiry of period of information.
 - ❖ The debt must be a lawfully one.
4. **Completed gifts:** The concept of “No consideration No contract” does not apply to completed gifts. Completed gift means the gift which have already been executed or given to somebody. In such a case the person provided the gift cannot recover it form the promises on the ground of want of consideration. However, this exception is not applicable to the gift, which is yet to be executed. Thus, a promise to gift cannot be enforceable.
5. **Agency:** Creation of agency does not require presence of consideration from either side. According to Sec. (185) the relation between principal and agent is as such in which the principal is bound by acts done by the agent. But agent is not bound in that way. So, principal provides the consideration, the agent does not. Thus, creation of agency is an exception.

1.6 Capacity To Contract

Capacity to contract means competence of a party to bind and to be bound by legal consequences of any transaction made by them. The law gives importance to this capacity of parties to enter into a contract, since in Sec.10 it is stated that all agreements are contract made by parties competent enough. That means a person to enter into a valid contract, must be considered capable to do so by the law. Accordingly, a person who is not capable, in the eyes of law, to contract shall not enforce any legal remedy. Sec.11 of the act further states that, Every person is competent to contract if :

- (1) He is of the age of majority (18 years in India) according to the law to which he is a subject.
- (2) He is if sound mind.
- (3) He is not expressly disqualified of contracting by any law to which he is a subject.

Thus Sec.11 gives certain criteria for competence to enter into a contract.

Sec.12 further expresses the parties which are considered incompetent to contract, they are as follows ,

- (1) Minor
- (2) Persons of unsound mind
- (3) Persons disqualified by any law to which they are subject.

MINOR :

Minority is considered and afforded a special status into the eyes of law. According to Sec. 3 of Indian Majority Act 1875, a person is a minor, who has not attained the age of majority.

Accordingly, a person shall attain age of majority on the completion of 18 years of his age. Until that he is a minor. However, in following two cases a person shall attain age of majority on the completion, not 18 years but 21 years of his age.

1. When a guardian is appointed to administer minor's person or property under the Guardians and Wards Act 1890.
2. When management of the property of a minor is taken over by the court of wards.
According to above rules any person who is below 18 years or 21 years respectively, is a minor and as such, is incompetent to make a contract.

This criteria of minority and incapacity is a positive criterion. A minor is considered incompetent by the law with a view to regarding interests of minors. The law understands that minor's are inexperienced for any commercial transaction and so they are susceptible to pressure from other persons who are more experienced. They may make a contract, harmful to their own interest. It is observed by the law that, for the minors, *court is servant, jury is counsellor and the law is guardian*. Therefore, legal position of a minor is very different from other persons.

• Legal Rules as To Minority Or Legal Position Of A Minor.

1. Agreements with or by minors are void ab initio: Agreements with or by minors are held by the law to be absolutely void i.e., void ab initio (right from the beginning). They are destitute or having any legal effect since their inception. As a result, no right shall be afforded to either of the parties under such agreement. This rule was emphatically laid down in the case of *Mohiri Bibi V/s Dharmodas Ghose* in which Mr. D. a minor mortgaged his property to a money lender to secure a loan of Rs.20000 out of which Rs.8000 was paid by the moneylender, later on Mr. D, on the plea of his minority, instituted a case to set aside the mortgage valid, even though a part payment was made. So, mortgage was set aside and the property was handed over to Mr. D. Further the request of money lender to get back Rs.8000 was not accepted since any agreement with minor is void-ab initio.
2. A minor can be beneficiary: Incapacity of minor, although prevents him to make a contract, does not prevent him to be a beneficiary. That means he is prevented to shoulder responsibility but is completely allowed to take benefits of a contract. So, he can enter into a contract only for the benefits of it. Thus, he can be a payee or endorsee or beneficiary under a trust.
3. No ratification: Ratification by the minor to his agreement are not allowed by the law. The satisfaction means later on approval. So, if a minor later on approves (after becoming a major) his deeds or acts made during minority. Such ratification shall have no effect. Ratification always has retrospective effect i.e., effect from the time when the act approved, was initiated. As the minor agreements are void ab initio, as retrospective effect cannot be allowed E.g. : If a minor executes a promissory note in the favour of a creditor for a debt, after having attained the age

of majority, he executes a fresh promissory note in the settlement of the earlier one... as ratification I not allowed, that fresh promissory note is the be act aside from want of consideration.

4. He can plead minority: A minor has been specifically protected by the law. He can always plead minority in the sense that minority can very well be an excuse for him to be escaped from any responsibility. Even though he, by misrepresenting his age entered into a contract as major, at the time of fulfilment of obligation he can prove himself to be minor, he can be legally escaped from responsibility, even if it amounts to some harm or loss to be caused to a 3rd party.
5. No application of restitution: In the case of minor doctrine of restate does not apply. According to this act under any contract, when it is prematurely restricted for any reason, a party, who has received some benefit under the contract from the other party, must restore it back to the party from whom he has received. This rule is not applicable to a minor and as such he is not liable to restore back any such benefit.
6. He cannot be a partner: Partnership is a contract so every party to the partnership must have contractual capacity. A minor does not have that capacity, as such cannot be a partner. However, he can be entered into of introduced, with the consent of all other partners, for the benefits of the partnership.
7. Minor's Liability for Necessaries: The Indian Contract, Act had provided a valuable exception to all the legal rules applicable to a position of minor. The law suggests that when a contract is made with or by a minor is legally bound to support, the supplier shall have surety of his payment even though such agreement is void ab initio. The noted act is that even in such a case a minor is not personally no tamed liable but his property or estate is. As such whenever necessities are supplied to a minor, the supplier can get his payment form the property of the minor. Sec.23 specifies two matters from the term necessities i.e.,

- **Necessary goods:**

However, no specification as to the goods which are termed necessary is laid down, it is suggested that necessary goods do not only mean the good required to maintain a bare existence i.e., bread or cloth, but such good which are considered reasonably necessary regard being had to is actual requirement. Therefore, even a luxurious item may be necessary form a minor. Supplier of such necessities shall have his payments.

- **Necessary services:**

The law specifies certain services to be necessities as they are required to enrich the minor's life. E.g., Medical, legal, educational, professional, vocational services etc. the provider of such services shall have his payment.

❖ **Persons Of Unsound Mind:**

Sec.12 of the Indian Contract Act categorically says that incapacity of a party to make a contract may also arise by unsoundness of mind of that party. The sec. Further lays down that shall be an ordinary pre-empts be the law as to the sanity of mind of the parties to the contract, however, the presumption remittable by making a

contrary proof. The Sec. States that a person is considered to be of an unsound mind if.

- He is not capable to understand the terms of the contract and
- He is not capable to form a rational judgment as to the consequences of the contract in which he is about to enter.

If person does not pass from these criteria, he shall be insane. Person and cannot make a valid contract unsoundness of mind may arise from lunacy, idiocy or drunkenness or intoxication of mind.

1. **Lunacy:** Lunacy is of a temporary nature. A person is said to be a lunatic when he is deranged of his mental ability and capacity for some period due to some inherent defect or due to some external shock. There are, as it is of a temporary nature, intermittent internal of sanity and insanity. Contract made during period of sanity stand to be valid and the contract made during period of insanity are absolutely void. The proof is to be presented by respective parties.
2. **Idiocy:** Idiocy is always a permanent nature. When a person has lost his mental powers permanently, he is said to be and idiot. This period of idiocy does not have any interval. This period of idiocy does not have any interval. An idiot is even not capable to understand and express an ordinary matter of life. Therefore, any contract with or by such a person is absolutely void.
3. **State of drunkenness or intoxication:** Due to the effect of some liquor or some medicine a person's mind may be in the state of drunkenness or intoxication. He is delirious for some time. This period exists, generally only for a very short time. For such time any such contract shall be put an end and is void. However, such a person, in order to escape from the responsibility must prove such state of his mind.

Persons of Particular Status or Disqualified by Law

Various law of the county sometimes disqualified certain persons to make a valid contract. They are given some special status by respective laws to which they are subject and as such are considered incompetent to contract such parties may be as follows:

1. **Alien Enemy:** An Alien [Subject of a foreign status] may be an Alien friend [subject of a state which is a piece of India]. According to Indian Contract and Indian Penal Cord, any contract by citizen of India with an Alien Enemy is not valid but illegal. So, a contract can not be entered into between such countries. Thus, an Alien Enemy is considered incapable to contract with the subject of India. According two situation immerged contract made during the period of war are void in issue, and contract made before the war breaks out, according to their nature, they are either suspended or put to an end.
2. **Foreign sovereigns:** Foreign sovereigns means recognized representative of other countries working in our country. They included ambassadors, diplomats, accredited persons lambency staff, journalists of various foreign agencies and countries. They are given a particular privilege under the constitution of India. Accordingly, they cannot be made subject to the laws of our country. As such the citizen of Indian cannot institute any legal action against such persons according to

our laws in our courts. Only if the central government permits, this can be done so. However, they can very well take legal actions against citizen of Indian Courts.

3. **Corporation:** Any corporation, whether established under a special act or under the companies Act, 1956, possesses a juristic personality separate from its members to their perspective or functional are is not governed by law of the nature but either by their memorandum or the companies Act or the special Act. Their authority is limited. Any contract made with or by them goes beyond their authority is limited. Any contract made with or by them goes beyond their authority is ultra vires and void. As such they are qualified only to make particular nature of contract and not all.
4. **Insolvents:** According to Indian insolvency Act, when a person is adjudged insolvent he cannot enter into a valid contract during period of insolvency, as all rights pertaining to property of insolvent, then vests in the capacity of official receiver are assigned appointed by the court, he can make a contract on behalf of the insolvent. Although contracts of personal nature are kept out of the realm of this provision.
5. **Convicts:** According to I.P.C. any co. during the period of imprisonment cannot enter into a valid contract. However, if for such period he is on "Ticket of leave" or "Parole", he can make a valid transaction. The noted fact is that the perspective of law of limitation is not applicable to a culprit during the period of punishment.

1.7 Consent, Free Consent, Coercion, Undue Influence, Fraud, is representation, Mistake

It is essential to the creation of a contract that the parties are *ad idem*, i.e., they agree upon the same thing in the same sense at the same time and that their consent is free and real (Sec. 10) also says that "all agreements are contracts if they., are made by the free consent of parties"

Meaning of "*consent*" and *free consent*" (Sec. 13 and 14)

Consent. It means acquiescence or act of assenting to an offer. "Two or more persons are said to consent when they agree upon the same thing in the same sense." (Sec. 13).

Free consent. Consent is said to be free when it is not caused by-

- (1) Coercion as defined in Sec. 15, or
- (2) Undue influence as defined in Sec. 16, or
- (3) Fraud as defined in Sec. 17, or
- (4) Misrepresentation as defined in Sec. 18, or
- (5) Mistake, subject to the provisions of Secs. 20, 21 and 22 (Sec. 14).

When there is no consent, there is no contract. Salmond describes it as error in consensus. If there is no *consensus ad idem*, there is no contract. One such circumstance which interferes with consensus *ad idem* is mistake.

The consent, may not be altogether missing, it may be there, but it is not free. Salmond calls it as error in causa, i.e., error in the inducing cause. Such an error results from coercion, undue influence, fraud, or misrepresentation.

COERCION

When a person is compelled to enter into a contract by the use of force, by the other party or under a threat, "coercion" is said to be employed. Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, 1860 or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. It is immaterial whether the Indian Penal Code, 1860 is or is not in force in the place where the coercion is employed (Sec. 15).

The threat amounting to coercion need not necessarily proceed from a party to the contract. It may proceed even from a stranger to the contract. Likewise, it may be directed against anybody-not necessarily the other contracting party. The intention of the person using coercion should, however, be to cause any, person to enter into an agreement.

Coercion includes fear, physical compulsion and menace to goods.

Consent is said to be caused by coercion when it is obtained by:

1. **Committing or threatening to commit any act forbidden:** Committing or threatening to commit any act forbidden under I.P.C. forbids various acts infringing the common rights of citizens of the country. Whenever any such act is committed or threatened to commit, it amounts to coercion.
2. **Detaining:** Threatening to detain the property of any other person prejudicially, i.e., without any right or wrongly. At the time to the coercion is said to have been applied.
3. **Threat to commit suicide does or not amount to coercion:** Although practically a person committing suicide puts himself out of the reach of any law and out of any punishment too but an attempt to suicide as well a threat to suicide must be punishable as both are harmful to the society. Particularly in the later case there was and has been a hidden object to obtain an unfair advantage out of such threat. So, it was made punishable under I.P.C. on the ground of coercions and the deed was set aside.

❖ UNDUE INFLUENCE

Sometimes one party to the contract is compelled to enter into a contract against his will as a result of unfair persuasion by the other, undue influence is said to be applied. This happens when one party is in domination nature over the other party and used that domination to obtain an unfair advantage.

Sec. 16 states that a contract is said to be induced by undue influence where relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an undue advantage over the other.

A person is deemed to be in a position to obtain an undue advantage over the other.

- (1) He holds an apparent authority over the other. E.g. Master and servant, Doctor & patient, Principle and temporary teacher etc.
- (2) He stands in fiduciary relation (relation of trust and confidence) over the other. E.g. Parent & child, Solicitor and Client, Trustee and beneficiary etc.
- (3) He makes a contract with an enfeebled person whose mental capacity is, temporarily or permanently lost due to some illness of age, E.g. : Medical attendant and patient.

When one person is in such a position, he may be able to control the mind of the other and may attempt to obtain an undue advantage of his control. In undue influence, a person's mind is controlled and as a result, it is, sometimes, called moral coercion or moral pressure.

- **Certain relations which raise presumption as to undue influence:**

Sec. 16 prescribes certain relations in which the courts shall have to presume application of undue influence. In such cases it becomes the duty of the court to ensure that there is no undue influence. Here, not the plaintiff but the defendant has to prove that undue influence was not applied. These relations are :

Parent – Child Trustee – Beneficiary Solicitor – Client Doctor – Patient
Financier – Finanee Religious advisor – Disciple Guardian – Ward.

Sec.16 however further states that there shall be no presumption of undue influence by the court in following relations:

Creditor – Debtor Landlord – Tenant Husband – Wife

- **FRAUD**

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive any party thereto or his agent, or to induce him to enter into the contract.

- The suggestion, as a fact, of that which is not true by one who does not believe of the fact;
- The active concealment of a fact by one having knowledge or belief of the fact;
- A promise made without any intention of performing it;
- Any other act fitted to deceive;
- Any such act or omission as the law specifically declares to be fraudulent.

Explanation: Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, in itself, is equivalent to speech.

Example: A sells by auction to B, a horse which A knows to be unsound. A says nothing to B about horse's unsoundness. This is not fraud on the part of A.

- ❖ **Characteristics**

1. There must be an assertion or concealment of a material fact: To be amount to fraud there must be an assertion of wrong facts, that means the person does not show what is true but shows what is not true not only that there may be an

assertion of wrong facts, even if there is some concealment of fact, it is also a fraud as for e.g. A to in its prospectus does not reveal about existence of a document incurring heavy liability for the company. It created an impression that the company was very sound but actually company was in a bad weather, if the disclosure is made of that document the impression must be otherwise. A shareholder wanted to resign the contract on the ground of trade; it was observed that to be amounted to fraud the assertion of wrong. Facts is not necessary only, if something is concealed, it also amounts to fraud (Peek Vs Gurney).

2. Representation must relate to a material fact: Only by making any wrong assertion with its complete knowledge even, it may not necessarily amount to a fraud, such assertion must relate, to a material fact. Material fact are such facts which are likely to influence the decision of the buyer. During the course of transaction, generally a party makes a putting expression. Flourishing description or commendatory statement etc all such assertion does not amount to fraud if they are not related to some material facts.

3. There must be an intention to induce the other party: To be amounted to a fraud, the maker of the assertion must intend the other party to act upon it and thereby to induce the other party to enter into the contract and to deceive him to obtain an advantage over the other.

4. The other party must be deceived and suffered some loss: Only a wrong assertion related to a material fact with an intention to deceive and induce the other party does not amount to fraud. The other party must act upon the basis of that wrong fact, must actually be deceived and must suffer some loss, to be amounted to a fraud. The rules of law that a deceit that does not deceive is not deceit and a deceit that does not inflict any loss, law is not deceit are always applicable in various circumstances.

5. The assertion may be made by the party or his agent: Any such assertion amounting to fraud, may necessarily be made only by the party to the contract. It may be made by any other with convenience of the party or made by the agent of the party as For E.g., in a prospectus the directors wrongly mentioned regarding abundant assets of the company at Nevada this assertion was acted upon by a shareholders who wanted to be relieved out of the contract. It was observed that as the directors were the agents of a company, not only the directors are liable but the company has also been made liable to allow recession and compensation to the shareholder. (Reese River Silver Mining Vs. Smith).

6. Silence may amount to fraud: In general circumstances, in every transaction, the rule caveat Emptor is applied. Accordingly, it is not the stroller's duty to tell anything about defects of the subject matter on his own to the buyer. He may remain silent and such silence does not amount to fraud. However, when it becomes the duty of the seller keeping silence to speak (If the buyer happens to be a blood relative of the seller) and if the silence of the seller is equivalent to his speech (When it is inquired into by the buyer) such silence on the part of the seller always amounts to fraud.

7. Consequence of Fraud: Sec.19 provides effects of fraud that when consent to a contract is induced by fraud, it becomes voidable at the option of the party who is defrauded. He may rescind the contract completely or may continue the contract, insisting upon that he shall be put in a position in which he would have been if the representation made had been true. Moreover, only for fraud he has a right to sue for damages.

❖ MIS-REPRESENTATION

During the course of negotiation, a party asserts something to the other party to induce him into the contract. If the assertion is wrongly made it becomes a misrepresentation made intentionally with a view to deceive the other contracting party, it becomes. When the representation is a misrepresentation made innocently without any motive to cheat the other contracting party, it is misrepresentation in legal sense.

Misrepresentation is a false statement of facts made innocently and the maker does not believe it to be false or believe it to be true. There is also a misrepresentation when there is a commitment of material facts made intentionally. In misrepresentation there can never be intention to deceive the other party but always has an intention to induce the other party.

Sec.18 defines misrepresentation. It further states that there is a misrepresentation when : A person positively asserts that a fact is true, when his information does not warrant it to be so but he honestly believes it to be true or There is a breach of duty on the part of the person accruing some benefit to the person commencing the contract to the prejudice of the other person or.

When a person however innocently, causes the other person to mistake as to the substances of the contract.

In all the circumstances, there is however, no intention to defraud the other party. Although it is an assertion of wrong facts, the assertor believes them to be true, although he does not have any ground reality to prove his belief.

❖ Features of Misrepresentation

Remedies on the ground of misrepresentation can be available only if the following features are satisfied and are proved to be there by the plaintiff.

- (1) The misrepresentation must relate to a fact, which is very essential for the root or substance of the contract. A mere opinion, puffing or commendatory statement, however made to attract the party, cannot be amounted to a misrepresentation.
- (2) The misrepresentation must be made before the conclusion of the contract.
- (3) The misrepresentation must be made with a view to inducing the other party into the contract.
- (4) The misrepresentation must be made with the purpose to be acted upon.
- (5) The other contracting party must have actually acted upon the misrepresentation fact.
- (6) However the asserted facts are wrong, the maker does not believe it to be wrong.
- (7) There must be always no intention to defraud the other contracting party.
- (8) To be misrepresentation, it need not necessarily be made directly to the plaintiff.

❖ MISTAKE

Mistake has been provided for in contract act under sections (20) (21) and (22). Mistake although one of the negative elements of free consent, is completely different, has different ground and different consequence than other negative elements. Whenever any contract is caused due to mistake, unlike consequence of fraud, misrepresentation, coercion and undue influence in which a contract becomes

voidable at the option of an aggrieved party the mistake leads also to the consequences that the contract altogether becomes void agreement. As such whenever a mistake is proved neither of the parties shall have any remedy. It must be put to an end as it is void-ab-initio. Such important consequences follow a mistake.

According to sec. (14) under sec. (20) mistake means erroneous belief as to the subject matter or the terms or the effects of a contract is said to have been induced by mistake when parties to the contract intend to do something eventually ending up doing some other thing under mistaken belief of themselves. This mistake has been classified under different sections as follows:

Primarily mistakes are of two types:

1. Mistake of Law, and
2. Mistake of fact.

1. Mistake of Law: When a person has mistakes of law, mistakes of law are again be classified following:

(a) Mistake of the law of the land: When a person is under some mistaken belief regarding various aspects of the law of his own country. It is called a mistake of the law of the land. There is a well-settled rule of constitution that ignorance of the law of the land cannot be an excuse. On that line it is presumed that every citizen must have knowledge of all the laws of the country practically it is presumed that every person must have the knowledge of those laws to which he is a mistake, that he did not have proper knowledge of a provision of a law applied to that this is provided with a view to safeguarding business and social order. Accordingly, such mistake is not treated as a mistake under these sections.

(b) Mistake of the law of a foreign country: When a person enters into a contract on the basis of his mistaken belief regarding any aspect of the law of a foreign country, such mistake is immerged. A person can be presumed to have knowledge of the law of his own country, however he cannot be presumed to have the knowledge of the laws of all countries. As such, ignorance of the law can be an excuse to be out of the responsibility of the contract. Such contract becomes void agreement.

2. Mistake of Fact (Sec.20, 22): When a person makes a mistake as to some factual matters, it is called a mistake of a fact. It is the real mistake can be noted by the law as a mistake. Mistake of fact can be of two types as follows:

Bilateral Mistake: A bilateral mistake is immerged when both the parties to the contract have entered into it on the basis of common mistake on their parts regarding any thing as to the subject matter and performance of the contract. Bilateral mistake is the real mistake. To immerged as bilateral mistake, following two conditions must be satisfied.

- Mistake must be mutual i.e., both the parties are under mistaken impression.
- The mistake must relate to some material facts. Material facts are such facts as are influential to the decision of a party to enter into a contract.

Only then a party could have a remedy under the ground of mistake. Mistake can happen following circumstances:

a. Mistake as to existence of subject matter: If the parties to a contract are under a mistaken belief regarding existence of the subject matter, the contract becomes void agreement. Thus, when while making a contract for some cargo in a ship being Sailed to destination, without the knowledge of the parties, the ship has already sunk with cargo, the mistake as to as existence of the subject matter.

b. Mistake as to the identity of subject matter: Such mistake is created when both the parties to a contract identifies the subject matter in completely different ways. One party thinks the one way and the other party thinks the other, the parties could be escaped from responsibilities. For e.g., Mr. "R" made a contract to purchase the cargo of cotton to be arrived at from Bombay in a ship named "Peerless". There were two ships of the same name with the same cargo selling from Bombay one is in October, the other is in December. Mr. "R" thinks the ship of October, Mr. "W" thinks the ship of December. This is the mistake as to the identity of the subject matter [Raffles Vs. Wichle law].

c. Mistake as to quantity of the Subject matter: As in different countries, different standards of weight prevail, parties to a contract may have a mistaken belief as to the weight [quantity] of the subject matter, the contract becomes void agreement.

d. Mistake as to the quality of the subject matter: Sometimes one party intends to procure some particular quality of the goods while the other party intends to sell goods of different quality, both the parties may be under a common mistake as to the quality of the goods, the contract becomes void.

e. Mistake as to capacity of performance of a contract: Such mistake arises when thinking that the contract is capable to be performed, however actually to their ignorance, the contract has becomes in capable to perform, it becomes void agreement. Incapacity of performance may be legal incapacity or physical incapacity.

Unilateral mistake: When one of the parties to the contract enters in to the contract under mistaken belief regarding something. It is called a unilateral mistake. Unlike to the bilateral mistake in which both parties are under common mistake here only party is under some mistaken belief, while the other party believes the true matter. According to the law a unilateral mistake, except exceptional circumstances cannot become a ground to be relieved out of the liability of the contract. This rule is provided so as to observed social and business order. Otherwise, a person enters into a contract and later on when responsibility arises may propound that he had some mistaken impression about something and as such, is not responsible for fulfilment of the contract. Thus, as a general rule no such mistake shall be allowed to be an abscise.

However, if such a mistake is induced and, on that inducement, the party enters into the contract, due to fraud or misrepresentation on the part of the other party, a unilateral mistake can be a good defence to be out of the contract. Similarly, when a unilateral mistake is induced as to such matter as a very essential and as go to the root of the contract, become the substance of the

contract, even though the mistake is unilateral, it can be a ground of defence. Such exceptional circumstances may be as follows:

a. Mistake as to the identity of a person: When a person, by mistake, believes that he contracts with a particular person, although he contracts with a different person and this mistaken identity is so vital as goes to the root of the contract i.e., if the person had the knowledge of true identity of the person contracted with. He would not have entered into the contract at all, such a mistake shall be allowed to be an excuse.

b. Mistake regarding nature of the contract: If a person enters into a contract on his mistaken belief regarding the nature of the contract, and if the nature is of all most significance, becomes a substance, even though it is a unilateral mistake the person could be escaped from responsibility. As he would not have entered into the contract, had he known the true nature of the contract, it comes a well defence.

1.8 Legality Of Object

A contract must not only be based upon mutual assent of competent parties but must also have a lawful object. If the object of an agreement is the performance of an unlawful act, the agreement is unenforceable Sec. 23 declares that the 'object' or the 'consideration' of an agreement is not lawful in certain cases. The words 'object' and 'consideration' in Sec. 23 are not used synonymously. They are distinct in meaning. The word, 'object' means purpose or design. In some cases, consideration for an agreement may be lawful but the purpose for which the agreement is entered into may be unlawful. In such cases the agreement is void. As such both the object and the consideration of an agreement must be lawful, otherwise the agreement is void.

- **When Consideration or Object is Unlawful (Sec. 23)**

The consideration or object of an agreement is unlawful

1. **If it is forbidden by law:** If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation or regulations made by a competent authority under powers derived from the Legislature.
2. **If it is of such a nature that, if permitted, it would defeat the provisions of any law:** If the object or the consideration of an agreement is such that though not directly forbidden by law, it would defeat the provisions of any law the agreement is void.
3. **If it is fraudulent:** An agreement which is made for a fraudulent purpose is void. Thus, an agreement in fraud of creditors with a view to defeating their rights is void.
4. **If it involves or implies injury to the person or property of another:** 'Injury' means 'wrong', 'harm', or 'damage'. 'Person' means one's body. 'Property' Includes both movable and immovable property.
5. **If the Court regards it as immoral:** An agreement, the consideration or object of which is immoral, e.g., an agreement between a husband and wife for future separation, is unlawful [Sumitra Devi v. Sulekha Kundu, (1976)]

However, agreements for immediate separation between a husband and wife, both in England and in India, are enforceable. The principle underlying this is preservation of the peace and reputation of families. Similarly, agreements in respect of past separation are also valid.

An agreement is unlawful for immorality in the following cases

- (1) Where the consideration is an act of sexual immorality, e.g., Illicit cohabitation or prostitution. For example, where A agrees to let her daughter on hire to B for concubinage, the agreement is unlawful, being immoral. But a promise to compensate a woman who has rendered services in the past, whether Immoral or otherwise, forms a good consideration for the contract to compensate her [Dhirai Kaur v. Bikramjit Singh, (1881)]. If the past cohabitation is of an adulterous kind, a promise relating to it cannot be enforced as adultery is an offence punishable under the Indian Penal Code, 1860 [Allice Mary Hill v. William Clark, (1905)]. The Bombay High Court has, however, held -that agreements for past or future cohabitation are void [S. Yellappa v. Y. Sabu]. Consideration, according to it, which is immoral at the time when it passes, cannot become legal by passage of time.
- (2) Where the object of the agreement is the furtherance of sexual immorality, e.g., lending money to a prostitute to help her in her trade.

6. Where the Court regards it as opposed to public policy.

1.9 Void Agreement

It is said that an agreement not Enforceable by law is void "[Sec.2 (g)] Therefore, a null agreement does not give rise to any legal consequence and is void ab-initio. Agreement is not an agreement at all from its inception.

An agreement cannot be enforced if it includes illegal considerations or is created by incompetent parties or it violates the basic principles of equity; or is contrary to legal or moral standards are called null agreement.

Void agreements have no legal status at all. An agreement is void if it does not fulfils all the conditions of enforceability. There are few agreements which have been expressly declared void under various sections and they are:

1. **Agreement by a Minor:** A person who has not completed 18 years of age is a minor. The law acts as guardian of minors and protects their rights. They do not have the ability to judge what is good and what is bad for them. Consequently, when a minor is accused of obligations and the other contracting party seeks to enforce these obligations against the minor, the agreement is considered void.

For e.g. A, 15 years old boy, made an agreement with B to give him Rs. 1000. This is a void agreement.

2. **Agreement with a Person of Unsound Mind:** A person who does not have a healthy mind or whose mental powers are not fixed or whose mental condition is not under their own control. Any agreement on the part of a sick-minded person is

absolutely void because he does not have the capacity to judge, what is good and what is bad for him.

For e.g. A mentally disordered man made an agreement with Miss B to marry her, but this is not a valid agreement.

3. **Agreements in Restraint of Marriage:** Everyone enjoys the freedom to marry and, in accordance with article 26 of the contract law, "any agreement is the restriction of the marriage of any person, who is not a minor, is null." The restriction may be general or partial, but the agreement is void, and therefore, an agreement that agrees not to marry at all, or a certain person or, a class of persons, or for a fixed period, is void.

4. **Agreement in Restraint of Trade:** The constitution of India guarantees the freedom of commerce for each citizen and, therefore, article 27 declares that "any agreement by which it is restricted to any of exercising a legal profession, trade or business of any kind, is in that sense null. " No person is in livery to deprive himself of the fruit of his work, ability or talent, by any contract he enters.

For E.g. An agreement by which one of the parties agrees to close its business in consideration of the other party's promise to pay a certain amount of money, is void, since an agreement is trade restriction,

5. **Wagering Agreements:** An agreement between two persons under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event is called a wagering event. Such agreements are chance oriented and therefore, completely uncertain. Betting is a wagering agreement, as it relies on an uncertain event and only one of the two parties' benefits from it, as such any one gain would the others loss. Hence it defeats the rule of contract and is considered void. For e.g. where A and B mutually agree that if it rains today A will pay B Rs.100 and if it does not rain B will pay A Rs.100. is a wager and a void agreement.

6. **Agreement in restraint of legal proceedings:** Any agreement by which any of its parties has restrictions to enforce their rights under a contract, by the usual legal procedures in the ordinary courts, or that limits the time in which they can assert their rights, is null or void.

For E.g. In a contract of fire insurance, it was provided that if a claim is rejected and a suit is not filed within three months after such rejection, all benefits under the policy shall be forfeited. The provision was held valid and binding and the suit filed after three months was dismissed. (Baroda spinning Ltd. vs. Satyanarayan Marine and Fire Ins. Com. Ltd.)

7. **Uncertain Agreements:** "Agreements whose meaning is not certain or can be assured are null and void" (Sec-29). Through Sec-29, the law seeks to ensure that the parties to a contract know the precise nature and scope of their mutual rights and obligations under the contract.

For e.g. A agrees to sell to B "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

8. **Agreement Contingent on Impossible Events:** "Contingent agreements to do or not do anything if an impossible event occurs are null, whether the event's impossibility is known or not by the parties to the agreement at the time it is made." (Sec. 36)

For e.g. A agrees to pay B Rs.1000 (as a loan) if B will marry A's daughter, C. C was dead at the time of the agreement, the agreement is void.

- 9. Agreements to do Impossible Act:** "An agreement to do an act impossible in itself is void." Any act that the law or the courts refers to as impossible to perform cannot be contracted. If any persons get into an agreement for such impossible act is void.

For e.g. Mr A agrees to put life into the dead body of Mr B's wife, is a void agreement. A agrees with B to discover treasure by magic. The agreement is void. A agrees with B to run with a speed of 100 Kilometre per hour. The agreement is void.

- 10. Agreements made under a mutual mistake of fact (Sec. 20):** A **mutual or bilateral mistake** is immerged when both the parties to the contract have entered into it on the basis of common mistake on their parts regarding any thing as to the subject matter and performance of the contract. Bilateral mistake is the real mistake.

A bilateral mistake is one where both the parties are under mistake and the mistake relates to some material fact about the subject matter. The material fact related to the subject matter could relate to the existence, identity, quantity, quality of the subject matter or the capacity and identity of the performer. Such agreements are expressly declared void.

- 11. Agreements the consideration or object of which is unlawful (Sec. 23):** A contract should not only be based on the mutual consent of the competent parties but should also have a legal purpose. If the object of an agreement is the performance of an unlawful act, the agreement is not enforceable. Sec.23 clears that the 'object' or 'consideration' of an agreement is not legal in certain cases. The words 'object' and 'consideration' in Sec. 23 are not used in same manner, they have different meanings. The word 'object' means purpose or design. In some cases, the consideration of an agreement may be legal, but the purpose for which the agreement is signed may be illegal. In such cases, the agreement is void. As such, both the object and the consideration of an agreement must be legal, otherwise the agreement will be void.

- 12. Agreements the consideration or object of which is unlawful in part (Sec~ 24):** An agreement must have a lawful objective and a lawful consideration. If the object or consideration of an agreement is the performance of an unlawful act, the agreement is unenforceable and void (Sec. 23)

- 13. Agreements made without consideration (Sec. 25):** Consideration is one of the essential and most important factors of a valid contract. It is compulsory to have consideration to formulate a valid contract. Hence any agreement without consideration is void. The law is only concerned with the presence of consideration and not the proportion.

- 14. In case of reciprocal promises to do things legal and also other things illegal,** the second set of reciprocal promises is a void agreement (Sec. 57). If an agreement involves two sets of promises one which is legal and the other which is illegal, the entire contract is tainted by illegality; unless and until the illegal portion of the contract is separable or removable.

1.10 Discharge Of Contract

The discharge of the contract means the termination of contractual obligation relationships between the parties to a contract. It is said that a contract will be terminated when the rights, duties and obligations of the parties under the contract come to an end.

When we say that the contract has been discharged, it means that the rights and liabilities created by law under contract have been terminated.

- **Methods to Discharge the Contract:**

The discharge of a contract implies the termination of contractual obligations. This is because when the parties originally signed the contract, the rights and obligations were established in terms of contractual obligations. Consequently, when those rights and duties are released, it is said that the contract has been fulfilled or discharged. Once a contract is suspended, the parties are not liable even if the obligations under the contract remain incomplete.

A contract may be discharged by many different ways and few of the most important methods are categorized below:

1. By Performance
2. By Agreement/Consent
3. By Lapse of Time
4. By Operation of Law
5. By Breach of Contract
6. By Impossibility of Performance

Now let's discuss each of the method briefly,

1. **By Performance:** It is one of the most common and natural way to discharge the contract. When all the parties perform their respective obligations and duties arising from the contract then it is said to be discharged of contract by way of performance. The performance may be justified by the following ways:
 - a) **Actual Performance:** Under actual performance the parties involved in the contract performs their duties and obligations practically.
 - b) **Attempted Performance:** When the party to a contract makes an attempt to perform the duties and obligations but the other party does not accept or refused to accept the work then it is said to be attempted performance (considered equivalent to performance).
2. **By Agreement/Consent:** As it is the contract between the parties which build them and hence the parties may also discharge the contract by fresh agreement and through mutual understandings. Discharge of contract by way of agreement or mutual consent may take place in any of the following ways:
 - a) **Alteration:** The alteration of a contract means a change in one or more of the material terms of a contract. If a material alteration in a written contract is made by mutual consent, the original contract is discharged by alteration and the new contract in its altered form takes its place. A material alteration is one that alters the legal effect of the contract, for example, a change in the amount of money to pay or a change in the interest rate. The intangible alteration, for example, the correction of an administrative error in the figures

or the spelling of a name, has no effect on the validity of the contract and does not amount to an alteration in the technical sense.

- b) **Remission:** The remission can be defined "as the acceptance of a lower amount than that contracted or a lesser fulfilment of the promise made." acceptance of a lesser sum than what was contracted for, in discharge of the whole of the debt. It is not necessary that there must be some consideration for the remission of the part of the debt.
 - c) **Merger:** When a lower right contract is merged with a higher right contract, the first one is automatically discharged.
 - d) **Novation:** "Novation occurs when a new contract is replaced by an existing contract, either between the same parties or between different parties, the consideration being mutually cancelling the previous contract. If the parties have not changed, the nature of the obligation (that is, the material terms of the contract) must be substantially altered in the new contract, replaced by a mere variation of some of the terms of a contract, while the parties remain the same., it is not "novation". When the parties to a contract accept "novation", the original contract is fulfilled and does not need to be carried out.
 - e) **Rescission:** Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur by mutual consent of the parties or where one party fails in the performance of his obligation. In such a case the other party may rescind the contract without prejudice to his right to claim compensation for the breach of contract.
 - f) **Waiver:** Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. This amounts to a mutual abandonment of rights by the parties to the contract. Consideration is not necessary for waiver
3. **Discharge by lapse of time:** The Law of Limitation establishes that in case of breach of a contract, the legal actions must be taken within a specific period, called the limitation period, otherwise, the promisee is disqualified to initiate a lawsuit in a court of law and the contract is suspended.
- Therefore, in certain circumstances, the lapse of time can also fulfil a contract. For example, the limitation period for simple contracts is three years under the Limitation Act and, therefore, in case of default by the debtor, if the creditor does not file a claim against him within three years after the default, the debt will set aside. The expiration of three years and the creditor will be deprived of his appeal before the law. This in effect implies the disbursement of the contract.
- In short, the contract should be performed within a fixed time period and if does not complete within a specified time than it can be understood to be discharged.
4. **By operation of the law:** A contract terminates as a result of the law in the following cases:
- a) **Death:** When the contract is of a personal nature, the death of the promisor ends the contract. In other contracts, the rights and responsibilities of the deceased pass to the legal representatives of the deceased.
 - b) **Insolvency:** A contract is cancelled due to the insolvency of one of the parties at the moment in which an insolvency court approves a "discharge order" that exempts the insolvent from liability for debts incurred prior to its adjudication.
5. **By Breach of Contract:** The breach of a contract by one of the parties is also a method of compliance with a contract, because "breach" also ends the obligations

created by a contract on the part of each of the parties. Of course, the aggrieved party, that is, the non-guilty party can sue for damages for breach of contract according to the law; but the contract as such is finished.

The breach of contract can be of two types:

- i. **Anticipatory Breach:** An early breach of contract is a contract violation that occurs before the time set for performance has arrived. It can take place in two ways:
 - (a) Expressly for spoken or written words: Here a part of the contract communicates to the other party, before the expiration date, its intention not to carry it out.
 - (b) Implicitly for the conduct of one of the parties: Here a party by its own voluntary act is incapacitated to fulfil the contract. For example, (i) a person contracts to sell a particular horse to another on June 1 and before that date, sells the horse to another person; (ii) A agrees to marry B, but before the agreed date of marriage marries C.
- ii. **Actual breach:** The actual violation can also fulfil a contract. It occurs when a party does not fulfil its obligation on the date set for compliance by the contract, for example, when the designated day the seller does not deliver the goods or the buyer refuses to accept the delivery.

It is important to bear in mind that there cannot be a real breach of the contract due to non-compliance, as long as the moment of performance has not yet arrived. The actual violation entitles the party that is not in default to choose to treat the contract as written off and sue the party at fault for damages for breach of contract.

6. **By Impossibility of Performance:** A contract is discharged if its performance becomes impossible to perform. This rule is based on following two principles:
 - ✓ The law does not recognize what is impossible.
 - ✓ What is impossible does not create any obligations.

There are two types of impossibility and they are,

- a) **Initial Impossibility:** Initial impossibility is that type of impossibility which exists at the time of making the agreement, such impossibility is only physical one and not the legal one.
 - i. **Known Impossibility:** Known impossibility is that type of impossibility which is known by both the parties at the time of making the agreement.
 - ii. **Unknown Impossibility:** It is an impossibility which is not known to any of the parties at the time of making the agreement, in such cases the agreement or contract becomes void as soon as the impossibility is discovered.
- b) **Subsequent Impossibility:** Impossibility which arises subsequently that is after the formation of contract is regarded as subsequent impossibility. In such cases the contract becomes unlawful. Such contract can be discharged in the following cases:

- i. **Restriction of subject matter:** When the subject matter of the contract subsequent to its formation is destroyed without the fault of any party, the contract is said to be discharged.

A music hall was agreed to be let out for a series of concerts on certain days. The hall was destroyed by fire before the date of the first concert. The plaintiff sued the defendant for damages for the breach of contract. It was held that the contract has become void and the defendant was not liable (Taylor vs Caldwell)

- ii. **Death or incapacity of person in case of personal services:** Where the performance of the contract depends on the personal skills or qualification of the parties, is discharged during the event of the death of the party.

For e.g. Contracts A and B will marry each other. Before the time set for marriage, A goes crazy. The contract is cancelled.

- iii. **Outbreak of war:** All contracts entered into with an alien enemy during the war are illegal and abrogated. The contracts concluded before the outbreak of the war are suspended during the war and can be revived after the war, as long as they have not been prescribed.

1.11 Breach and Remedies against Breach of Contract

Parties to a lawful contract are bound to perform their respective obligations, when one party fails to perform his/her obligation, then it is said to have committed a breach of contract. The other party who suffers the loss on the account of breach of contract is said to be injured party or suffering party or aggrieved party.

When any of the parties to a contract, whether oral or written, does not comply with any of the terms of the contract, it may be found in breach of contract. A breach of contract means that one of the parties to the contract does not fulfill its contractual obligations. A violation can occur if one of the parties does not comply within the term specified in the contract, does not operate in accordance with the terms of the agreement, or fails to perform. If one of the parties fails to comply while the other party fulfills its obligations under the contract, the executing party is entitled to legal remedies for breach of contract.

In case of breach of contract, the aggrieved party or injured party have one or more of the following remedies:

1. Cancellation of contract
 2. Suit for specific performance
 3. Suit for Damages
 4. Suit for Injunction
 5. Suit for Quantum Meruit
 6. Suit for Restitution
1. **Cancellation of Contract:** Cancellation means revocation or putting an end to the contract. When one of the parties makes a breach of contract, then the other party may treat such contract as revoked??? revoked and he/she is discharged from all the obligations under the contract. According to sec.-75, a suffering party has the right to demand for the compensation for any damages which he/she has sustained through the non-fulfillment of the contract.

2. **Suit for Specific Performance:** In certain cases when the damages are not adequate monetary remedies, the court may allow the suffering party to file a suit for a specific performance of the contract. This remedy is available under specific circumstances as per the provision of specific relief act-1963.

When this option is selected, the party that broke the contract is brought before the courts, and the plaintiff requests the court to compel the defendant to comply with the specific terms of the contract that have not been met or to refrain from participating in any prohibited activity by the contract.

3. **Suit for Damages:** The term damages are used to mean compensation in monetary terms, as a substitute for the performance of promise. Damages as a monetary compensation are allowed to the injured party for the loss suffered by him/her as a result of breach of contract. By awarding damages, the court aims at putting the injured party into the position in which he would have been if the contract was not breached.

Types of Damages:

The damages may be classified into following two categories:

- a) Primary Damages
- b) Secondary Damages

Primary Damages: The primary damages further classified into the following categories:

- i. **Ordinary or General Damages:** Damages which arises in the ordinary course that is from the breach of contract is regarded as ordinary or general damages. These damages include the direct loss suffered by the injured party. For the purpose of claiming ordinary damage the following two conditions must be satisfied:
 - The injured party must be suffered from the damages by breach of contract.
 - The damage must arise from the general course such as breach of contract.
- ii. **Special Damages:** They are those damages which results from the breach of contract under special circumstances. These include the indirect loss suffered by the injured party on the account of breach of contract. They can be recovered only when special circumstances responsible for the special loss which was not made known to the other party at the time of making the contract.
- iii. **Vindictive Damages/Exemplary Damages:** Vindictive damages are quite heavy in amount and can be awarded in the following situation:
 - Breach of contract to marry.
 - Dishonour of customer's cheque by the bank without any proper reason.
- iv. **Nominal Damage:** These damages are quite small in the amount, they are never granted by the way of compensation for the loss because that loss is very negligible. They are awarded simply to recognize the rights of the party to claim damages for the breach of contract.

Secondary Damages: Following are few of the damages which can be included under secondary damages:

- i. **Damages for loss of Reputation:** Damages for the loss of goodwill or reputation is generally not enough to be recover except to the rule that

- exist in case of bank if the customer is a trade person, he cannot recover any damages in respect of loss of reputation.
- ii. **Damages for Discomfort:** Damages can be recovered for the physical discomfort, the general rule in this connection is major of damages is not affected to the reputation of any person personally.
 - iii. **Damages agreed in advance:** Sometimes, the contract restricts or decides in advance the amount to be paid in case of breach of contract. The general rule is that the stipulation can be in form of penalty.
 - iv. **Damages by way of penalty:** Damages by the way of penalty are not allowed except in case of public interest or for the non-performance of public duty by the order of government.
 - v. **Liquidity Damages:** Liquidity damages represent fair and reasonable amount of provisions and rules which are in favour of suffering party for the loss accrued due to the breach of contract.
4. **Suit for Injunction:** Injunction may be defined as an order of court by which a party is refrained from doing any particular act. In the context of contract, the term injunction is regarded as a negative work or activity or order issued by the court of law.

A court order that is an equitable remedy can be interlocutory or mandatory. It may even be prohibitive or restrictive in nature. A prohibitive mandate prevents something from being done.

5. **Suit for Quantum Meruit:** The phrase quantum meruit means payment in proportion of the amount of work done. Right on quantum meruit arises when a contract is partly performed by one party and has become discharged by the breach of contract.

In a literal sense, the expression "Quantum Meruit" means "as much as you earn". In a legal sense, it means payment in proportion to the work performed. This principle provides for the payment of compensation in certain circumstances, to a person who has offered the goods or services to the other party under a contract that, under certain circumstances, could not be carried out in its entirety.

6. **Suit for Restitution:** Restitution generally means restoration. It is based on the noble principle that a person should not be allowed to enrich himself or herself at the expense of another person. Therefore, when the contract breaches, the party who have received all the benefits must restore or compensate the other party by providing damages.

Restitution is a remedy designed to restore the injured party to the position occupied before the formation of the contract. The parties seeking restitution cannot request to be compensated for the loss of profits or other gains caused by a violation. Instead, the restitution is intended to return to the claimant any money or property that has been given to the defendant under the contract.

1.12 Specific Contracts - Contingent Contracts, Quasi Contracts

A contract may be absolute or contingent. An absolute contract is the one in which the promise performs his or her duty and obligations without any condition. On other hand contingent contract is the contract in which the conditions are always laid

down with regards to the performance. In short contingent contract is the contract which is based on few terms and conditions; it is also known as conditional contract. According to sec.31 of the Indian Contract Act, a contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. E.g. Goods sent on approval is a contingent contract.

This is a contingent contract, in accordance with the Contract law; a contingent contract is one whose performance is uncertain. The performance of the contract that is included in this category depends on whether or not certain uncertain events occur. On the other hand, an ordinary or absolute contract is such that the performance is true or absolute in itself and does not depend on the fact or not of an event. A contingent contract is defined as a contract to do or not do something, if any event, guarantee of said contract, happens or not (Sec. 31).

- **Characteristics of a contingent contract**

A contingent contract must have three essential characteristics. Exist:

- (1) Its performance depends upon the happening or non-happening of a futuristic event. This dependence on a probable future event distinguishes a contingent contract from an ordinary contract.
- (2) This event must be uncertain, that means that happening or not happening the future event is not certain, that is, it can happen or not. If the event is one hundred percent sure to happen, and the contract in that case must be done in any way, that contract is not called a contingent contract.
- (3) The event must be collateral or incidental to the contract.

Contracts of insurance, indemnity and guarantee are the commonest examples of a contingent contract.

- **Rules regarding contingent contract:**

1. **Depending on the Happening of an Uncertain Event:** Sometimes the Contingent Contract depends on the uncertain event. Then, if such an uncertain event takes place, the contingent Contract becomes valid and if that uncertain event does not take place, the contingent Contract is null.
2. **Contingency is the non-occurrence of an event:** Sometimes the contingent contract may depend on the non-occurrence of an uncertain event. Then, if that event does not occur, the Contract is Valid and if that event takes place, the contract is void.
3. **Depending on the occurrence of an uncertain event in a fixed period:** Sometimes the contingent contract may depend on the occurrence of an uncertain event in a fixed period. If such an event occurs within a fixed period, the contract is Valid. If such an event does not occur within a fixed period, the contract will be void.
4. **Depending on whether an uncertain event does not occur in a fixed period:** Sometimes the contingent contract may depend on the occurrence of an uncertain event in a fixed period, then if said event occurs within that fixed period, the contract is null and if that event does not take place within the agreed period, then it is valid.
5. **Contingency depending on the future conduct of a living person:** Here are contract would cease to be enforceable if it is contingent upon the conduct of a

living person; when that living person does something to make the event or conduct as impossible of happening.

6. **Contingency Depending on an Impossible Event:** Sometimes the Contingent Contract may depend on an impossible event. Such type of contingent contract is null and void. A contract made over an impossible event is expressly declared void by the act. Hence whether the contract is a regular contract or a contingent contract does not matter in any case the contract remains void.

- **Quasi-Contracts**

Law of quasi-contracts is also known as the law of restitution. Strictly speaking a quasi-contract is not a contract at all. A contract is intentionally entered into. But law on the other hand creates a quasi-contract. Under certain circumstances, a person may receive a benefit to which the law regards another person as better entitled, or for which the law considers he should pay to the other person even though there is no contract between the parties. Such relationship is termed as quasi-contracts. This is because although there is no contract or agreement between the parties, they are put in the same position as if there were a contract in between. These relationships are termed as quasi-contracts or constructive contracts. Certain relations resembling those created by contracts are called quasi-contracts. A quasi-contract rests on the ground of equity that a person shall not be allowed to enrich himself unjustly at the expense of another. Quasi-contracts are based on principles of equity, justice and good conscience and must contain the following features (a) a right is generally a right to money, though not always to a liquidated sum of money. (b) it does not arise from any agreement of the parties concerned, but is imposed by the law and (c) it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right. The Indian contract act recognizes such types of contracts and sections 68 to 72 deal with such contracts. They are as follows:

1. **Supply of necessities (sec.68):** If a person incapable of entering into a contract or anyone whom he is legally bound to support, is supplied by another with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

- a. Only the property of the person is liable and not the person personally.
 - b. Secondly no claims for supplies of luxury articles can be made

E.g. A supplies B a lunatic with necessities suitable his condition in life. A is entitled to be reimbursed from B's property. If B has no property, then A cannot make any claims.

2. **Payments by an interested person (sec.69):** A person who interested in the payment of money which another is bound by law to pay and who therefore pays it, is entitled to be reimbursed by the other. However certain essential requirements should be fulfilled as under the payment made should be bonafide for the protection of one's interest the payment should not be a voluntary one. The payment must be such as the other party was bound by law to pay.
3. **Obligation to pay for non-gratuitous acts (sec.70):** where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefits thereof, the latter is

bound to pay compensation to the former in respect of, or to restore, the thing is so done or delivered. For example: Mr K a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary, but was given no work. In the meantime, government went on appeal to the higher court. The appeal was decided in favour of the government and Mr K was directed to return the salary paid to him during the period of reinstatement.

4. **Responsibility of finder of goods (sec.71):** According to this section of the law a person who finds the goods belonging to another and takes them into his custody is subject to the same responsibility as if he were a Bailee. He is bound to take as much care of the goods as a man of ordinary prudence would under similar circumstances, take care of his own goods of the same bulk, quality and value. He must also take all necessary measures to trace its owner. If he does not, he will be guilty of wrongful conversion of the property. Till the owner is found out, the property in goods will vest in the finder and he can retain the goods as his own against the world at large. The finder can sell the goods in the following cases:
 - a. When the thing found is in danger of perishing.
 - b. When the owner cannot, with reasonable diligence, be found out.
 - c. When the owner is found, but he refuses to pay the lawful charge of the finder and
 - d. When the lawful charges of the finder, into respect of the maintenance of the thing found, amount to two-thirds of the value of the thing found.
5. **Mistake or Coercion (sec.72):** A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it to the person who paid it by mistake or under coercion. The word coercion is not necessarily governed by section 15 of the act, rather the word is interpreted to mean and include oppression, extortion or such other means. Every kind of payment of money or delivery of goods for every type of "mistake" is recoverable. For example: Mr. A pays some money to Mr. B by mistake. It is really due to Mr. C. Mr. B must refund the money to Mr. A. Mr. B, however, cannot recover the amount from Mr. C, as there is no privity of contract between Mr. B and Mr. C.

❖ Exercise

• Descriptive Questions

1. Define consents. When are the consents to a contract said to be free?
2. "A contract the object and consideration of which is unlawful is unenforceable by law". Define the statement in the light of the provisions of the contract act.
3. Explain in brief the different types of agreements expressly declared void by the Contract Act 1872.
4. Define in detail what are contingent contracts.
5. Explain in detail the different ways to perform a contract and who can perform?
6. Define the different ways in which the contract can be discharged.

7. When is the consideration and object of an agreement considered to be unlawful?
8. Elaborate the different remedies available to an aggrieved party for the breach of contract.
9. What is a contract? Explain the essential elements of a valid contract.
10. Define in detail the various features of law of contracts
11. Define offer and explain its essential elements.
12. Define acceptance and explain the legal rules as to acceptance.
13. Explain briefly the various types of contracts on the basis of validity, formation and performance.
14. What is consideration? Explain in detail the different elements of consideration.
15. Define in detail the various exceptions to the rule "No Consideration No Contract".
16. Define the legal position of a minor in terms of contracts done with and by a minor.
17. Explain in detail the different people disqualified by law from contracting.
18. What are quasi-contracts? Explain the different types of quasi-contracts formed under the law.

● **Short Notes**

1. Distinction between Coercion and undue influence.
2. Distinction between fraud and misrepresentation.
3. Illegal and unlawful agreements.
4. Effects of illegality.
5. Requisites of a valid tender.
6. Wagering agreement.
7. Agreements opposed to public policy.
8. Characteristics of contingent contracts.
9. The discharge of contract by an agreement for mutual consent.
10. Impossibility of performance.
11. Types of damages awarded for breach of contract.
12. Quantum Meruit.
13. Define the different types of four
14. Types of contracts based on validity
15. Objects of contract.
16. Tender
17. Nudum Pactum
18. Contracts with people of unsound mind
19. Alien Enemy
20. Time-barred debt

- Multiple Choice Questions

1. The consents to a contract are not said to be free when they are obtained under;
 - a. Undue influence
 - b. Coercion
 - c. Mistake
 - d. All of the above.
2. A contract to do or not to do something, if some event, collateral to such contract does or does not happen is called a...
 - a) Unenforceable contract
 - b) Quasi Contract
 - c) Contingent contract
 - d) None of the above
3. Under a contract if a promisor offers to attempt performance, but the promisee refuses to accept such an attempt. What does such an attempt to performance amount to?
 - a) Tender
 - b) Performance
 - c) Void Agreement
 - d) Valid Contract
4. Novation, Rescission, Alteration, Remission, Waiver and Merger are all different ways to discharge contracts by what means?
 - a) Discharge by Performance
 - b) Discharge by consent
 - c) Discharge by impossibility of performance
 - d) Discharge due to change of law.
5. A supplies B (a minor) with essential necessities for his living. B is not personally liable to pay, but A is entitled for reimbursement from the properties or estate of B. according to the Contract Act 1872 what are such contracts called?
 - a) Unenforceable contract
 - b) Quasi Contract
 - c) Contingent contract
 - d) Void Contract
6. Where in a contract, partly performed by one party has become discharged by breach of the contract by the other party. As a remedy to breach of contract the aggrieved party is entitled to claim from the other party a consideration for the amount of performance done. What is such a remedy to breach of contract called?
 - a) Quantum Meruit
 - b) Nominal Damages
 - c) Injunction
 - d) Specific Performance
7. If a contract is made without free consent, the contract turns.
 - (a) Void.
 - (b) Voidable.
 - (c) Illegal.
 - (d) Valid.
8. According to the Contract Act 1872 a 'Wagering Agreement' is a....
 - a) Valid agreement
 - b) Void agreement
 - c) Contingent agreement
 - d) None of the above
9. When the parties to an agreement have agreed about the subject matter of the agreement in the same sense and at the same time it is said to be?
 - a) Obligation
 - b) Agreement
 - c) Consensus ad idem
 - d) Timely agreement

10. To force someone to get into a contract on the threat to commit amounts to?
 - a) Undue influence
 - b) Coercion
 - c) Mistake
 - d) All of the above.
11. When a person in a contract purposefully misrepresents to the other party to deceive him it amounts to?
 - a) Undue influence
 - b) Coercion
 - c) Mistake
 - d) Fraud
12. Which of the following is a method to discharge contract by mutual agreement or consent?
 - a. Novation
 - b. alteration
 - c. recession
 - d. all the above
13. Ordinarily, special, vindictive and nominal are all different forms of_____?
 - a. contracts
 - b. agreements
 - c. Damages
 - d. none of the above
14. A _____ is a proposal by one party to another to enter into a legally binding agreement with him.
 - a. Offers
 - b. Acceptance
 - c. Agreement
 - d. Contract
15. Which of the following necessarily needs to be absolute and unconditional?
 - a. Contract
 - b. Offer
 - c. Acceptance
 - d. Agreement
16. Which of the following according to the contract act represents the phrase “quid-pro-quo”?
 - a. Acceptance
 - b. Offer
 - c. Free consent
 - d. Consideration
17. An agreement can be called ‘Nudum Packtum’ when it is...
 - a. Without Free Consent
 - b. Without Consideration
 - c. With a minor
 - d. Valid
18. Contracts can be classified on the basis of ...
 - a. Validity
 - b. Formation
 - c. Performance
 - d. All of the above.
19. According to the ‘the Contract Act’, contracts with the following people are void.
 - a. People of unsound mind
 - b. Minors
 - c. People disqualified by status
 - d. All of the above.
20. A Price tag on the goods displayed on the shelves of a showroom is by law
 - a. A proposal
 - b. Invitation to offer
 - c. Acceptance
 - d. None of the above.

21. Which of the following is not a legal rule as to acceptance?
- It must be absolute and unqualified.
 - It need not be communicated to the offerer.
 - It must be according to the mode prescribed.
 - It must be given within a reasonable time.
22. Lunatics, idiots and drunkards are not considered capable to contract due to.
- Status
 - Mental soundness.
 - Age
 - All the above.
23. Consideration to a contract can be.
- Past
 - Present.
 - Future
 - All the above.
24. It is a contract created by the law and not by the mutual consent of the parties.
- Quasi-contracts
 - contingent contracts
 - government contracts
 - void contracts

• **MCQ Answer key**

1	2	3	4	5	6	7	8	9	10	11	12	13
d	c	a	b	b	a	b	b	c	b	d	d	c
14	15	16	17	18	19	20	21	22	23	24	14	
a	c	d	b	d	d	b	b	b	d	a	a	

2.1 Introduction**2.2 Essential elements of contract of sale****2.3 Important Terms in the Sale of Goods Act, 1930****2.4 Types of Goods Under Sale of Goods Act 1930****2.5 Delivery****2.6 Condition and warranty.****❖ Exercise**

2.1 Introduction

Almost every kind of business involves the sale and purchase of goods as part of its transaction. People in business are often entering into a contract of sale to sell their commodities. All these sales are governed by the Sale of Goods Act, 1930 which is one of the most important types of contracts under the law of India.

The Sale of Goods Act, 1930 governs the contracts relating to Sale of Goods. It provides for the setting up of contracts where the seller transfers or agrees to transfer the title (ownership) in the goods to the buyer for consideration. It is applicable all over India. Under the act, goods sold from owner to buyer must be sold for a certain price and at a given period of time.

The contracts for sale of goods under The Sale of Goods Act, 1930 are subject to the general principles of the law relating to contracts i.e. the Indian Contract Act, 1872. Till 1930, transactions relating to sale and purchase of goods were regulated by Indian Contract Act, 1872.

In 1930, Sections 76 to 123 of Indian Contract Act, 1872 were repealed and a separate act called “The Indian Sale of Goods Act, 1930” was passed. It came into force on the 1st day of July, 1930. It applies to the whole of India except the State of Jammu & Kashmir.

According to Section 4

(1) of the Sale of Goods Act, 1930, “Contract of Sale of Goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price”.

There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

(5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

2.2 Essential elements of contract of sale are:

- a. Seller and Buyer: Section 2(13) defines Seller as a person who sells or agrees to sell goods and Section 2(1) defines Buyer as a person who buys or agrees to buy goods.
- b. Goods: Section 2(7) says, “Goods means every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”
- c. Delivery or Transfer of Goods: Under Section 2(2) delivery means voluntary transfer of possession from one person to another.
- d. Price: Under Section 2(10), price means the money consideration for the sale of goods.

2.3 Important Terms in the Sale of Goods Act, 1930

1. **Buyer** - This is mentioned in section 2(1) and defined as a person who either purchases or agrees to purchase certain products. The buyer appears as one of the parties in the contract of sale.
2. **Seller** - This is defined in section 2(13) and defined as a person who either sells or agrees to sell certain products. The seller appears as one of the parties in the contract of sale.

By combining the definitions of a buyer and seller, we can conclude that it is not mandatory to transfer goods to be deemed as a buyer or a seller. Just by agreeing or promising to sell and buy goods, you become buyer and seller as per the contract of sale.

3. **Goods** - Goods are any merchandise or possession. An important clause in the contract for sale goods is described in Section 2(7) as:
 - a. It is a moveable property (except for money and actionable claims)
 - b. Stocks and shares
 - c. Growing crops, grass, standing timber
 - d. The things that are attached to the land but are agreed to be severed before the sale. For example, if a resort is offering complimentary food along with lodging and customers do not want to take the food. Then the rebate on food is not applicable as the food was not part of the sale.

Thus, we conclude here that goods are moveable property barring money and actionable claims. Goods are classified into many categories, as explained in the next section.

2.4 Types of Goods under Sale of Goods Act 1930

Section 6 of the act explains in detail all types of goods in the Sale of Goods Act. There are mainly three categories of goods:

1. **Existing Goods** – If the goods exist physically at the time of contract and the seller is in legal possession of the goods, then it is termed as existing goods. They are further divided into three types:
 - a. **Specific Goods** – They are defined under section 2(14) and refer to goods that are identified and agreed to be transferred, at the time of making the contract. For example, A wants to sell a Bike of a certain model and year of manufacture, and B agrees to buy the bike. Here the bike is a specific good.
 - b. **Ascertained Goods** – These types of goods are identified by judicial interpretation and not by law. Any good where the whole or part of the good is identified and marked for sale at the time of the contract comes under ascertained goods. These goods are earmarked for sale.
 - c. **Unsanctioned or Unascertained Goods** – Those goods that are not specifically identified for sale, at the time of the contract, fall under the category of unsanctioned goods. For example, there is a bulk of 1000 quinols of wheat out of which 500 quinols are agreed to be sold. Here the seller can choose the goods from the bulk and is not specified.
2. **Future Goods** – The definition of future goods appears in section 2(6). The goods which do not exist at the time of contract but are supposed to be produced, acquired, or manufactured by the seller are called future goods. For example, A sells chairs and B wants 300 chairs of a specific design which A agrees to manufacture at a future date. Here chairs are future goods.
3. **Contingent Goods** – You can find the answer to what is contingent goods in section 6(2) of the Sale of Goods Act. A contingent good is a kind of future good, but it is dependent on the happening (or the absence of) certain conditions. As an example, X has agreed to sell 100 mangoes from his farm to Y at a future date. But this sale depends on the fact whether the trees in X's farm give a yield of 100 mangoes by the date of the contract.

2.5 Delivery

Delivery of goods appears in section 2(2) and describes the process of transferring the possession of goods from one person to another. The person receiving the goods could either be the buyer or another person authorized by the buyer to receive the goods. There are different types of delivery of goods as described below:

- **Actual Delivery** – If the commodity is handed over directly to the buyer or the person authorized by the buyer then that's called an actual delivery.
- **Constructive Delivery** – When the transfer of goods is done without any change in possession, then it is a constructive delivery. It could mean that the seller, even after selling the goods, holds them as bailee for the buyer.

- **Symbolic Delivery** – In this case, the goods are not delivered, but a symbolic means of obtaining possession is involved. For example, handing over the keys of a warehouse where the goods are stored is a symbolic delivery. Such delivery is usually done when the goods are bulky or heavy.

2.6 Condition and warranty

- (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
 - (2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
 - (3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.
 - (4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.
- **When condition to be treated as warranty.**
 - (1) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.
 - (2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.
 - (3) Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.
 - **Sale by description.**

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

- **Sale by sample.**
 - (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.
 - (2) In the case of a contract for sale by sample there is an implied condition—

(a)	that the bulk shall correspond with the sample in quality;
(b)	that the buyer shall have a reasonable opportunity of comparing the bulk with

	the sample;
(c)	that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

• Unpaid Seller:

Meaning and Definition Section 45 of Sale of Goods Act, 1930 defines Unpaid Seller as:

The seller of goods is deemed to be an “unpaid seller” within the meaning of the Sale of Goods Act:

- a. When the whole of the price has not been paid or tendered.
- b. When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

II. In this Part of this Act, “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself or herself paid, or is directly responsible for, the price.

It is to be seen that a seller who has received only a part of the price or consideration for the goods is also an unpaid seller and were the seller has received any kind of negotiable instrument for the price or consideration and the same is dishonoured by the payee then in that scenario, the seller will shift to be within the folds of an unpaid seller. This is because a negotiable Instrument is always presumed to be a conditional payment and when it is dishonoured, the nonfulfillment of the condition can be deduced to being an unpaid consideration.

• Rights of Unpaid Seller against the goods

Section 46 seeks to protect the interest of an unpaid seller by conferring upon him the following rights:

I. Subject to the provisions of this Act and of any Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law:

- a. A lien on the goods or right to retain them for the price while he or she is in possession of them;
- b. In case of the insolvency of the buyer, a right of stopping the goods in transition after he or she has parted with the possession of them;
- c. A right of resale as limited by this Act.

II. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his or her other remedies, a right of withholding delivery similar to

and coextensive with his or her rights of lien and stoppage in transit where the property has passed to the buyer.

These rights of an unpaid seller do not depend on any agreement, express or implied, between the parties. They arise by implication of law. They are some of the incidents attached by law to a contract of sale. The buyer has no right to have possession of goods till he pays the price. The seller's right in respect of the price is not a mere lien which he will forfeit if he parts with the possession, but grows out of his original ownership and dominion, and payment of a tender or price is a condition precedent on the buyer's part and until he makes such payment or tender, he has no right to possession.

- **Right to Lien**

Lien is the right to retain possession of goods until certain charges due in respect of them are paid. This right is available to the unpaid seller of the goods under Section 47 of the Sale of Goods Act and is enumerated as follows:

I. Subject to the provisions of the Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases:

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

II. The seller may exercise his or her right of lien notwithstanding that he or she is in possession of the goods as agent or bailee for the buyer.

The seller's lien is a possessory lien, i.e., the lien can be exercised only so long as the seller is in the possession of the goods. Lien can be exercised for the non-payment of price, not for any other charges. The right of lien is linked with the possession and not with the title. Thus, where the seller has transferred to the buyer the documents of the title of the goods, his lien is not defeated as long as he remains in possession.

- **Stoppage in transit:**

Subject to this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transition under Section 50, that is to say, he or she may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

- **Rights of Unpaid Seller as against the Buyer Suit for price**

- (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.
- (2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

- **Damages for non-acceptance**

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance. The seller's remedy in this case is a suit for damages rather than an action for the full price of the goods.

- **Sale of unascertained goods and appropriation.**

- (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.
- (2) *Delivery to carrier.* Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

- **Goods sent on approval or "on sale or return".**

When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—

(a)	when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
(b)	if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

- **Sale by person not the owner.**

Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell :

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

- **Sale by one of joint owners.**

If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

- **Sale by person in possession under voidable contract.**

When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872 (9 of 1872), but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

- **Delivery.**

Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

- **Effect of part delivery.**

A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

- **Buyer to apply for delivery.**

Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

- **Rules as to delivery.**

- (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.
- (2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
- (3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf :

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

- (4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.
- (5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

- **Delivery of wrong quantity.**

- (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.
- (2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.
- (3) Where the seller delivers to the buyer the goods, he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.
- (4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

❖ **EXERCISE:**

- **Fill in the blanks**

1. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for _____ (damages for non-acceptance.)
2. _____ can be exercised for the non-payment of price, not for any other charges. (Lien)
3. When the whole of the price has not been paid or tendered, the seller is _____ (unpaid seller)
4. Where there is a contract for the _____, there is an implied condition that the goods shall correspond with the description. (sale of goods by description)
5. Handing over the keys of a warehouse where the goods are stored is a _____. (symbolic delivery)
6. When the transfer of goods is done without any change in possession, then it is a _____ (constructive delivery)
7. If the commodity is handed over directly to the buyer or the person authorized by the buyer then that's called an _____ (actual delivery.)
8. The goods which do not exist at the time of contract but are supposed to be produced, acquired, or manufactured by the seller are called _____ (future goods)

9. Any good where the whole or part of the good is identified and marked for sale at the time of the contract comes under _____ (ascertained goods.)
- **Answer the following questions.**
 1. Write a short note on Sale of Goods Act, 1930
 2. Explain the essential elements of contract of sale.
 3. Explain the terms of Sale of Goods Act, 1930
 4. Explain types of goods under Sale of Goods Act, 1930
 5. Write a note on Delivery.
 6. Explain the rights of unpaid seller against the goods
 7. Write a note on Right to Lien
 - **Explain the following terms.**
 1. Goods
 2. Buyer
 3. Delivery
 4. Sale by sample
 5. Sale by description
 6. Unpaid seller
 7. Constructive delivery
 8. Symbolic delivery
 9. Contingent goods
 10. Future goods

- 3.1 Introduction**
- 3.2 Nature of Partnership**
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- 3.17 The Limited Liability Partnership Act, 2008 of India**
- 3.18 Incorporation of Limited Liability Partnership Act**
- 3.19 Features of Limited Liability Partnership**
- 3.20 Advantages of Limited Liability Partnership**
- 3.21 Disadvantages of an LLP**
- 3.22 Difference between LLP and Partnership Firm**

❖ **Exercise:**

3.1 Introduction

A partnership is a kind of business where a formal agreement between two or more people is made who agree to be the co-owners, distribute responsibilities for running an organization and share the income or losses that the business generates.

In India, all the aspects and functions of the partnership are administered under 'The Indian Partnership Act 1932'. This specific law explains that partnership is an association between two or more individuals or parties who have accepted to share the profits generated from the business under the supervision of all the members or behalf of other members.

3.2 Nature of Partnership

When two or more people join hands to set up an enterprise and share its gains and losses, they are said to be in a partnership. Section 4 of the Indian Partnership Act 1932 states partnership as the association between people who have consented to share the profits of an enterprise carried by all or any of them acting for all.

People who have entered into a partnership with one another are independently termed as 'partners' and comprehensively termed as 'firm'. The name under which the trade is carried is called the 'name of the firm'. A partnership enterprise has no distinct legal entity apart from the partners comprising it.

3.3 Characteristics / Features of Partnership:

Two or more persons: In order to manifest a partnership, there should be at least two persons possessing a common goal. To put it in other words, the minimal number of partners in an enterprise can be two. However, there is a constraint on their maximum number of people.

By the uprightness of Section 464 of the Companies Act 2013, the Central Government is authorised to stipulate a maximum number of partners in an enterprise; however, the number of partners cannot exceed 100.

Under Rule 10 of the Companies (miscellaneous) Rules 2014, the central government has stipulated the maximum number of partners in an enterprise to be 50. Hence, a partnership enterprise cannot have more than 50 people (partners).

Agreement: It is the outcome of an accord between two or more people to regulate a business and share its gains and losses. The agreement (accord) becomes the basis of the association between the partners.

Such an agreement is in the written form. An oral agreement is even-handedly legitimate. In order to avoid controversies, it is always good if the partners have a copy of the written agreement.

Sharing of profit: Another significant component of the partnership is the accord between partners to share the gains and losses of a trading concern. However, the definition held in the Partnership Act elucidates partnership as an association between the people who have consented to share the gains of a business. The sharing of loss is implicit. Hence, the sharing of gains and losses is vital.

Agreement between Partners: It is an association of two or more individuals, and a partnership arises from an agreement or a contract. The agreement (accord) becomes the basis of the association between the partners. Such an agreement is in the written form. An oral agreement is even-handedly legitimate. In order to avoid controversies, it is always good, if the partners have copy of the written agreement.

Business Motive: It is important for a firm to carry some kind of business and should have a profit gaining motive.

Mutual Business: The partners are the owners as well as the agent of their firm. Any act performed by one partner can affect other partners and the firm. It can be concluded that this point acts as a test of partnership for all the partners.

3.4 Types of Partnerships

A partnership is divided into different types depending on the state and where the business operates. Here are some general aspects of the three most common types of partnerships.

❖ General Partnership

A general partnership comprises two or more owners to run a business. In this partnership, each partner represents the firm with equal right. All partners can participate in management activities, decision making, and have the right to control the business. Similarly, profits, debts, and liabilities are equally shared and divided equally.

In other words, the general partnership definition can be stated as those partnerships where rights and responsibilities are shared equally in terms of management and decision making. Each partner should take full responsibility for the debts and liability incurred by the other partner. If one partner is sued, all the other partners are considered accountable. The creditor or court will hold the partner's personal assets. Therefore, most of the partners do not opt for this partnership.

4 Limited Partnership

In this partnership, includes both the general and limited partners. The general partner has unlimited liability, manages the business and the other limited partners. Limited partners have limited control over the business (limited to his investment). They are not associated with the everyday operations of the firm.

In most of the cases, the limited partners only invest and take a profit share. They do not have any interest in participating in management or decision making. This non-involvement means they do not have the right to compensate the partnership losses from their income tax return.

5 Limited Liability Partnership

In Limited Liability Partnership (LLP), all the partners have limited liability. Each partner is guarded against other partners legal and financial mistakes. A limited liability partnership is almost similar to a Limited Liability Company (LLC) but different from a limited partnership or a general partnership.

6 Partnership at Will

Partnership at Will can be defined as when there is no clause mentioned about the expiration of a partnership firm.

Under section 7 of the Indian Partnership Act 1932, the two conditions that have to be fulfilled by a firm to become a Partnership at Will are:

- The partnership agreement should have not any fixed expiration date.
- No particular determination of the partnership should be mentioned.

Therefore, if the duration and determination are mentioned in the agreement, then it is not a partnership at will. Also, initially, if the firm had a fixed expiration date, but the operation of the firm continues beyond the mentioned date that it will be considered as a partnership at will.

3.5 Advantages of Partnership:

- **Easy Formation** – An agreement can be made oral or printed as an agreement to enter as a partner and establish a firm.
- **Large Resources** – Unlike sole proprietor where every contribution is made by one person, in partnership, partners of the firm can contribute more capital and other resources as required.
- **Flexibility** – The partners can initiate any changes if they think it is required to meet the desired result or change circumstances.
- **Sharing Risk** – The Partnership comes into the limelight when:
 - There is an outcome of agreement among the partners.
 - The agreement can be either in written or oral form.
 - The Partnership Act does not demand that the agreement has to be in writing. Wherever it is in the form of writing, the document, which comprises terms of the agreement is called ‘Partnership Deed.’
 - It usually comprises the attributes about all the characteristics influencing the association between the partners counting the aim of trade, the contribution of capital by each partner, the ratio in which the gains and losses will be divided by the partners and privilege and entitlement of partners to interest on loan, interest on capital, etc.

3.6 Indian Partnership Act 1932

Most of the businesses in India adopt a partnership business, so to monitor and govern such partnership The Indian Partnership Act was established on the 1st October 1932. Under this partnership act, an agreement is made between two or more persons who agrees to operate the business together and distribute the profits they gain from this business.

3.7 Meaning of Partnership deed:

Partnership deed is a written legal document that contains an agreement made between two individuals who have the intention of doing business with each other and share profits and losses. It is also called a partnership agreement.

3.8 Registration of Partnership Deed:

- All the rights and responsibilities of each member are recorded in a document known as a Partnership Deed. This deed can be oral or written; however, an oral agreement is of no use when the firm has to deal with tax. A few essential characteristics of a partnership deed are:
- The name of the firm.
- Name and addresses of the partners.
- Nature of the business.
- The term or duration of the partnership.
- The amount of capital to be contributed by each partner.
- The drawings that can be made by each partner.
- The interest to be allowed on capital and charged on drawings.
- Rights of partners.
- Duties of partners.
- Remuneration to partners.
- The method used for calculating goodwill.
- Profit and loss sharing ratio

3.9 Partnership Deed Contents

- While making a partnership deed, all the provisions and the legal points of the partnership deed are included. This deed also includes basic guidelines for future projects and can be used as evidence at times of conflict or legal procedures. For a general partnership deed, the below mentioned information should be included.
- Name of the firm as determined by all partners.
- Name and details of all the partners of the firm.
- The date on which business commenced.
- Firm's existence duration.
- Amount of capital contributed by each partner.
- Profit sharing ratio between the partners.
- Duties, obligations and power of each partner of the firm.
- The salary and commission if applicable that is payable to partners.
- The process of admission or retirement of a partner.
- The method used for calculating goodwill.
- The procedure that must be followed in cases of dispute arising between partners.
- Procedure for cases where a partner becomes insolvent.
- Procedure for settlement of accounts in the event of dissolution of a firm.

3.10 Importance of partnership deed

- A few important advantages of a well-drafted deed are listed:
- It controls and monitors the rights, responsibilities and liabilities of all the partners
- Avoids dispute between the partners.
- Avoids confusion on profit and loss distribution ratio among the partners.
- Individual partner's responsibilities are mentioned clearly.

- Partnership deed also defines a remuneration or salary of the partners and working partners. However, interest is paid to each partner who has invested capital in the business.

3.11 Documents are required for registration of a partnership firm:

- Documents required for registration of a partnership firm are:
- Certified original copy of Partnership deed
- Partner's documents (PAN Card and Aadhar or Driving License)
- Address proof of the firm (rent agreement and utility bills (gas, landline or electricity)
- GST registration
- Specimen of an affidavit certifying all the details mentioned in the partnership deed and documents are correct.
- Application for registration of partnership

3.12 Rights of the Partners:

- Participation in business: Each Partner will have an equal opportunity to participate in their business operation. If the partnership contract stipulates so, partners can restrict this power to allow only some of them to contribute to the running of the business.
- Right to express views: Partners have the freedom to express their opinions. A majority vote of the partners can settle discrepancies in common business issues. To help solve such problems, each Partner can communicate their idea.
- Right to access the books and accounts: Every Partner has the right to investigate and make copies of the company's accounting records. This implied consent to both active and dormant partners.
- Right to share profits: Partners outline specific details in their partnership deed the percentage to exchange the firm's profits. If they've not consented to a fixed share of the profits, all the partners must share the company's profits evenly.
- Right to be indemnified: Partners could make a payment and debts directly a consequence of their business practices. They can sue one another for compensation for the Partner's decisions. Such decisions need to be made in an urgent situation and should be of the sort that a prudent and reasonable partner would end up making in identical conditions.
- Right to interest on capital and advances: In most instances, partners do not earn interest in their investments. If they decide to express an interest, it must be compensated only from profits. They could indeed earn interest at a rate of 6% per annum on any subsequent advances made to the business.

3.13 Duties of Partners

- Every Partner does have obligations such as continuing the business for the biggest public good by being truthful to one another. They should be providing

main information and supplying complete information on all issues about the business.

- Every Partner is obligated to compensate the firm for damages incurred due to any partner's wrongdoing in the transaction of business.
- Every Partner should undertake his or her duties to the business as diligently as possible since his or her inability to do so impacts other partners as well.
- As all own the firm's property jointly, partners can use it exclusively for business reasons and not for personal benefit.
- Each Partner must operate under mutually agreed-upon objectives.

1] Active Partner or Managing Partner

As the name suggests he takes active participation in the firm and the running of the business. He carries on the daily business on behalf of all the partners. This means he acts as an agent of all the other partners on a day to day basis and with regards to all ordinary business of the firm. Hence when an active partner wishes to retire from the firm he must give a public notice about the same. This will absolve him of the acts done by other partners after his retirement. Unless he gives a public notice he will be liable for all acts even after his retirement.

2] Dormant or Sleeping Partner

This is a partner that does not participate in the daily functioning of the partnership firm, i.e. he does not take an active part in the daily activities of the firm. He is however bound by the action of all the other partners.

He will continue to share the profits and losses of the firm and even bring in his share of capital like any other partner. If such a dormant partner retires, he need not give a public notice of the same.

3] Nominal Partner

This is a partner that does not have any real or significant interest in the partnership. So, in essence, he is only lending his name to the partnership. He will not make any capital contributions to the firm, and so he will not have a share in the profits either. But the nominal partner will be liable to outsiders and third parties for acts done by any other partners.

4] Partner by Estoppel

If a person holds out to another that he is a partner of the firm, either by his words, actions or conduct then such a partner cannot deny that he is not a partner. This basically means that even though such a person is not a partner he has represented himself as such, and so he becomes partner by estoppel or partner by holding out.

5] Partner in Profits Only

This partner will only share the profits of the firm, he will not be liable for any liabilities. Even when dealing with third parties he will be liable for all acts of profit only, he will share none of the liabilities.

6] Minor Partner

A minor cannot be a partner of a firm according to the Contract Act. However, a partner can be admitted to the benefits of a partnership if all partner gives their consent for the same. He will share profits of the firm but his liability for the losses will be limited to his share in the firm. Such a minor partner on attaining majority (becoming 18 years of age) has six months to decide if he wishes to become a partner of the firm. He must then declare his decision via a public notice. So, whether he continues as a partner or decides to retire, in both cases he will have to issue a public notice.

3.14 Dissolution of Partnership Firm:

Dissolution of partnership is said to take place when one of the partners associated with the business, ceases to be a part of the business going forward. The dissolution of a partnership means a change of business relationship between partners whereas the dissolution of a firm means dissolving of the firm along with the relation between partners.

3.15 Reasons for Dissolution of partnership

There can be several reasons for the dissolution of a partnership, which are mentioned below:

1. Death of a partner.
2. Admission of a new partner.
3. Insolvency of an existing partner.
4. Early retirement of a partner.
5. Due to expiry of a partnership period after a certain time as mutually agreed upon by all partners.

3.16 Methods of dissolving partnership firm:

Generally, a partnership terminates or dissolved when a partner discontinues participating in the business operation. The dissolution can happen in three different ways.

- **By an act of the partners-** When a partner agrees to dissolves partnership at a particular time. For instance, partners can come to an agreement that a partnership should continue for a span of five years. The partners can dissolve the agreement at the end of the five (5) years. Sometimes, it can be mentioned that a partner can be suspended under a specific condition. If a partner breaks a rule, then this can dissolve the partnership.
- **By operation of law-** A Partnership is a consequence of an agreement which is governed by the law. Therefore, any hindrance to the agreement or unlawful operating of business can cancel the partnership contract. For instance; you cannot make a valid partnership for selling illegal things.
- **By court's decree-** A partner can demand partnership dissolution, and the law will allow the dissolution only under these conditions: a partner's incapability to

work; breach of the agreement by a partner; when a partner is mentally unstable; and the misbehaviour of a partner that impacts the partnership.

- **Statement of Dissolution – This** is done by filing the statement to the state's secretary. The form can be taken from the website of the secretary of state. The form must have the partnership name, date and reason of dissolution.
- **Personal Notification-** This can be done by giving personal notice to the partnership's creditors. Also, inform who is associated with the partnership by publishing the notification in a newspaper.

3.17 The Limited Liability Partnership Act, 2008 of India

The act was passed by the Indian Parliament on December 2, 2008. It provides a new legal framework for forming limited liability partnerships (LLPs). The LLP is an association of two or more persons who have agreed to be jointly and severally liable for the obligations incurred by the LLP. The LLP has no legal personality and does not own any property. It is governed by a contract that sets out its members' rights, duties, and liabilities.

3.18 Incorporation of Limited Liability Partnership Act

The LLP Act provides a framework for regulating the business affairs of limited liability partnerships. It also defines what constitutes a partnership, how it can be formed, dissolved, and other important terms related to this type of entity.

Incorporating a limited liability partnership is a procedure to create the legal entity known as a limited liability partnership.

The articles of incorporation for a limited liability partnership must include the following:

- The name, address, and registered agent of the LLP
- The name, address, and registered agent of each general partner
- The name and address of each member
- The date when formed the LLP was formed
- A brief statement about what type of business or profession is being conducted by the LLP

Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such body's corporate shall act as designated partners. For the purposes of this section, the term "resident in India " means a person who has stayed in India for a period of not less than one hundred and twenty days during the financial year.

3.19 Features of Limited Liability Partnership:

- **Separate legal entity**

An LLP is a distinct legal entity from its partners, meaning it can own assets, enter into contracts, and sue third parties in its own name.

- **Limited liability**

Partners are only liable for the amount they've contributed to the LLP, protecting their personal assets from business debts.

- **Flexible structure**

LLPs combine the flexibility of a partnership with the liability protection of a company.

- **Perpetual succession**

An LLP continues to exist even if partners retire, die, or leave, ensuring continuity and stability for the business.

- **Low formation cost**

Establishing an LLP is less expensive than forming a private limited company.

- **Fewer regulations**

LLPs have fewer regulatory requirements and compliance obligations than other business structures.

- **No minimum capital requirement**

There's no mandatory minimum capital contribution needed to start an LLP.

- **Taxed as a partnership**

LLPs are taxed as a partnership.

3.20 Advantages of Limited Liability Partnership:

- **Limited liability**

Partners are only liable for the LLP's debts up to the amount they've contributed, so their personal assets are protected.

- **Separate legal entity**

An LLP is a registered legal entity that can buy, sell, and own property, employ staff, and enter into contracts.

- **Fewer compliance requirements**

LLPs have fewer compliance requirements than corporations, such as no annual general meeting or audited financial statements.

- **Flexible management**

Partners can have different levels of investment and participate in management in ways that suit their agreement.

- **Tax benefits**

LLPs are taxed as a partnership, so profits and losses flow through to the partners, who report them on their personal tax returns.

- **Increased credibility**

LLPs are seen as more credible than other business structures, which can help attract customers and investors.

- **Easy to form and dissolve**

LLPs are easier to form and dissolve than other business structures.

3.21 Disadvantages of an LLP

- Public disclosure is the main disadvantage of an LLP. ...
- Income is personal income and is taxed accordingly. ...
- Profit cannot be retained in the same way as a company limited by shares. ...
- An LLP must have at least two members. ...

3.22 Difference between LLP and Partnership Firm

Particulars	LLP	Partnership Firm
Governing law	The Limited Liability Partnership Act, 2008 governs LLPs.	The Indian Partnership Act, 1932 governs partnership firms.
Registration	The registration of an LLP as per the LLP Act is mandatory.	The registration of a partnership firm under the Indian Partnership Act is voluntary.
Registering authority	An LLP should submit the registration form and all the subsequent e-forms with the Registrar of Companies.	The firm must submit the partnership firm registration form and other subsequent forms with the Registrar of Firms.
Creation	An LLP is created by law.	A partnership firm is created by contract.
Power to enter into contract	An LLP can enter into a contract in its name.	A partnership firm cannot enter into a contract in its name.
Separate legal entity	An LLP has a separate legal entity under the law.	A partnership firm has no separate legal status apart from its partners.
Liability of partners	The partner's liability of an LLP is limited to the extent of their capital contribution to the LLP.	The partner's liability of a partnership firm has unlimited liability.

Name	The name of an LLP must contain the word 'LLP' at the end of its name.	The partnership firm can have any name, and it need not mention any word in its name.
Perpetual succession	An LLP has perpetual succession, which means its existence is not affected when a partner joins or leaves.	A partnership firm does not have perpetual succession, and its existence depends upon the will of its partners.
Maximum partners	There is no limit on maximum partners in an LLP.	The maximum number of partners in a partnership firm is limited to 100 partners.
Ownership of assets	The LLP has the ownership of assets which are independent of the partners. No partner owns the assets of the LLP.	The partners have joint ownership of all the assets belonging to the partnership firm. The firm cannot own the assets.
Power to own property	The LLP can hold property in its name.	The partnership firm cannot hold property in its name. It must be in the names of all partners or the authorised partner as per the partnership deed.
Common seal	An LLP has a common seal which denotes the signature of an LLP. The common seal is used to sign documents.	There is no concept of a common seal in a partnership firm. The authorised partner must sign the documents.

❖ **Exercise:**

• **Answer the following questions:**

1. Write down the difference between LLP and Partnership firm.
2. Explain the advantages of LLP.
3. Explain the types of partners.
4. Explain the types of partnership firm.
5. Write down the features of partnership firm.
6. Write down the salient features of LLP.
7. Write down a note on dissolution of partnership firm.
8. Explain the rights and duties of partners.

• **Write Short Notes on:**

- a. Disadvantages of LLP
- b. Advantages of LLP
- c. Content of Partnership Deed
- d. Required documents for registration of Partnership firm
- e. Limited partnership
- f. Duties of Partner
- g. Rights of Partner
- h. Nature of Partnership
- i. Reasons for Dissolution of Partnership

- j. Importance of Partnership deed
- k. Active Partner
- l. Nominal Partner
- m. Indian Partnership Act 1932
- n. Minor partner

- 4.1 Introduction**
- 4.2 Definition and Meaning of negotiable instrument**
- 4.3 Features of negotiable instrument**
- 4.4 Types of negotiable instrument**
- 4.5 Promissory note**
- 4.6 Bills of exchanges**
- 4.7 Difference Between the Promissory Note and Bills of Exchange**
- 4.8 Classification of Bills**
- 4.9 Cheques**
- 4.10 Difference Between Bills of Exchange and Cheque**
- 4.11 Parties of negotiable instruments**
- 4.12 Endorsement**
- 4.13 Difference Types of endorsements**
- 4.14 Holder and holder in due course**
- 4.15 Privileges of holder in due course**
- 4.16 Dishonour of negotiable instruments**
- 4.17 Noting and protesting**
- 4.18 Discharge of negotiable instruments**

Exercises

4.1 Introduction:

In 1881, The Negotiable Instruments Act was enforced in India. Before its implementation, English Negotiable Instrument Act were applicable in India. Negotiable Instruments Act 1881 is also based on the English Act with some amendments. It is applicable to the whole of India except the J & K. This Act operates under the Sections 31 and 32 of the Reserve Bank of India Act, 1934.

4.2 Definition and Meaning of negotiable instrument

According to Section 13 (a) of the Act, “Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.”

In other words, negotiable instrument is known as a written document which is freely transferable and payable by order to bearer. As per the Act, there are three instruments i.e., promissory note, a bill of exchange and cheque.

Any instrument which satisfies the conditions of negotiability called instruments:

1. freely transferable either by delivery or by endorsement
2. who obtains it in good faith should get it free from all defects, and be eligible to recover the amount in his own name.

Negotiable instruments include share warrants and debentures payable to bearer and dividend warrants and excludes the money orders and postal orders, share certificates, deposit receipts, dock warrant and bill of lading. Even though they are transferable by delivery and endorsements and because not able to give better title to transferee.

4.3 Features of negotiable instrument:

The following are the features of negotiable instrument:

1. **Title:** The transferee is recognized as holder in due course of negotiable instrument. A real transferee is not affected by any defect of title from the transferor or any other previous holders.
2. **Property:** The possessor or holder of the negotiable instrument is supposed to be the real owner. It does not only provide the possession of the negotiable instrument but also provide a right of property. The instrument property can be easily transferred. In the bearer instrument, the property passes through the delivery to the transferee. In the order instrument, endorsement and delivery are essential for the transfer.
3. **Presumptions under Sections 118 and 119** of the Negotiable Instrument Act: there are Certain presumptions which are applied in all types of negotiable instruments such as consideration, Date, Time of acceptance, Time of transfer, Order of endorsement and Proof of protest (section 119).
4. **Prompt payment:** The holder of negotiable instrument expects prompt payment due to the possibility of a dishonours.
5. **Rights:** In case of dishonours, transferee can sue in his own name. A negotiable instrument can be transferred any number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument to pay.
6. **Stamp:** It shall be assumed that a lost bill of exchange, promissory note and cheque was duly stamped.
7. **Holder in due course:** it shall be supposed that the holder is always the holder in due course of negotiable instruments. It is assumed that every holder has paid consideration and taken it in good faith. if the negotiable instrument was taken from its real owner by fraud or illegal act, then the holder has to prove that he is a holder in due course.

4.4 Types of negotiable instrument

According to section 13 of negotiable instruments act, there are major three types of negotiable instruments :1. promissory note, 2. bill of exchange and 3. a cheque. As per our Indian customs and traditions there are some types of negotiable instruments which

are as following: 1. Hundis, 2. Dividend warrants, 3. Share warrants, 4. Circular notes, 5. Banker's draft, 6. Bearer debentures, 7. Railway receipts and Delivery orders.

4.5 Promissory notes

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

4.5.1 Features of Promissory notes: there are some features or characteristics of a promissory note which is given below.

1. Promissory note Must be in written form: as per the negotiable instruments, there is a pre-requisite condition that every instrument must be in written form or in evidence form. Only an oral promise to pay is not considered as a promissory note. The writing method may be as per the mutual understanding of the parties but it must be in written in such a way that none of the parties can altered easily.
2. It is a promise to pay: it clearly an express undertaking to pay. Only acknowledgment is not sufficient. If there is no promise to pay then it is not considered as a promissory note. Let's understand with an illustration:

If Ankit writes:

(a) "Mr. Bablu (I owe you) Rs. 100"

(b) "I am liable to pay Rs. 100" whenever you ask for it have to pay".

it will be considered as a promissory note because it express promise to pay:

3. It must be unconditional: promissory note contains unconditional promise to pay. A conditional undertaking abolishes the negotiable instrument. Thus, the promise to pay is not depended on the any condition or events. It must be payable absolutely.
4. Signed by the maker: The person (maker) promises to pay must sign the negotiable instrument. In the case of promisor, who write a promissory note by himself then also he/ she has to sign it. The only legal requirement to know the identity of the person and his intention to be bound by the terms and condition of the promissory note.
5. The maker must be certain person: The maker agreeing or accept the liability to pay the amount. The maker signs in an assumed liability because he/she is taken as a certain sum of money disclose the sufficient indication about identity. In case of more numbers of maker promise to pay, then they may jointly responsible.
6. The payee must be certain: The payee should be a certain person to whom the promise has been made. The payee may be identified and the name of the payee should be mention in the documents.
7. A promise note contains a promise to pay money only: Money means legal tender money, which is the consideration between the parties.

8. To pay a specific or certain sum of money: A promissory note is certainly not only content the person to whom or by whom payment is to be made but also mention the sum of money. There are some exceptions under Section 5 provides that the amount is not specific is some case: when a promise to pay content amount with interest at a specified rate and the paid at an indicated rate of exchange.

4.6 Bill of exchanges

According to the Section 5 of the negotiable instruments Act defines “A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument”.

In simple words, “A bill of exchange is a written documents of the debt written by the drawer and accepted by the drawee. There are usually three parties involves in a bill of exchange drawer, acceptor or drawee and payee. In some cases, Drawer may be the payee.

4.6.1 Features and characteristics of a bill of exchange includes the following:

- (1) It must be in written format or in an evidence document.
- (2) It is duly signed by the drawer.
- (3) There are three Parties involve in bills of exchanges, which must be certain persons i.e., drawer, drawee and payee.
- (4) The amount or sum payable must be certain.
- (5) It should be properly stamped.
- (6) It contains an order to pay.

Let’s understand with an illustration:

- (a) “pay Rs. 5000 to the order of ‘A’. In this case, there is an order to pay, so it will consider bills of exchanges.

- (7) It contains order to pay in money.
- (8) The order must be unconditional.

4.7 Difference Between the Promissory Note and Bills of Exchange

Sr.	Base	Promissory Note	Bills of Exchange
1	Number of parties	There are only two parties involves in Promissory Note such as the maker and the payee.	There are three parties involves Bills of Exchange such as drawer, drawee and payee.
2	Payment to the maker	A promissory note cannot be made payable the maker himself.	In the bills of exchange, the drawer and payee may be same person.
3	Unconditional promise	A promissory note contains an unconditional promise by the maker to pay the payee.	In the bills of exchange, there is an unconditional order to the drawee to pay as per the order of

			the drawer.
4	Prior acceptance	It is presented for payment without any prior acceptance by the maker.	A bill of exchange is payable after accepted by the drawee before it can be presented for payment.
5	Primary and complete liability	The liability of the maker is primary and complete.	The liability of the drawer is secondary and conditional.
6	Relation	The maker stands in immediate relation with the payee.	the maker or drawer stands in immediate relations with the acceptor and not the payee.
7	Protest for dishonour	There is no such protest needed.	Foreign bill must be protested for dishonour when such protest is required to be made by the law of the country where they are drawn,
8	Notice of dishonour	There is no such notice need to be given.	Due notice of dishonours is to be given by the holder to the drawer and the intermediate endorsers,

4.8 Classification of Bills:

There are many types of bills of exchanges, which are given below.

- (1) Inland bill.
 - (2) Foreign bill.
 - (3) Time bill.
 - (4) Demand bill.
 - (5) Trade bill.
 - (6) Accommodation bill.
- (1) Inland bill: A bill which is drawn in India on a person residing in India, whether payable in or outside India known as an inland bill.
 - (2) Foreign Bill: A bill which is not an inland bill is a foreign bill. A bill which drawn outside India on any person residing outside India and made payable in India. A bill which drawn in India on a person residing outside India and made payable outside India. A bill which drawn outside India on a person residing in India and made payable outside India.
 - (3) Time Bill: A bill which payable after a fixed time is termed as a time bill. In simple words, bill payable after date is known as a time bill.
 - (4) Demand bill: A bill which payable on demand is termed as a demand bill.
 - (5) Trade bill: A bill which drawn and accepted for a normal course of business or transactions is known as a trade bill.

- (6) Accommodation bill: A bill which not drawn and accepted for a normal course of business or transactions but only helpful in providing financial supports to some party is known as an accommodation bill.

4.9 Cheques

As per the section 6 of the negotiable instruments Act “A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand”.

A cheque is bill of exchange with addition of two more characteristics such as it is always drawn on a specified banker, and it is always payable on demand.

Consequently, all cheque is bill of exchange, but all bills are not cheque. A cheque must satisfy all the requirements of a bill of exchange; that is, it must be signed by the drawer, and must contain an unconditional order on a specified banker to pay a certain sum of money to or to the order of a certain person or to the bearer of the cheque. It does not require acceptance.

4.10 Difference Between Bills of Exchange and Cheque

Sr.	Base	Bills of Exchange	Cheque
1	Drawn on	It is usually drawn on some person or firm.	It is always drawn on a specified bank.
2	Acceptance	A bill of exchange must be accepted before its payment can be claimed.	A cheque does not require any Types of acceptance.
3	Payable on	A bill may be also drawn payable on demand and on the expiry of a certain period.	A cheque can only be drawn payable on demand.
4	Grace period	A grace periods of three days is allowed in the case of time bills.	There are no such grace periods is given in the case of a cheque.
5	Discharged from liability	The drawer of the bill is discharged from his liability, if it is not presented for payment,	The drawer of a cheque is discharged only if he suffers any damage by delay in presenting the cheque for payment.
6	Notice of dishonour	Notice of dishonour of a bill is necessary.	There are no such requirements of notice in the case of cheque.
7	Crossing	There is no need of crossing in the case of bill.	A cheque may be crossed. There is need of crossing in the case of cheque.
8	Stamped	A bill of exchange must be properly stamped.	A cheque does not require any stamp.

9	Demand payable	A bill payable on demand can never be drawn to bearer.	A cheque drawn to bearer payable on demand shall be valid.
10	Countermanded	The payment of a bill cannot be countermanded by the drawer.	The payment of a cheque countermanded by the drawer.

4.11 Parties of negotiable instruments

4.11.1 Parties of Bill of Exchange

1. **Drawer:** The maker of a bill of exchange or a person who drawn the bill is known as a drawer.
2. **Drawee:** The person directed to pay the specified sum by the drawer is known as the drawee.
3. **Acceptor:** After sign in the bill and delivered the bills with a given notice of such signing to the holder is called the acceptor.
4. **Payee:** The person to whom order the money is directed to be paid is known as the payee. Payee is the real beneficiary or receiver.
5. **Indorser:** When the owner transfers the bills to someone else then he becomes the indorser.
6. **Indorsee:** The person to whom the bill is indorsed is known as an indorsee.
7. **Holder:** A person who have the legal possession of the bills of exchange and to receive the sum is known as a holder. When its payable to the bearer then the person in possession is known as the holder.

4.11.2 Parties of a Promissory Note

1. Maker. who promises to pay specified sum is known as a debtor or maker.
2. Payee. To whom the specified sum is payable is known as the creditor or payee.
3. Holder. the payee to whom the Promissory note might have been indorsed.
4. both are the same i.e., indorser and indorsee.

4.11.3 Parties to a Cheque

1. Drawer. who draws the cheque and the depositor of money.
2. Drawee. the drawer's banker on whom the cheque has been drawn.
3. Payee. who is entitled to receive the sum of money of the cheque.
4. all are the same i.e., holder, indorser and indorsee.

4.12 Endorsement

As per the Negotiable Instruments Act “the writing of one's name on the back of the documents with the intention of transferring the right.

Endorsement is signing for the negotiation. The person who transferred the possession by endorsement is known as an endorser and to whom the possession is transferred by endorsement is called the endorsee.

4.12.1 Essentials of an endorsement

1. Endorsement must be on the instrument: The endorsement on the back or face of the documents and made on a separate paper attached to it by ink pen.
2. It must be made or endorsed by the maker or holder and anyone cannot endorse it. Thumb impression should be shown and Signature may be made.
3. It made either by the endorser or only signing his name on the documents, which is called a blank endorsement. Any words mention the intention to endorse or transfer the documents is known as endorsement in full. There is no specific format of words is prescribed for endorsement and the intention of transfer must be present.
4. Completed by delivery of the negotiable instrument: The delivery by the endorser with the intention of passing property and keeps it in documents after his death and then transfer to the endorsee the last gets no right on the negotiable instrument.
5. An endorsement of the entire negotiable instruments: which implications to transfer the endorse some part of the sum payable known as a partial endorsement and does not operate as a valid endorsement. If delivery is conditional, then it will be depended on condition to be fulfilled and it considered as an endorsement.
6. The payee is the first rightful person to make endorsement. Thereafter it will be endorsed by the holder or possessors of the negotiable instrument.

4.13 Different types of endorsements:

There are mainly five types of endorsement. Which is given below.

- (1) General or Blank endorsement
- (2) Full or Special endorsement
- (3) Partial endorsement
- (4) Restrictive endorsement
- (5) Qualified or Conditional endorsement

(1) General or Blank endorsement:

According to sections 16 and 54 describe the endorser only signs on the negotiable instrument without mentioning the name of endorsee. A blank or general Endorsement describe no endorsee. It only includes the signature of the endorser on the instruments of endorsement. A blank negotiable instrument payable to order called a bearer instrument and transferable by delivery.

In blank endorsement a bill or note both are the same payable to bearer and negotiated by delivery.

(2) Full or Special endorsement:

According to Section 16 describe the endorsement which includes the endorser signature and the endorsee name in whose favour the endorsement is made therefore it is known full endorsement. i.e., it is made in writing like Pay to Ankit or Ankit's order with the signature of the endorser. In these types of an endorsement the endorsee only can transfer the negotiable instrument.

It may be possible to Convert blank endorsement into full endorsement: the blank endorsement can convert into full endorsement with the endorser's signature by writing a direction to pay. the endorser is not liable on the negotiable instrument. In simple words, according to Section 49 the person transferring negotiable instrument does not incur all the liabilities of an endorser.

Example: Ankit is the holder endorsed by Bijal with blank endorsement. Ankit writes it to Bijal's with signature and words Pay to order to Chandar. Ankit is not liable as endorser which creates a full endorsement from Bijal to Chandar.

(3) Partial endorsement

According to Section 56, which define as a partial endorsement transfer to the endorsee a part or partial of the sum payable and not operate as a negotiation of the negotiable instrument.

Example: Ankit as a holder of Rs.1000 instruments and order to pay to Bijal or Rs.500. This is a partial or part endorsement and invalid for negotiation.

(4) Restrictive endorsement

According to the Section 50, The endorsement may contain different terms making it restrictive. It is restricted by either express words or prohibits the further negotiation and that expresses not a complete and unconditional transfer of authority to the endorsee to deal with instruments such as Pay to C and Pay to C for my use are examples of restrictive endorsement. The endorsee acquires all the rights of the endorser excluding the right of negotiation.

(5) Qualified or Conditional endorsement

In the conditional endorsement, endorser put some condition in owner liability and endorsee limits his liability through putting some condition in the negotiable instrument. The endorser may impose a precedent or a condition subsequent. The amount will payable if the endorsee reaches majority embodies. A conditional endorsement same as a restrictive endorsement does not affect the negotiability. In other terms, it is known as qualified endorsement. An endorsement made conditional or qualified with the following:

1. Sans recourse (without recourse) endorsement: An endorser use word exclude his own liability to the subsequent holder in case of dishonour which is known as an endorsement sans recourse (without recourse). Examples: as Pay to Anita or order sans recourse or without recourse to me.

2. Facultative endorsement: where the endorser extends his liability or abandons some right then it is known as facultative endorsement. Examples: as Pay Anita or order with Notice of dishonour waived.
3. Sans frais endorsement: Where the endorser does not need the subsequent holder or endorsee to cover any expense on his account therefore it is known as sans frais endorsement.
4. Liability dependent upon a contingency: an endorser makes the rights or his liability and the endorsee to receive the sum depend upon contingent event. the liability of the endorser will arise on the happening of contingent event. An endorser may Pay Anita or order on his marriage with Virender. In such a case, the endorser will be liable when the marriage takes place.

4.14 Holder and holder in due course

According to Section 9 defines holder in due course as any person who have valuable consideration becomes the possessor of a negotiable instrument payable to bearer or the endorsee or payee the amount mentioned in the document and with an assumption that title is free from any defect.

The essential prerequisite of a holder in due course as follows:

1. A holder for valuable consideration
2. Consideration not be illegal or void.
3. A holder (possessor) before the date of maturity.
4. holder in good faith of the negotiable instrument.
5. Without any negligence on his part.
6. Take the negotiable instrument complete and regular on the face of it.

4.15 Privileges of a holder in due course

1. Instrument excluded from all the defects: A holder in due course gets the good faith in the negotiable instrument and protected against all defects of title from the previous holder. It is like a current coin. As per Sec. 53, Who so ever takes it can recover the amount from previous holder of the negotiable instruments. A holder in due course purifies a defective title.

Examples: Ajay obtains Beena acceptance to a bill by fraud. Ajay indorses it to Chetan (holder in due course). The instrument is purged of its defects and Chetan gets a good title to it.

2. Fair Rights in case of an inchoate instrument: According to the Sec. 20, Right of a holder in due course to recover money is not affected even in an inchoate stamped instrument. The transferor completes the negotiable instrument for a sum greater than what was projected by maker.
3. All the previous parties are liable: All previous parties i.e., maker, acceptor and intervening indorsers liable to the holder in due course. As per Sec. 36 express that the holder in due course can file a suit against the parties liable to pay.

4. Can enforce payment of a fictitious negotiable instrument: when drawer and payee are fictitious persons then the acceptor is liable to a holder in due course. As per the section 42, the signature of the supposed drawer and the first indorser for the bill being payable to the drawer's order the fictitious drawer must indorse the bill.
5. There is No effect of conditional delivery: According to Sec. 46, when it is delivered conditionally and negotiated to a holder in due course therefore a valid delivery presumed and acquired good title to it.
6. No effect of absence of an unlawful consideration: According to section 58, The request of unlawful consideration is not available against the holder in due course. The party responsible will have to make payment.
7. Estoppel against denying original validity: As per Sec. 120, The request of original invalidity cannot be put out, against the holder in due course by the drawer or an acceptor for the honour of the drawer. when the negotiable instrument is void on the face i.e., it made payable to bearer.
8. Estoppel against denying capacity of the payee to indorsee: As per the Section 121, No maker and no acceptor of negotiable instruments payable to order by a holder in due course be allowable to resist the claim on the request that the payee.
9. Estoppel against indorser to deny capacity of parties: An indorser of negotiable instruments, endorsement guarantees that all prior endorsements are genuine and parties had capacity to enter into valid contracts or not.

4.16 Dishonour of a negotiable instrument

Any negotiable instrument is dishonoured, then the holder has a right to give a notice of dishonour to all the related previous parties in order to make them liable. The following are the conditions:

As per Section 91, Dishonour by non-acceptance within 48 hours from the time of presentment for acceptance. When the drawee of negotiable instrument is a fictitious person, incompetent to do or perform contract and either become insolvent or dead.

As per Section 92, Sometimes the acceptor fails to make payment when instruments are due and as per section 76, when overdue remains unpaid the bill is dishonoured by non-payment.

Effect of dishonour: It is either by non-acceptance or by non-payment therefore the all the related parties can be charged with liability.

Notice of dishonour: The notice of such refusal must instantly give to the related parties to whom the holder wishes to make liable.

Notice by whom: The holder of the instrument must give a notice of dishonour to all the prior related parties whom he wants to make liable.

Notice to whom? It is given to all the related parties to whom the holder to make liable. There is no need giving notice to a maker, acceptor or drawee, principal debtors.

Mode of notice: The mode of notice of dishonour may be oral or written.

What is reasonable time? there is no specific time or any hard and fast rule and it is Depends on the types of instruments.

4.17 Noting and protesting

As per Sec. 99, A dishonoured of negotiable instruments which is non-accepted or non-paid and therefore the holder may such dishonour to be noted by a notary public upon a paper or partly upon. As per Sec.100, The holder may in a reasonable time to note the negotiable instrument protested by notary public.

- **Noting**

When the negotiable instruments are dishonoured, then the holder after giving notice of dishonour to the parties and after sue liable. As per Section 99, provides a mode of authentication and mode of noting the instrument. Noting is a minute recorded by a notary public on the dishonoured instrument or on a paper attached to such instrument.

Noting includes the fact, date of dishonour, the reason of dishonour and also the notary's charges, a reference to the notary's register and notary's initials.

It is made by the notary within a specific time after dishonour. Both are not compulsory but foreign bills must be protested for dishonour when it is essential by the law of the place. There is no requirement of noting and protesting in Cheques. There is no legal effect in Noting but some advantages are there If it is made within a reasonable time.

- **Protest**

It is a formal document of the notary public attesting the dishonour of the negotiable instruments by non-payment. After noting, the next step for notary is to draw a certificate of protest, which is a formal declaration on the bill or a copy thereof. The chief advantage of protest is that the court on proof of the protest shall presume the fact of dishonour.

Besides the protest for non-acceptance and for non-payment the holder may protest the bill for better security. When the acceptor becomes insolvent or decline (non-payment) payment before the date of maturity. Therefore, the holder may protest for getting better security for the amount due. For the same, the holder may hire a notary public to make the demand on the acceptor and if declined then the protest may be made. As per section, Sec. 102 Notice of protest delivers to all the prior parties instead of notice of dishonour.

As per Sec. 104, Every foreign bill must be protested for dishonour as per requirement of the law of the place were drawn whereas Inland bills may be protested.

As per Sec. 104A, where a bill is essential to be protested under the respective Act with a word "noted for protest" within a specified time. The formal protest given at any time after the noting.

❖ Exercises

1. Fill in the blanks:

1. Negotiable Instruments Act was enforced in India in ----- (1881)
2. There are -----parties involved in Promissory Note. (two)
3. There are -----parties involved in Bills of Exchange. (three)

2. Answers the short and long questions.

1. Explain the definition and meaning of negotiable instrument.
2. Explain the features of negotiable instrument.
3. Explain the types of negotiable instrument.
4. What is a promissory note?
5. What is a Bill of exchange?
6. Differentiate between the Promissory Note and the Bills of Exchange.
7. Explain the Classification of Bills.
8. What is a Cheque?
9. Explain the difference between Bill of Exchange and Cheque.
10. Explain the parties to negotiable instruments.
11. What is Endorsement?
12. Explain the types of endorsements.
13. Explain the holder and holder in due course.
14. Explain the privileges of holder in due course.
15. Explain the dishonour of negotiable instruments.
16. What is Noting and protesting?
19. Explain the Discharge of Negotiable Instruments.

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5.1 Agent**5.2 Definition of Agent****5.3 Definition of Principal****5.4 Essentials of Relationship of Agency****5.5 Rules of Agency****5.6 Classification of Agents****5.7 Other Classification of Agents****5.8 Creation of Agency****5.9 Duties of Agent****5.10 Rights of Agent****5.11 Duties of Principal****5.12 Right of Principal****5.13 Termination of Agency****5.14 Indemnity****5.15 Contracts of Guarantee****5.16 Distinction between Indemnity and Guarantee****5.17 Rights of a Surety****5.18 Termination of Contracts of Guarantee****5.19 Contracts of Bailment****5.20 Contracts of Pledge****5.21 Difference between Bailment and Pledge****❖ Exercise**

5.1 Agent

When a person employs another person to do any act for himself or to represent him in dealing with third persons, it is called a '**Contract of Agency**'. The person who is so represented is called the '**principal**' and the representative so employed is called the '**agent**' (Sec. 182). The duty of the agent is to enter into legal relations on behalf of the principal with third parties. But, by doing so he himself does not become a party to the contract to the contract not does he incur any liability under that contract. Principal shall be responsible for all the acts of his agent provided they are not outside the scope of his authority.

The term agent can best be used to denote a relationship that is very different from that between a master and his server, or an employer and his independent contractor.

"Although employees and independent contractors are parties to relationships in which one person acts for another and possesses the ability to involve that other

person in responsibility, the nature of the relationship and the type of acts in question are different enough to justify the exclusion of independent servers and contractors from the law relating to the agency, unless a server or independent contractor is employed as an agent at a given time, when it should be called that way. In other words, the term agent must be restricted to the one who has the power to affect the legal status of his principal by entering into contracts or the disposition of property: but which, incidentally, may affect the legal position of his principal in other ways.

One that represents and acts for another under the contract or agency relationship. The agents are general or special. A general agent is one who is employed in his capacity as professional man or teacher of an art or trade, or to whom the director entrusts all his business or all transactions or functions of a designated class; or is a person who is authorized by his principal to execute all the deeds, sign all contracts or buy all the goods required in a particular trade, business or employment.

5.2 Definition of Agent:

“One who agrees and is authorised to act on behalf of another, a principal, to legally bind an individual in a particular business transaction third parties pursuant to an agency relationship”.

West’s Encyclopedia of American Law

“A person who has received the power to act on behalf of another, binding that other person as if he or she were themselves making the decisions.”

Duhaime’s Law Dictionary

A party that has express (oral or written) or implied authority to act for another (the principal) so as to bring the principal into contractual relationship with other parties. An agent is under the control (is obligated to) the principal, and (when acting within the scope of authority delegated by the principal) binds the principal with his or her acts. Additional powers are assigned to agents under the legal concept of "apparent authority." The agent, however, does not have title to the principal's goods in his or her possession, except where agent's lien is applicable. In general, advertising agencies do not fall under this definition of an agent, because they act as principals for the services they buy on behalf of their clients.

5.3 Definition of Principal:

In commercial law, a principal is a person, legal or natural, that authorizes an agent to act to create one or more legal relationships with a third party.

In an agency relationship, the principal is the person who gives authority to another, called an agent, to act on his or her behalf.

Generally, anyone who has the legal capacity to carry out an action can appoint an agent to do it on their behalf. Common types of principal/agent relationships include employer/employee, corporation/officer, client/attorney. It's also possible to create an agent by drawing up a power of attorney to authorize someone to act as one's representative. As long as one has the legal capacity to make decisions.

5.4 Essentials of relationship of Agency:

There are two essentials of the relationship of agency:

1. **Agreement between the principal and the agent:** The agency depends on the agreement, but not necessarily on the contract. As between the director and third parties, anyone can become an agent. As such, even a minor or a sick-minded person can be an agent. However, the principal is responsible for the acts of said agent.
2. **Intention of the agent to act for the principal:** Whether a person intends to act on behalf of another is a matter of fact. When a person intends to act on behalf of another, the agency may arise even if the contract between the parties stipulates that there is no such relationship.

5.5 Rules of Agency:

There are two important rules of agency:

1. **What a person can do personally, can be done through agent:** This rule, of course, is subject to certain well-known exceptions, such as when the act that is performed is of a personal nature (i.e., singing) or is attached to a public office.
2. **He who does an act through another can be dealt by himself:** This means that the acts of an agent, subject to certain conditions, are acts of the principal. Sec. 226 clearly states that the acts and contracts of an agent will have the same legal consequences as if the contracts and acts performed by the director in person had been celebrated.

5.6 Classification of agents

6 Classification Of Agents

Depending on the scope of the authority, the agents can be classified as Agents, General Agents and Universal Agents. They are explained briefly as follows.

1. **Special agents:** A special agent is one who is designated to perform a special act or represent his principal in a particular transaction. He has limited authority. He has no authority to bind the principal with respect to any act other than that for which he is employed. **For example**, if a person is employed to buy a car, the authority of that person comes to an end as soon as he buys a car. If you exceed your authority, the principal is not responsible for such unauthorized acts.
2. **General agents:** A general agent is one who has the authority to perform all acts related to a particular trade, business or job. For example, if a person positions himself as a manager, he has the authority to bind the principal for all of his or her actions that fall within the scope of the business of running the store. Such authority of the agent is implicit as long as his actions are within the limits of his apparent authority. It is irrelevant if they are beyond the reach of their real authority.

Third parties have the right to assume that the agent has the authority to do whatever is necessary in the course of the business, and even if the agent violates his apparent authority, his actions are binding on the principal unless third parties

have notified the reduction of the apparent authority of the agent. Unless the principal ends the authority, it will be assumed to be continuous.

3. **Universal agents:** A universal agent is one who has unlimited authority to perform all acts that can be delegated to him, and which the principal can perform legally. An agent of this type is usually appointed by an employer who is still legally competent to appoint an agent, but due to his physical condition, he wishes to withdraw giving a general power of attorney to the agent to do whatever must be done while he is in the service.
4. **Co-agents:** This happens when a principal appoints two or more people as agents together. Their authority is joint when nothing is mentioned. It implies that all co-agents agree to the exercise of their authority unless their authority is fixed or unless the circumstances reveal any intention to the contrary. But when its authority is several, any other co-agent can act without the concurrence of the other.
5. **Sub-Agents:** In the language of the law, a subagent would be "a person employed and acting under the control of the original agent in the business of the agency." In simple words, the subagent is an agent of the original agent. With respect to a third party, the principal may be held liable for the acts of a secondary agent in certain cases such as fraud, etc., however, in general, the agent is liable to the principal for the acts of the secondary agent.
6. **Substituted agents:** The substitute agent is almost the same as a co-agent or a subagent. Sections 194 and 195 deal with substituted agents. It states that "when an agent has express or implicit authority to appoint another person to act on behalf of his principal in his business, that agent is known as a substituted agent." There are certain differences between the two, which could be better understood by the way of the following illustration: Mr. RR authorizes Mr. YY, who is an entrepreneur in Pune, to recover the money due to RR from ABC Company, and, in turn, instructs NN, a lawyer, to Take the necessary legal actions and recover the fees Here, NN is not a subagent but an attorney of RR.

5.7 Other Classification Of Agents

1. **Factor:** According to section 2 of the law of sale of goods, there is an agent known as a commercial agent. As his name suggests, he is the one who works for the business (merchandise) of the principal. A factor is a type of commercial agent that sells goods on behalf of its principal. It has broad authority and discretionary powers to sell products according to the terms and conditions it deems appropriate. In broader terms, relieves its director of the burden of his work. If a factor does any act that is beyond its authority, but that is within the scope of its apparent authority, then its principal is bound by that act.
2. **Broker:** A broker is a special type of commercial agent that acts as an intermediary between the buyer and the seller. We can say that it is used to establish a contractual relationship between the principal and the third party. In general, you receive a commission for the work done. Its function ends when it brings together the two parties. He is never in the possession of the subject, therefore he cannot exercise the right of encumbrance.
3. **Auctioneer:** The auction is usually a public sale of goods made at the highest of several bidders. An auctioneer is a commercial agent who is designated to sell goods on behalf of the principal, compensated in terms of commission.

4. **Agents of the Commission:** A commission agent is usually designated to sell or buy goods on behalf of its principal. These types of agents belong to a somewhat indefinite class of agents. He / She tries to ensure the buyer for a seller of goods and sellers for a buyer of goods and receives a commission in exchange for his work on the actual selling price.
5. **Agents of Del Credere:** An agent of Del Credere is a commercial agent that is used to sell products on behalf of its principal. It undertakes to guarantee the payment of the fees in consideration of an additional commission. We can say that in addition to being a commercial agent, an agent of the credere is also in the skin of a guarantor.

5.8 Creation of agency:

A person who has the capacity to contract can contract for himself or for another person. If you adopt the first method, it is not about agency. If you adopt the second method, then there arises the concept of an agency. The person who represents another in their dealings with third parties is called an agent and that person who is represented by an agent is called a principle.

The following are different modes of creation of agency.

1. Agency by Express agreement.
 2. Agency by Operation of law.
 3. Agency by Ratification.
 4. Agency by Implied authority.
1. **Agency by Express Agreement:** The authority of an agent can be expressed or implied (Sec. 186). Normally, the authority given by a principal to his agent is an express authority, which allows the agent to bind the principal for acts performed within the scope of his authority. The agent can, in such case, be designated by word of mouth or by means of a written agreement (Sec.187). The usual form of a written agency contract is power (a formal instrument by which one person empowers another to represent it, or act in its place, for certain purposes) on a stamped paper.
 2. **Agency by Implicit (implied) Agreement:** The implied agency arises from the conduct, situation or relationship of the parties. It can be deduced from the circumstances of the case, and the things spoken or written or the ordinary course of the negotiation, can be counted as circumstances of the case (Sec. 187).
Examples: A and P are brothers. A lives in Delhi while P lives in Meerut. A with the knowledge of P Leases P lands in Delhi. The income is reported and sent to P. A is the agent of P, although it is not expressly designated as such.
 The implied agency arises when the principal addresses the person supposedly the agent or third parties in such a way, as if the director had granted the appointment of that person as agent. It includes:
 - a) **Agency for estoppels:** The doctrine of estoppel can be expressed as follows: When a person, by his behaviour, or by spoken or written words, voluntarily induces another person to believe that a certain state of affairs exists and induces him to act in accordance with that belief to alter his previous position, it is prevented from subsequently denying the fact of that state of affairs.

For e.g. In presence of A, B says to C that he (B) is A's agent though it is not so actually. A has not restricted B from making such statement. Here agency by Estoppel can be seen.

- b) **Agency retaining:** The agency retaining is a branch of the agency by estoppel. In this case, a positive or affirmative prior act by the director is required to establish the agency later.

For e.g. P allows his servant to usually buy products on credit to T, and he pays them. On one occasion, he pays his servant money to buy the goods. The servant misappropriates the money and buys goods on credit from T. T can recover the price of P since he had offered his servant as his agent on previous occasions.

- c) **Agency by necessity:** In certain urgent circumstances, the law confers authority on one person to act as agent for the benefit of another, with no opportunity to communicate with that other. Such an agency is called a necessity agency.

For e.g.: A has delivered 100 litres of milk for transport, to a trucking company. Actually, it's a bail contract, let's assume that in transit all vehicles have stopped and it takes a week to continue the movement. Then the authorities of the transport company have sold the milk in those nearby areas. Here you can see the agency by necessity.

- 3. **Agency for Ratification:** A person can act on behalf of another person without their knowledge or consent. For example, A can act as agent of P even though he does not have prior authority of P. In such a case, P can subsequently accept the act of A or reject it. If he accepts the act of A, done without his consent, it is said that he ratified that act and places the parties exactly in the same position as they would have been if A had the authority of P at the time he made the contract. In the same way, when an agent exceeds the authority granted by the principal, the principal can ratify the unauthorized act.

Ratification can be expressed or implied. In case the adoption of the activity is done through the expression, it is called express ratification. For example: without the address of A, B has purchased goods for the sake of A. After A has given his support (adoption) to the activity of B, it is called Ratification. Now A is Principal and B is agent.

Ratification where there is no expression is called implicit ratification. For example: Mr. Q has P's money with him. Without the direction of PQ, he has lent that money to R. There after R has paid interest directly to P. Without any debate P has taken that amount of R. This implies that P has given his support to the activity of Q. It is an implicit ratification.

6 Requisites of Valid Ratification

- i. The agent should pretend to act as an agent for a principal who is in contemplation and is identifiable at the time of the contract. **Example:** R was authorized by K to buy wheat at a certain price. Acting in excess of his authority, R bought wheat from D at a higher price in his own name. He did not profess but wheat in the name of K. Subsequently, K ratified the act of R but then refused to receive the wheat. D filed a claim against K. Held, the contract could not be ratified because R did not intend to act as K's agent [Keighley, Maxsted & Co. v. Durant, (1901) A.C. 240].

- ii. The principal must exist at the time of the contract. A company, for **example**, cannot ratify the contracts entered into by the promoters on its behalf before its incorporation.
 - iii. The principal must have contractual capacity both at the time of the contract and at the time of ratification. If the principal was not competent to enter into a contract at the time the contract was signed, he cannot validate it by ratifying it at the time he is competent to contract.
 - iv. The ratification must be with full knowledge of the facts. A valid ratification cannot be made by a person whose knowledge of the facts of the case is materially defective (Sec. 198).
 - v. The ratification must be made within a reasonable time of the act that is intended to ratify. If it is made after the expiration of the reasonable time, it will not be valid.
 - vi. The act to be ratified must be legal and not null or illegal or ultraviolent in the case of a company. An agreement, which is void ab initio, cannot be ratified.
 - vii. The ratification must be communicated to the party to which it seeks to be linked by the act performed by the agent.
 - viii. The ratification can be of the acts that the director had the power to do. The acts, which the director is unable to do, cannot be ratified. A company, for example, cannot ratify the acts of the directors, who are at all costs of the powers of the company.
 - ix. The ratification must not expose a third party to damages. Ratification, which has the effect of subjecting a third party to damages or ending any right or interest of a third person, cannot be done (Sec. 200).
 - x. The ratification is related to the date of the act of the agent. **Example:** Whoever intends to act as an agent on behalf of P but without P's authorization accepts an offer from T. T withdraws the offer before P finds out. P subsequently ratifies the acceptance of A. The result of the ratification is a contract and, as such, is bound by the contract.
- 4. Agency by Operation of Law:** Sometimes, an agency arises because of the operation of the law. When a company is formed, its promoters are its agents by law. A partner is the agent of the company for the business purposes of the company, and the act of a partner, which is carried out to carry out, in the usual manner, business of the type carried out by the company, links to the company (Sections 18 and 19 of the Indian Association Act, 1932). In all these cases, the agency is implied by the operation of the law.

5.9 duties of Agent

An agent owes a number of duties to his principal which varies in degree according to the nature of agency. These duties are as follows:

- 1. To carry out the work given by the director:** In the absence of such instructions, you must act in accordance with the custom that prevails when doing business of the same type in the place where you conduct such business. When acting otherwise, if any loss is sustained, it must be made good for its principal, and if any gain accrues, it must be accounted for (Sec. 211). If the disobedience of the agent is material, the director may even terminate the agency. **For e.g.** A, an agent engaged in conducting a P business, in which it is customary to invest from time to time, at interest, the money that may be available, fails to make such

investments. A should be good for P the interest generally obtained by such investment.

2. **To carry out the work with care, skill and diligence:** An agent is required to carry out the business of the agency with as much skill as people in similar businesses usually possess, unless the director is aware of his lack of ability. He is always required to act with reasonable diligence, to use the skills he possesses, and to compensate his principal with respect to the direct consequence of his negligence, lack of skill or misconduct. But he is not responsible to his director regarding the loss or damage, which is indirectly or remotely caused by such negligence, lack of skill or misconduct.
3. **To communicate with the director in case of difficulty:** It is the duty of an agent, in cases of difficulty, to use all reasonable diligence to communicate with his principal and seek to obtain his instructions (Section 214).
4. **Do not try on your own:** An agent should not deal with his own account in the business of the agency without first obtaining the consent of the director and familiarizing him with all the material circumstances that he has come to his knowledge.
5. **Pay the sums received by the principal:** An agent is obligated to pay his principal all the sums received in his account (Sec. 218). He may deduct from it all the money that corresponds to him for advances made or expenses incurred by him in carrying out such business and also the remuneration that corresponds to him for acting as agent (Sec. 217).
6. **To protect and preserve the interests of the principal in the event of his death or insolvency:** When the principal expires an agency, the principal is dying or is losing sanity, the agent is obliged to take, on behalf of the representatives of his late director, all reasonable steps for the protection and preservation of the interests that are Trust (Sec. 209).
7. **Not to use information obtained in the course of the agency against the principal:** It is the duty of the agent to transmit any information received in the course of the agency to its director. When you use such information against the interest of the principal and the principal suffers a loss, you are obligated to compensate the principal. The principal may also prevent the agent from using such information through a court order.
8. **Not to make secret profit from agency:** An agent occupies a fiduciary position. It must not, except with the knowledge and consent of the principal, obtain any benefit beyond the agreed commission or remuneration.
9. **Not to set up an adverse title:** An agent must not set up his own title or the title of a third person (unless he proves a better title in that person) to the goods, which he receives, from the principal as an agent. If he does so, he will be liable for conversion (any act in relation to goods of another person which constitutes an unjustifiable denial of his title to them).
10. **Not to put himself in a position where interest and duty conflict:** An agent has the obligation, in all cases, to act in the interest of the principal. You must not place yourself in a position where your duty to the principal and your personal interest is in conflict unless you have made a full disclosure of your interest to your principal, specifying its exact nature and obtaining your assent. **For e.g.** P hired A, a stockbroker, but with some shares for him. A sold his own shares to P

without revealing that the shares belonged to him. Held, P could terminate the contract.

11. **Not to delegate authority:** An agent should not, as a general rule, delegate another person to do what he has committed himself to do. However, this is subject to certain exceptions (Sec. 190).

7 Liabilities of Agent:

Actually, the agents link the principal with their activities, but there are some situations in which the agent finds personal responsibility. Those situations are the following;

- i. **Liabilities regarding damages and misconduct:** In case of breach of contract by an agent, he is responsible for paying the damages. If he is found guilty of misconduct, the principal may delay his remuneration for the part of the business he has mistreated.
- ii. **Personal liability of an agent when it is established by commercial custom or use:** if the commercial custom or use in the business specifies the personal responsibility of an agent, then Hill will be considered personally responsible for his / her misconduct, until specified otherwise.
- iii. **When an agent expressly accepts being responsible:** when the contract expressly specifies that the agent will be personally responsible in case of breach of contract, then he can be held personally responsible.
- iv. **Liability for their unlawful acts:** an agent takes personal responsibility when acting beyond his authority or commits fraud or misrepresentation.
- v. **Responsibility for the actions of subagents:** when an agent appoints a sub-agent, without having the authority to do so, he will be responsible for all acts of the sub-agent, both for the principal and the third party.

5.10 Rights Of Agent.

An agent has the following rights against the principal:

1. **Right of retainer:** The agent may withhold, from any amount received on account of the principal in the agency's business, all the money owed to him with respect to his remuneration and advances made or expenses incurred by him in conducting such business (Sec. 217) .
2. **Right to receive remuneration:** The agent is entitled to his agreed remuneration, or if there is no agreement, to a reasonable remuneration. But in the absence of a special contract, the payment for the performance of any act is not due to the agent until the completion of such act (Sec. 219). Now the question is: when is the act completed? This depends on the terms of the contract.
3. **Right of lien:** In the absence of any contract to the contrary, an agent has the right to retain property, papers and other property, whether movable or immovable, from the principal received by him, up to the amount owed by commission, disbursements and services in connection with the same has been paid or accounted for (Sec. 221). This encumbrance of the agent is a private encumbrance. It is limited to claims that arise in relation to the goods or goods in respect of which the right is claimed. But through a special contract, an agent can have a general lien that extends to all claims arising from the agency.

4. **Right of indemnification:** The agent has the right to be indemnified against the agent has the right to be compensated against the consequences of all legal acts performed by him in the exercise of the authority conferred on him (Sec.222).
5. **Right of compensation:** The agent has the right to be compensated for injuries sustained due to negligence or lack of skill on the part of the director (Section 225). For e.g. P employs A as a bricklayer in the construction of a house and lifts the scaffolding himself. The scaffolding is misplaced and, consequently, A is injured. P must compensate A.
6. **Right of stoppage in transit:** This right is available to the agent in the following two cases: (1) When you have purchased goods for your principal by incurring personal liability, you have the right to stop in transit against the principal, with respect to the money you have paid or must pay. This right of the agent is similar to that of the unpaid seller.
(2) When he is personally liable to the principal for the price of the goods sold, he is placed in the position of a seller not paid to the buyer and may stop the goods in transit in case of insolvency of the buyer.

5.11 Duties of principal.

The duties of a principal towards his agent are the rights of the agent against the principal. The rights of an agent have already been discussed. The principal owes the following duties to an agent:

1. **To indemnify the agent against the consequences of all lawful acts:** The principal is obliged to indemnify the agent against the consequences of all legal acts performed by said agent in the exercise of the authority conferred on him (section 222).
2. **To indemnify the agent against the consequences of acts done in good faith:** When a person employs another to do an act, and the agent does the act in good faith, the employer is obligated to indemnify the agent against the consequences of that act, even if it causes an injury to the rights of a third party (Sec. 223). However, when a person employs another to perform an act that is criminal, the employer is not liable to the agent, either by an express or implied promise, to indemnify him against the consequences of that act (Section 224).
3. **To indemnify agent for injury caused by principal's neglect:** The principal must compensate his agent regarding an injury caused to that agent by negligence or lack of skill of the principal (Sec.225).
4. **Duty to Compensate:** An agency relationship can be paid or free. The term of an agency can be established in an agency agreement. If the agreement of the agency does not indicate the terms of the compensation, the principal is obligated to provide the agent with reasonable compensation.
5. **Duty to Reimburse:** The principal must reimburse the agent for a reasonable amount spent in fulfilling the duties. Reasonable refund includes the cost of travel, meals, lodging, incidentals, etc.

5.12 Right of principal.

Rights are legal, social or ethical principles of freedom or right; that is, rights are the fundamental normative rules about what people are allowed or are owed to people, according to some legal system, social convention or ethical theory.

The principal can enforce all the duties of the agent that are indirectly the rights of the principal. When an agent fails in his duty towards the principal, the principal has the following remedies against the agent:

1. **To recover damages:** If the principal suffers a loss because the agent ignores the instructions of the principal, or does not follow the custom of the exchange in the absence of instructions from the principal, or when the principal suffers due to lack of skill, care, or diligence on the part of the agent, he can recover the accumulated damages as a result of the agent.
2. **To obtain an account of secret profits and recover them and resist a claim for remuneration:** If the agent, without the knowledge and assent of the principal, obtains secret profits from the agency, the principal has the right to recover them from the agent. Not only this, the agent also loses his right to any commission with respect to the transaction. When the agent generates a secret benefit, the contract with the third party is not invalidated.
3. **To resist agent's claim for indemnity against liability incurred:** When the principal can demonstrate that the agent has acted as principal and not merely as an agent, he can oppose the agent's claim for compensation against the liability incurred by him in that transaction.

5.13 Termination Of Agency

After the termination of the agency, the agent is free of any fiduciary obligation to the principal derived from the relationship of the agency. The parties may terminate the agency by mutual agreement. An agency cannot be rescinded by the act of one of the parties and must be done mutually.

An agency relationship will end automatically when certain events occur. Such events include death, insanity or bankruptcy of the principal or agent. A court usually intervenes and terminates the agency relationship if one of the parties refuses to do so.

Termination of agency by the operation of law:

The following are the situation where the agency is terminated by the operation of law:

1. **Expiration of time:** sometimes the agency contract can be formed for a particular period. In such case, after the expiration of the agreed period, the termination of the agency occurs.
2. **Fulfilment of the object:** sometimes the agency contract can be found for a particular purpose or to make a particular company. In such case, the termination of the agency takes place after the completion of that company.
3. **Death or madness of either party:** whenever the principal or agent encounters death or insanity, the agency contract ends.
4. **Insolvency of the director:** the director must have the capacity to contract. When the principal becomes insolvent, he renounces the ability to contract and the

termination of the agency occurs. But the act is silent with respect to the agent's insolvency. As a minor can also act as an agent, it can be conformed that the insolvent person can act as an agent.

5. **Destruction of matter:** when the object of the contract is destroyed, the contract of the agency comes to an end.
6. **Principal - Alien Enemy:** when the principal is a foreigner and the war breaks out between the countries, the principal becomes a foreign enemy and the contract of the agency is cancelled.
7. **Liquidation of the company:** because of the legal entity, the company can act as principal or agent. Whatever the state, if the company goes into liquidation, the termination of the agency occurs.

Termination by the act of Parties:

The following are the situation where the agency is terminated by the act of parties:

1. **Termination of the agency by the Principal:** the principal can terminate the agency contract by notifying the agent. In doing so, if the agent encounters some suffering the principal has to compensate the agent.
2. **Termination of the agency by the agent:** the agent can also terminate the agency's contract by notifying the principal, but in doing so if the principal encounters some suffering, the agent has to compensate.
3. **Termination of the agency by both parties to the contract:** through mutual understanding between the principal and the agent, the contract of the agency may come to an end.

Termination of sub-agency and substituted agency:

The authority of the subagent will end when the main agency is finished. However, the substitute agency will not close automatically if the principal agent's authority is cancelled.

5.14 Indemnity

Definition

A contract, by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity' (Sec. 124). The person who promises to make good the loss is called the **indemnifier (promisor)** and the person whose loss is to be made good is called the **indemnified or indemnity-holder (promisee)**. A contract of indemnity is really a class of contingent contracts.

Example: a contract to indemnify Mr B against the consequences of any proceedings which Mr C may take against Mr B in respect to a certain sum of Rs. 20,000. This is a contract of indemnity. The indemnify means to compensate or make good the loss. A contract of indemnity refers to a promise made by one person to make good any loss or damage another has incurred or may incur by acting at his request or for his benefit.

A contract of **fire insurance** or **marine insurance** is always a contract of indemnity. But there is no contract of indemnity in case of a contract of life insurance. There may not be a valid contract of indemnity where it is against public policy.

The most common use of the terms *indemnify* and *indemnity* occur in insurance policies. When purchasing an insurance policy, the insurance company agrees to indemnify the policyholder, or another specified party, against losses or damages that may occur.

Example: Rasilaben has a homeowner's insurance policy on her home in Ahmedabad. The insurance company has agreed to indemnify Rasilaben against damages to her home and the personal property kept there, from many types of damage, including fire, burglary, and liability if someone gets injured on Rasilaben's property. A visiting neighbour trips on a crack in the walkway and falls, breaking her arm. Rasilaben's insurance company would protect Rasilaben from the medical bills and other losses claimed by the neighbour by paying the claim.

Example: A and B claim certain goods from a railway company as rival owners. A takes delivery of the goods by agreeing to compensate the railway company against loss in case B turns out to be the true owner. There is a contract of indemnity between A and the railway company.

According to the definition given by Sec. 124 of the Contract Act, contract of indemnity includes (i) only express promise to indemnify and (ii) cases where loss is caused by the conduct of the promisor himself or by the conduct of any other person. It does not include (a) implied promise to indemnify and (b) cases where the loss is caused by accident or by the conduct of the promisee.

Example: A wheelchair manufacturer enters into an agreement with a large hospital to provide 500 wheelchairs at a discount price. The manufacturer asks that an indemnity clause be included in the contract, in which the hospital agrees to protect the company from any losses or lawsuits should patients be injured while using any of the wheelchairs. In doing this, the hospital *indemnifies* the wheelchair company, or the hospital guarantees *indemnity* for any losses or injuries that may occur.

Commencement of Indemnifier's Liability

High Courts have differed in their judgements regarding commencement of indemnifier's liability. According to High Courts of Calcutta, Madras, Allahabad and Patna indemnity holders when asked to meet a liability, can compel the indemnifiers to put him (indemnity-holder) in a position to meet the liability without waiting until he (indemnity-holder) has actually discharged it. High Courts of Bombay, Lahore and Nagpur have, however, held that indemnifier can be made liable only when indemnity-holder has incurred an actual loss, i.e., discharged the liability. The former view seems to be more correct and is also in consonance with the English view "to indemnify does not merely mean to reimburse in respect of moneys paid, but to save from loss in respect of liability against which the indemnity has been given...if it be held that payment is a condition precedent to recovery, the contract may be of little value to the person to be indemnified, who may be unable to meet the claim in the first instance." (Kennedy L.J.) in Liverpool Insurance Co. case 84

Thus, we can conclude that if the indemnity holder had incurred an absolute liability, he has the right to call upon the indemnifier to save him from that liability and pay it off.

5.15 Contracts Of Guarantee

A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the '**surety**', the person in respect of whose default the guarantee is given is called the '**principal debtor**', and the person to whom the guarantee is given is called the '**creditor**'. A guarantee may be either oral or written (sec. 126). It may be express or implied and may even be inferred from the course of conduct of the parties concerned.

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

The law of contract defines that for any valid contract there must be a minimum of two parties. A contract of guarantee is one of a kind where it requires a minimum of three parties instead of two for a contract of guarantee to be valid. A contract of guarantee is a **tripartite agreement**, which contemplates the principal debtor P, the creditor C, and the surety S. In it, there is a **triangular relationship** in which the following three collateral contracts may be distinguished:

- 1) As between C and P, there is a contract out of which the guaranteed debt arises.
- 2) As between S and C, there is a contract by which S guarantees to pay to C, P's debt in case of his (P's) default.
- 3) As between S and P, there is a contract that P shall indemnify S in case S pays in the event of a default by P. This contract, if it is not expressed between the parties, is always implied.

Essentials of a Contract of Guarantee

1. **Concurrence of All the Parties:** All the three parties namely, the principal debtor, the creditor and the surety must agree to make such a contract.
2. **Liability:** In a contract of guarantee, liability of the surety is secondary i.e., the creditor must first proceed against the debtor and if the latter does not perform his promise, then only he can proceed against the surety.
3. **Existence of a Debt:** A contract of guarantee pre-supposes the existence of a liability, which is enforceable at law. If no such liability exists, there can be no contract of guarantee. Thus, where the debt, which is sought to be guaranteed is already time barred or void, the surety is not liable.
4. **Consideration:** There must be consideration between the creditor and the surety so as to make the contract enforceable. The consideration must also be lawful. In a contract of guarantee, the consideration received by the principal debtor is taken to be the sufficient consideration for the surety. Thus, any benefit received by the debtor is adequate consideration to bind the surety. But past consideration is no consideration for a contract of guarantee. There must be a fresh consideration moving from the creditor.

5. **Writing not Necessary:** A contract of guarantee may either be oral or written. It may be express or implied from the conduct of parties.

Note: A Contract of Guarantee is always in writing under English Law.

6. **Essentials of a Valid Contract:** It must have all the essentials of a valid contract such as offer and acceptance, intention to create a legal relationship, capacity to contract, genuine and free consent, lawful object, lawful consideration, certainty and possibility of performance and legal formalities.
7. **No Concealment of Facts:** The creditor should disclose to the surety the facts that are likely to affect the surety's liability. The guarantee obtained by the concealment of such facts is invalid. Thus, the guarantee is invalid if the creditor obtains it by the concealment of material facts.
8. **No Misrepresentation:** The guarantee should not be obtained by misrepresenting the facts to the surety. Though the contract of guarantee is not a contract of *uberrimae fidei* i.e., of absolute good faith, and thus, does not require complete disclosure of all the material facts by the principal debtor or creditor to the surety before he enters into a contract. But the facts, that are likely to affect the extent of surety's responsibility, must be truly represented.
9. **In case co-surety does not join (Sec. 144):** Where a person gives a guarantee upon a contract that the creditor shall not act upon until another person has joined in it as co-surety, the guarantee will be invalid if that other person does not join.

Example: A agrees with B to stand as a surety for C for a loan of Rs. 1000 provided D also joins him as surety. D refuses to join. A is not liable as a surety.

Kinds of Guarantee

Contracts of guarantee may be of two types (1) Specific, or (2) Continuing.

1. **Specific guarantee:** Specific guarantee means a guarantee given for one specific transaction. In this case the liability of the surety extends only to a single transaction.

Example: A guarantee payment to B of the price of 5 sacks of flour to be delivered by B to C and to be paid in a month. B delivers sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay. The guarantee given by A was only a specific guarantee and accordingly he is not liable for the price of the four sacks.

2. **Continuing guarantee (Sec. 129):** A continuing guarantee is that which extends to a series of transactions (Sec. 129). It is not confined to a single transaction. Surety can fix up a limit on this liability as to time or amount of guarantee, when the guarantee is a continuing one. The fact that the guarantee is continuing can also be ascertained from the intentions of the parties and the surrounding circumstances.

Example: A, in consideration that B will employ C in collecting the rents from B's tenants, promises B to be responsible, to the amount of Rs. 5,0000, for the due collection any payment by C of those rents. This is continuing guarantee.

Example: A guarantees payment to B, a tea/dealer to the amount of Rs. 100000, for tea he may from time-to-time supply to C. B supplies C with tea to the extent of the agreed value i.e., Rs. 100000 and C pays B for it. Afterwards B supplies C with tea to the value of Rs 200000. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of Rs. 100000.

5.16 Distinction Between Indemnity And Guarantee

Points of difference	Contracts of Indemnity	Contract of Guarantee
Parties	Only two parties- 'indemnifier & indemnified'.	There are three parties: 'Creditor' 'Principal debtor' and 'surety'.
Liability	The liability of the indemnifier is 'primary'	The liability of the surety is secondary, i.e., the surety's is liable only if the principal debtor fails. The liability of the principal debtor is primary.
Contingency	The liability of the indemnifier arises only on the happening of a contingency.	There is an existing debt or duty the performance of which is guaranteed by the surety.
Contract	There is only one contract between the indemnifier and the indemnified.	Three contracts; one between the creditor and principal debtor; second, between the surety and the creditor, and third, between the surety and the principal debtor.
Object	The indemnity contract is for reimbursement of loss. It provides 'security'.	The contract of guarantee provides 'surety' or assurance to the creditor.
Interest of parties	Indemnity contract gets formed upon indemnifier's interest	Guarantee contract gets formed upon principal debtor's interest.
Right to sue	Indemnifier cannot sue a third party for the loss suffered.	Surety can sue the principal debtor.

5.17 Rights Of A Surety

Rights against the Creditor

1. Sec. 133 – The creditor ought not to change terms of the agreement between the creditor and the principal debtor without the surety's assent. Any such change releases the surety as to transactions ensuing to the difference. However, in the event that the change is for the profit of the surety or does not prefer him or is of an irrelevant character, it might not have the impact of releasing the surety.
2. Sec. 134 – The creditor ought not discharge the principal debtor from his liability under the agreement. The impact of the release of the principal debtor is to release the surety too. Any enactment or exclusion from the creditor which in law has the impact of releasing the principal debtor puts a close to the liability of the surety.
3. Sec. 135 -In the event that an agreement is made between the Creditor and Principal debtor for intensifying the last's liability or making a guarantee to

him growth of time for doing the commitments or swearing up and down to not to beyond any doubt, releases the surety unless he consents to such an agreement.

4. Sec. 139 – the surety is released if the creditor debilitates (weakens) the surety's possible remedy against the principal debtor.

Rights against the Principal Debtor

1. Right of subrogation – The surety on making good of the debt obtains a right of subrogation (the substitution of one person or group by another in respect of a debt or insurance claim, accompanied by the transfer of any asset).
2. Sec. 140 – the surety can't assert the right of subrogation to the creditor's securities in the event that he has agreed as a security for a part of the contract and security has been procured by the creditor for the complete debt.

5.18 Termination Of Contracts Of Guarantee

A contract of guarantee can terminate in a few ways, including:

1. **Revocation by the surety:** The surety can revoke a continuing guarantee for future transactions by giving notice to the creditor.
2. **Death of the surety:** The guarantee is revoked for all future transactions if the surety dies.
3. **Change in contract terms:** If the creditor and principal debtor change the contract terms without the surety's consent, the surety is discharged from all transactions after the change.
4. **Creditor releases the debtor:** If the creditor releases the debtor or makes an omission that discharges the debtor's liability, the surety is discharged.
5. **Principal debtor makes payment:** The guarantee terminates when the principal debtor makes payment of the debt.
6. **Creditor makes an arrangement with the debtor:** If the creditor makes an arrangement with the debtor not to sue or to provide extra time to pay the debt, the surety is discharged.
7. **Creditor acts inconsistently with the surety's rights:** The surety is discharged if the creditor acts in a way that is inconsistent with the surety's rights.

5.19 Contracts Of Bailment

The term bailment is derived from French word 'bailor' which means to deliver. Bailment is a delivery of goods on condition that the recipient shall ultimately restore them to the Bailor or dispose of them according to the direction of the Bailee or dispose of them according to the direction of the Bailor.

Bailment etymologically means "handing over" or "change of possession". As per section 148 of the act, bailment is an act whereby goods are delivered by one person to another for some purpose, on a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person who delivers the goods is called the **Bailor** and the person to whom the goods are delivered is called the **Bailee**.

Requisites of Bailment

1. **Contract:** A bailment is usually created by agreement between the bailor and the bailee. The agreement may be express or implied. In certain exceptional cases, bailment is implied by law as between a finder of goods and the owner.
2. **Delivery of possession:** A bailment necessarily involves delivery of possession of goods by bailor to bailee. The basic features of possession are control and an intention to exclude others. As such, mere custody of goods does not create relationship of bailor and bailee. A servant who receives certain goods from his master to take to a third party has mere custody of the goods; possession remains with the master and the servant does not become a bailee. Thus, to create bailment, there must be delivery of goods.

Examples: (1) A delivers his watch to a watch-maker for repair.

(2) A lady handed over her old jewellery to a jeweller for melting and making it into a new one. Every evening, she used to collect the half-made jewellery and put in into a box kept in the shop of the jeweller. She used to keep the key of the box with her.

One day the box was stolen. Held, the jeweller was not liable as the jeweller had re-delivered the jewellery to the lady and as such, the jeweller could not anymore be regarded as a bailee. The lady must bear the loss herself. [Kaliaperumal Pillai v. Visolakshmi]

3. **Movable goods:** It should be noted that in bailment, only the possession of the goods is transferred not the ownership. Again, only movable goods can be bailed as immovable goods cannot be delivered. It is the main feature of bailment that it is only for the moveable property and not for the immoveable property.
4. **For some purpose:** The delivery of goods from bailor to bailee must be for some purpose. If goods are delivered by mistake to a person, there is no bailment.
Examples: (1) A leaves his suit-case with a Railway Cloak Room for safe custody.
(2) A gives his watch for repair to a watch-maker.
(3) A gives a piece of cloth to a tailor for stitching it into a shirt.
5. **Return of specific goods:** It is agreed between the bailor and the bailee that as soon the purpose is achieved, the goods shall be returned or disposed of according to the directions of the bailor. For a transaction of bailment, it is necessary that the same goods must be returned. If the goods are not to be specifically returned, there is no bailment. But there is a bailment even if the goods bailed are, in the meantime, altered in form, e.g., when a piece of cloth is stitched into a suit. Where money is deposited in a savings bank account or any other account, it is not a transaction of bailment because the bank is not going to return the same currency notes but will return only an equivalent amount. However, where money or valuables are kept in safe custody, it will amount to a transaction of bailment as these will be returned in specie.
6. **Consideration is not necessary in case of Contract of Bailment:** In case of bailment for mutual benefit of the bailor and bailee, consideration is there for both the parties e.g., A gives his watch for repair to B for Rs. 10. For A, consideration is repair of his watch and for B, consideration is Rs. 10. However, in case of

bailment either for the benefit of the bailor or bailee alone, consideration in the form of something in return is not there. In such cases the detriment suffered by the bailor in parting with the possession of goods is considered as a sufficient consideration to support the promise on the part of the bailee to return the goods.

Termination of Bailment

A contract of bailment is terminated in the following cases:

1. **On the expiry of the period:** When the bailment is for a specific period, it terminates on the expiry of that period.
2. **On the achievement of the object:** When the bailment is for a specific purpose, it terminates as soon as the purpose is achieved.
3. **Inconsistent use of goods:** When the bailee uses the goods in a manner inconsistent with the terms of the contract, the bailment terminates (Sec. 154).
4. **Destruction of the subject matter:** A bailment is terminated when the subject matter of the bailment (a) is destroyed, or (b) by reason of a change in its nature becomes incapable of use for the purpose of the bailment.
5. **Gratuitous (unjustified) bailment:** It can be terminated any time subject to condition laid down in Sec. 159.
6. **Death of the bailor or bailee:** A gratuitous bailment is terminated by the death either of the bailor or of the bailee (Sec. 162).

5.20 Contracts Of Pledge

In 'pledge'. The bailor is, in this case, called the 'pledger' or 'pawnor' and the bailee is called the 'pledgee' or 'pawnee' (Sec. 172).

A pledge is a bailment for security. It is a special kind of bailment. **Example:** If A borrows Rs. 200 from B and keeps his watch as security for payment of the debt, the bailment of watch is a pledge. Any kind of movable property, i.e., goods, documents, or valuables may be pledged. Even a Savings Bank Pass Book may be pledged [J. & K. Bank v. Tek Chand, A.I.R. (1959) J. & K. 67]. But delivery is necessary to complete a pledge. The delivery may be actual or constructive. If, because of the bulk of the property or for some other reason, actual delivery is impracticable, a symbolic delivery will suffice (as for example delivery of the keys to a locker in a safe deposit vault).

Pledge by non-owners

Ordinarily only a person who is the real owner of the goods can make a valid pledge, but in the following cases pledge made by non-owners will also be valid.

1. **Pledge by a mercantile agent (Sec. 178):** Where a mercantile agent is, with the consent of the owner, a possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same, provided that the pawnee act in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge.
2. **Pledge by person in possession under voidable contract (Sec. 178 A):** When the pawnor has obtained possession of the goods pledged by him under a contract voidable under Section 19 or Section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquired a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

3. **Pledge where pawnor has only a limited interest (Sec. 179).** Where a person pledges goods in which he had only a limited interest, the pledge is valid to the extent of that interest. **Example:** A finds a watch on the road and spends Rs. 25 on its repairs. He pledges it with B for Rs. 50/-. The real owner can get the watch by paying Rs. 25 to the pledge.
4. **Pledge by a co-owner in possession:** If there are several joint owners of goods and goods are in the sole possession of one of the co-owners with the consent of other co-owners, such a co-owner can make a valid pledge of goods.
5. **Pledge by seller or buyer in possession after sale:** A seller, who has got possession of goods even after sale, can make a valid-pledge, provided the pawnees act in good faith. **Example:** X buys goods from Y, pays for them, but leaves them in the possession of Y, and Y then pledges the goods with Z who does not know of sale to X, the pledge is valid. Similarly, if the buyer obtains possession of goods with the consent of the seller before payment of price and pledges them, the pawnee will get a good title provided he does not have the notice of seller's right of lien or any other right.

Difference between Bailment and Pledge

BASIS FOR COMPARISON	BAILMENT	PLEDGE
Meaning	When the goods are temporarily handed over from one person to another person for a specific purpose, it is known as bailment.	When the goods are delivered to act as security against the debt owed by one person to another person, it is known as the pledge.
Defined in Section	Section 148 of the Indian Contract Act, 1872.	Section 172 of the Indian Contract Act, 1872.
Definition	Delivery of goods by Bailor to Bailee for a definite purpose on condition of their return or disposal, when purpose is accepted.	The Bailment of goods as security for payment of a debt or performance of a promise is called pledge.
Parties	The person who delivers the goods is known as the Bailor while the person to whom the goods are delivered is known as Bailee.	The person who delivers the goods is known as Pawnor while the person to whom the goods are delivered is known as Pawnee.
Consideration	May or may not be present.	Always present.
Right to sell the goods	The party whom goods are being delivered has no right to sell the goods.	The party whom goods are being delivered as security has the right to sell the goods if the

BASIS FOR COMPARISON	BAILMENT	PLEDGE
		party who delivers the goods fails to pay the debt.
Use of Goods	The party whom goods are being delivered can use the goods only, for the specified purpose.	The party whom goods are being delivered has no right to use the goods.
Purpose	Safe keeping or repairs, etc.	As security against payment of debt.
Example	Sam delivers cloth to John, a tailor to make a shirt. The contract between Sam and John is bailment.	If a Farmer delivers to bank 50 bags of wheat as security for obtaining a loan, it is called pledge.

❖ Exercise

• **Descriptive Questions**

1. Define agency. What are the essentials and rules related to agency?
2. Define in detail the classification of agents.
3. Elaborate the different ways in which an agency can be created.
4. Explain in detail the rights and duties of an agent.
5. Explain in detail the rights and duties of the principal.
6. Elaborate the different ways in which an agency can be terminated.
7. What is a contract of Indemnity? Also explain the rights and duties of and indemnity holder.
8. What is a Contract of Guarantee? Explain the essential elements of a Contract of Guarantee.
9. Define the Contracts of Indemnity and Guarantee and explain in detail the distinction between the two.
10. What are Contracts of Bailment? Define in detail the requisites of Bailment.
11. Discuss in detail the rights and duties of Bailor and Bailee.
12. What are Contracts of Pledge? Define in detail the rights of Pawnor and Pawnee.
13. Define contracts of bailment and pledge and explain in detail the distinction between them.

• **Short Notes**

1. Termination of agency by acts of parties.
2. Termination of agency by operation of law.
3. Creation of agency by ratification.
4. Creation of agency by implied agreement.
5. Co-agents and sub-agents.

6. Define agent and principal
7. Kinds of guarantee.
8. Rights of surety.
9. Termination of Bailment.
10. Particular and General Lien.
11. Difference between Indemnity and Guarantee.
12. Difference between Bailment and Pledge.

• **Multiple Choice Questions**

1. What type of a contract is a contract of fire insurance?
 - a. Contract of indemnity
 - b. Contract of Bailment
 - c. Contract of Guarantee
 - d. Contract of Pledge
2. An indemnity holder has the right to recover which of these?
 - a. Damages in any suit
 - b. Costs incurred in any suit
 - c. Any sum paid as compromise
 - d. All the above
3. Which of the following necessarily has to have three parties to the contract?
 - a. Contract of Indemnity
 - b. Contract of Bailment
 - c. Contract Of Guarantee
 - d. Contract of Pledge
4. In a contract of guarantee liability of the surety is...
 - a. Primary
 - b. Secondary
 - c. Contingent
 - d. None of the above
5. A guarantee that extends to not one but a series of transactions is better known as...
 - a. Specific guarantee
 - b. Continuing guarantee
 - c. No guarantee
 - d. Full guarantee
6. An act whereby goods are delivered by one person to another for some purpose, on a contract, that the goods shall, when the purpose is accomplished, be returned are called?
 - a. Contract of Indemnity
 - b. Contract of Bailment
 - c. Contract Of Guarantee
 - d. Contract of Pledge
7. The bailment of goods as security for payment of a debt or performance of a promise is called a...
 - a. Contract of Indemnity
 - b. Contract of Bailment
 - c. Contract Of Guarantee
 - d. Contract of Pledge
8. A contract of bailment can be made for...
 - a. Movable property only
 - b. immovable property only
 - c. both movable and immovable property
 - d. none of the above.
9. The right of a person to retain possession of some goods belonging to another until some debt or claim of the person in possession is satisfied is called a
 - a. Detention
 - b. Penalty
 - c. Lien
 - d. Damages
10. A contract of bailment can be terminated in which of the following ways?
 - a. On the expiry of the specific period
 - b. on destruction of the subject matter
 - c. on the achievement of the object
 - d. all of the above

11. What do you call a person who has received the power to act on behalf of another, binding that other person as if he or she were themselves making the decision?
 - a. Principal.
 - b. Agent.
 - c. Creditor.
 - d. Attorney.
12. What do you call a person who gives authority to another to act on his or her behalf?
 - a. Principal.
 - b. Agent.
 - c. Creditor.
 - d. Attorney.
13. A principal is responsible for all the acts of his agent which is called...
 - a. Vicarious liability.
 - b. Original liability of the principal.
 - c. Both (a) and (b)
 - d. None of the above.
14. An agent is bound to render proper account to _____ on demand.
 - a. Subagent
 - b. creditor
 - c. principal
 - d. all the above
15. _____ agency is the most common form of agency.
 - a. Incidental.
 - b. Apparent.
 - c. Implied.
 - d. Express.
16. A _____ is a contract principal and agent entered into that says that the principal cannot employ another agent or other then the one stated.
 - a. Ratified contract.
 - b. Exclusive agency contract.
 - c. Apparent agency contract.
 - d. Exclusive principal contract.
17. A principal exception an agent's unauthorised contract through _____ of the contract.
 - a. Ratification
 - b. Ramification.
 - c. Subrogation
 - d. none of the above
18. Frank enters into a contract with Sally believing that Sally is acting on her own behalf when in fact she is acting as an agent of Derek on his express instructions. In the event of a breach of contract who can Frank take action against?
 - a. No one, the contract is invalid
 - b. Sally
 - c. Derek
 - d. Derek or Sally
19. Which one of the following statements is incorrect?
 - a. An agency relationship may be created through necessity.
 - b. An agency relationship may be created through Estoppels.
 - c. All agents are entitled to be paid for their services.
 - d. And agent creates legal relationship between a third party and the principal.
20. Which one of the following is not the duty of an agent?
 - a. Duty to exercise care and skill.
 - b. Duty to take commission.
 - c. Duty to account.
 - d. Duty to avoid a conflict of interest.
21. Which of the following statement is incorrect?
 - a. An agency may be terminated by the death of either party.
 - b. An agency may be terminated by express agreement.

- c. An agency agreement can always be terminated by a principal.
 - d. Mental incapacity of an agent will terminate the agency relationship.
22. Which of the following is not a method of terminating an agency relationship by operation of law?
- a. Bankruptcy of the principal.
 - b. Mutual agreement.
 - c. Insanity of either the principal or the agent.
 - d. Death of either the principal or the agent.
23. Which of the following is not a method of terminating an agency relationship by acts of the parties?
- a. Mutual agreement.
 - b. Achievement of agency purpose.
 - c. Lapse of time.
 - d. Bankruptcy of principle.

• **MCQ Answer key**

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
a	d	c	b	b	b	d	a	c	d

1	1	1	1	1	1	1	1	1	2	2	2	2
1	2	3	4	5	6	7	8	9	0	1	2	3
b	a	a	c	d	b	a	d	c	b	c	b	d

- 6.1 Introduction**
- 6.2 About Consumer Protection Act**
- 6.3 Meaning of Consumer**
- 6.4 Meaning of Service**
- 6.5 Unfair Trade Practice**
- 6.6 Rights Of the Consumers And reliefs Available to Consumer**
- 6.7 Consumer Protection Council**
- 6.8 Consumer Dispute Redressal Agencies**
- 6.9 Finding of Districts Forum And Appeal**
- 6.10 Definitions of various terms under this act**
- 6.11 Exercise**

6.1 Introduction

Besides the basic necessities of food, clothing, and shelter, we consume a variety of things in our daily lives such as cell phones, digital cameras, soaps, perfumes, cosmetics, among other things. Thus, all of us are consumers in the literal sense of the term. When we buy things from the market as a consumer, we expect value for money, i.e., quality, quantity, right price, information about the mode of use, etc. However, there may be instances where a consumer is cheated.

In such cases, most of us do not know whom to approach to seek redressal. Moreover, a majority of us also are unaware of our “rights” as a consumer and often hesitate to complain or even stand up to unfair practices. We also don't have the recourse of costly litigation to seek justice and we continue to bear such injustice.

This is where consumer forums, which can help you seek justice against unfair practices without incurring exorbitant litigation costs, come in.

6.2 About Consumer Protection Act

Consumer Protection is a concept that was first introduced by John Fitzgerald Kennedy, the 35th President of the United States on 15th March 1962. He spoke about this concept in a special speech to the Congress. His speech stressed protecting the consumer's interest. Kennedy also spoke about the four basic rights of the consumer, namely:

- Right to Safety
- Right to be Informed
- Right to be Heard
- Right to Choose.

His discussion sparked a deliberation and subsequent legislation to protect consumers. 15th March is celebrated as World Consumer Rights Day, taking inspiration from Kennedy.

Another important name in the international sphere while discussing consumer protection is **Ralph Nader**. He is the author of the book “**Unsafe at Any Speed**” which indicates the faulty design of automobiles. The book led to a series of landmark laws that have prevented multiple motor vehicle accidents thus curbing deaths and injuries. He revolutionized Consumer Protection in the United States of America.

Ancient India witnessed the supremacy of the Vedas as a religious text, coming from God himself. The Vedas was strictly followed by the majority in the ancient Indian society. Apart from the Vedas, this period also gave rise to the Code of Chanakya, Manu Smriti, Narada Smriti and so on. These ancient codes contained provisions which sought to safeguard the interests of the consumer, with the aim of consumer safety. The punishment was also granted when the consumer-related provisions were gone against.

- **Among the Dharmas, the most authoritative texts are:**

- Manu Smriti
- Yajnavalkya Smriti
- Narada Smriti
- Bruhaspati Smriti
- Katyayana Smriti.

Among these, Manu Smriti was the most influential.

In the modern period, the previous traditional legal systems established by Indian kings were replaced by new modern laws. The British introduced the English Common Law in India along with other legislative measures for the public and in turn, the consumers.

- **Some of these legislations are as follows:**

- The Indian Contract Act, 1872
- The Sale of Goods Act, 1930
- Indian Partnership Act, 1932
- The Agricultural Produce (Grading and Marketing) Act, 1937
- The Drugs Act, 1940
- The Drugs and Cosmetic Act 1940

These legislations proved to be immensely effective in saving the interests of the consumers during the time of the British. The rules were now uniform across the country and not arbitrary to the opinions of the various kings of the Ancient and Medieval periods.

- **Post-Independence Period**

When India attained independence, it adopted the Anglo-Saxon system of administration of justice. Hence, the previous legislation that was established by the British continued to function in independent India.

Along with the existing legislation, the country was on its path to more laws through the creation of the Indian Constitution and its adoption in 1950. Due to the democratic nature of the Constitution, the prime focus of the laws was the benefit of the general public, who were also consumers.

- **Certain implications of the Indian Constitution that may apply to consumers are as follows:**

Article 14 of the constitution implies equality before the law and equal protection of laws. This results in manufacturers, producers, traders, sellers and consumers having an equal position before the law.

Article 39 has two clauses, (b) and (c), according to which the state is bound to direct its policy to ensure the distribution of the ownership of the material resources of the society. This distribution should be done to serve the common good.

According to Article 43, the state must strive to develop an economic organization or to make legislation in order to secure a decent standard of life to all the workers. These workers are the ones who constitute the bulk of the consumers.

- **The new legislation enacted after Independence are as follows:**

- The Prevention of Food Adulteration Act, 1954
- The Essential Commodities Act, 1955
- The Monopolistic Restrictive and Unfair Trade Practises Act, 1969
- The Standard of Weights and Measures Act, 1976
- The Bureau of Indian Standards Act, 1986
- The Consumer Protection Act, 1986
- The Trade Marks Act, 1999
- The Competition Act, 2002

The Consumer Disputes Redressal agencies- the National Commission, the State Commission, and the District Forum soon started working and has rapidly resulted in quick action taken against those who exploit the consumers.

The efficient justice system in the sphere of consumer protection that we see today is a resulted of all these previous developments that have taken place in the past which is worthy of appreciation.

6.3 Meaning Of Consumer

"Consumer" means any person, who

- (i) Buys any goods for a consideration (a) which has been paid or promised or partly paid and partly promised, or (b) under any system of deferred payment. 'Consumer' also includes any user of Such goods other than the buyer himself. The use of such goods must however be for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment. The use of such goods must be made with the approval of the buyer. 'Consumer' does not

include a person who obtains goods for resale or for any commercial purpose. "*Commercial purpose*" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

- (ii) Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment. '*Consumer*' also includes any beneficiary of such services other than the person who hires or avails of such services. The beneficiary must however acquire the use of such services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment. Further such services must be availed of by the beneficiary with the approval of the hirer.

6.4 Meaning Of Service

It means service of any description which is made available to potential users. It includes the provision of facilities in connection with (a) banking, (b) financing, (c) insurance, (d) transport, (e) processing, (f) supply of electrical or other energy, (g) board or lodging or both, (h) house construction, (i) entertainment, amusement or other purveying of news or other information.

The expression '*service*' includes in its scope provision of facility in connection with telephone provided by Telecommunication Department and houses and plots by the Housing & Development Board.

'*Service*' however does not include the rendering of any service free of charge or under a contract of personal service.

6.5 Unfair Trade Practice

It means a trade practice which a trader, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice. It includes any of the following practices, namely

The practice of making any statement, whether orally or in writing or by visible representation which,

- (i) Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (ii) Falsely represents that the services are of a particular standard, quality or grade;
- (iii) Falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- (iv) Represents that the goods or services have sponsorship, approval, performance, characteristics accessories, uses or benefits which such goods or services do not have;
- (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have ;
- (vi) Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

- (vii) Gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof ;
- (viii) Where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence.
- (ix) makes to the public a representation in a form that purports to be (i) a warranty or guarantee of a product or of any goods or services ; or (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (x) Materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided. For this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (xi) Gives false or misleading facts disparaging the goods, services or trade of another person.

6.6 Rights Of The Consumers And Reliefs Available To Consumer

Consumers' rights under section-6 of the consumer protection act are as follows:

1. **Right to Safety:** A consumer has the right to safety against such goods and services as are hazardous to his health, life and property.

For example, spurious and substandard drugs; appliances made of low-quality raw material, such as, electric press, pressure cooker, etc. and low-quality food products like bread, milk, jam, butter, etc. The consumers have the right to safety against the loss caused by such products.
2. **Right to be Informed/Right to Representation:** A consumer has also the right that he should be provided with all the information on the basis of which he decides to buy goods or services. Such information relates to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity. Thus, a producer is required to provide all such information in a proper manner, so the consumer is not cheated.
3. **Right to Choose:** A consumer has the absolute right to buy any goods or services of his choice from among the different goods or services available in the market. In other words, no seller can influence his choice in an unfair manner. If any seller does so, it will be deemed as interference in his right to choice.
4. **Right to be Heard:** A consumer has the right that his complaint be heard. Under this right, the consumer can file a complaint against all those things which are prejudicial to his interest. First, their rights mentioned above (Right to Safety; Right to be informed and Right to Choose) have relevance only if the consumer

has the right to file his complaint against them. These days, several large organisations have set up Consumer Service Cells with a view to providing the consumer the right to be heard.

The function of the cell is to hear the complaints of the consumers and to take adequate measures to redress them. Many daily newspapers have also special columns to entertain the complaints of the consumers.

5. **Right to Seek Redressal:** This right provides compensation to the consumers against unfair trade practice of the seller. For instance, if the quantity and quality of the product do not conform to those promised by the seller, the buyer has the right to claim compensation.

Several redressals are available to the consumer by way of compensation, such as free repair of the product, taking back of the product with refund of money, changing of the product by the seller.

6. **Right to Consumer Education:** Consumer education refers to educating the consumer constantly with regard to their rights. In other words, consumers must be aware of the rights they enjoy against the loss they suffer on account of goods and services purchased by them. Government has taken several measures to educate the consumers.

For instance, Ministry of Civil Supplies publishes a quarterly magazine under the title “Upbhokta Jagran”. Doordarshan telecasts a programme like the “Sanrakshan Upbhokta Ka” and apart from this, Consumer Day is observed on March 15 every year.

Note: In addition to the above mentioned six rights of the consumers, the United Nations Organisation guidelines also contain two more rights. These are the following:

7. **Right to Basic Needs:** The basic needs mean those goods and services which are necessary for a dignified living of people. It includes adequate food, clothing, shelter, energy, sanitation, health care, education and transportation. All the consumers have the right fulfil these basic needs.
8. **Right to Healthy Environment:** This right provides the consumers, protection against environmental pollution so that the quality of life is enhanced. Not only this, it also stresses the need to protect the environment for the future generations as well.

6.7 Consumer Protection Council

The Central Consumer Protection Council (Sec 4 To 6)

Establishment (Sec. 4). Sec. 4 empowers the Central Government to establish, by notification, a Council to be known as the Central Consumer protection Council (referred to as the Central Council).

Membership. The Central Council shall consist of the following members, namely :

- (a) The Minister in charge of consumer affairs in the Central Government, who shall be its Chairman, and

- (b) Such number of other official or non-official members representing such interest as may be prescribed.

According to Rule 3 of the Consumer Protection Rules, 1987, the Central Council shall consist of the following **150 members**, namely :-

- (a) The Minister in charge of consumer affairs in the Central Government, who shall be the Chairman of the Central Council ;
- (b) The Minister of State (where he is not holding independent charge) or Deputy Minister in the Department of Civil Supplies who shall be the Vice Chairman of the Central Council;
- (c) The Ministers of Food and Civil Supplies or Minister in charge of consumer affairs in states;
- (d) 8 Members of Parliament, 5 from the Lok Sabha and 3 from the Rajya Sabha ;
- (e) The Commissioner for Scheduled Castes and Scheduled Tribes;
- (f) Representatives of the Central Government Departments, autonomous organizations concerned with consumer interests, not exceeding 20
- (g) Representatives of the Consumer Organizations or consumers-not less than 35 ;
- (h) Representatives of women-not less than 10
- (i) Representatives of farmers, trade and industries-not exceeding 20
- (j) Persons capable of representing consumer interests not specified above - not exceeding 15;
- (k) The Secretary in the Department of Civil Supplies shall be the member secretary of the Central Council.

The term of the Council shall be 3 years: Any member may, by writing under his hand to the. Chairman of the Central Council, resign from the Council. The vacancies, so caused or otherwise, shall be filled from the same category by the Central Government. The person shall hold office so long as the member whose place he fills would have been entitled to hold office, if the vacancy had not occurred.

Procedure for meetings of the Central Council (Sec. 5). The Central Council shall meet as and when necessary, and at least one meeting of the Council shall be held every year. It shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

Objects of the Central Council (Sec. 6). The objects of the Central Council shall be to promote and protect the rights of the consumers such as,

- (a) The right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices ;
- (c) The right to be assured, wherever possible, access to a variety of goods and services at competitive prices

- (d) The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums;
- (e) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- (f) The right to consumer education.

The Central Council shall give wide publicity to the rights of the consumers and the consumer dispute redressal agencies and procedure of filing complaints therein through television, radio, newspapers and magazines to give impetus to consumer movement in the country.

- **The state consumer protection councils (secs. 7 and 8)**

Establishment (Sec. 7). The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Consumer Protection Council for (referred to as the State Council).

Membership. The State Council shall consist of the following members, namely

- (a) The Minister in charge of consumers affairs in the State Government who shall be its Chairman;
- (b) Such number of other official or non-official members representing such interest as may be prescribed by the State Government.

Meetings. The State Council shall meet as and when necessary but not less than 2 meetings shall be held every year.

Time and place of meetings and procedure. The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

Objects of the State Council (Sec. 8). The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in Sec. 6.

6.8 Consumer Dispute Redressal Agencies

Consumer Dispute Redressal Agencies or what we also know as the consumer courts in layman's terms. They are at three levels like any other courts of our judiciary system that is at district level along with District Courts, at state level along with the High Courts and at national level along with the Supreme Court.

Consumer Disputes Redressal Forum (The District Forum)

Composition (Sec. 10).

Each District Forum shall consist of

- (a) A person who is, or has been, or is qualified to be a District Judge, who shall be its President;
- (b) 2 other members who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with,

problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

Appointment on the recommendation of Selection Committee. Every, appointment shall be made by the State Government on the recommendation of a selection committee consisting of the following namely:

- (i) The President of the State Commission-Chairman.
- (ii) Secretary, Law Department of the State-Member.
- (iii) Secretary in charge of the Department dealing with consumer affairs in the State-Member.

Term of office. Every member of the District Forum shall hold office for a term of 5 years or up to the age of 65 years, whichever is earlier. He shall not be eligible for re-appointment.

Resignation. A member may resign his office in writing under his hand addressed to the State Government. On such resignation being accepted, his office shall become vacant. The vacancy so caused, may be filled by an appointment of a person possessing the qualifications mentioned above in relation to the category of the member who has resigned.

Salary and terms of condition of Service. The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the District Forum shall be such as may be prescribed by the State Government.

Jurisdiction (Sec. 11).

The District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed Rs. 12,00,000. This is however subject to other provisions of this Act.

A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction, ---

- (a) The opposite party (i.e., the person who answers complaint or claim) or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office, or personally works for gain, or
- (b) Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain. But in such a case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, must acquiesce in such institution; or
- (c) The cause of action, wholly or in part, arises.

Manner in which complaint shall be made (Sec. 12).

A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be-filed with a District Forum by

- (a) The consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;
- (b) any recognized consumer association, whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided, is a member of such association or not; or
- (c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or
- (d) The Central or the State Governments.

"Recognized consumer association" means any voluntary consumer association registered under the Companies Act, 1956, or any other law for the time being in force.

- **Consumer Disputes Redressal Forum (The State Forum)**

Composition (Sec. 16).

Each State Commission shall consist of

- (a) A person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President. However, no appointment under this Clause shall be made except after consultation with Chief justice of the High Court;
- (b) 2 other members, who shall be persons of ability, integrity and standing and have, adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of these members shall be a woman. However, every appointment made under this Clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely
 - (i) President of the State Commission-Chairman.
 - (ii) Secretary of the Law Department of the State Member.
 - (iii) Secretary, in charge of Department dealing with consumer affairs in the State Member.

The salary or honorarium and other allowance payable to, and the other terms and conditions of service of, the members of the State Commission shall be prescribed by the State Government.

Every member of the State Commission shall hold office for a term of 5 years or up to the age of 67 years, whichever is earlier and shall not be eligible for re-appointment.

- **Jurisdiction (Sec. 17).**

The State Commission shall have jurisdiction,

- (1) To entertain-

- (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 12 lakhs but does not exceed Rs. 1 Crore and
 - (ii) **Appeals** against the orders of any District Forum within the State and
- (2) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District forum within the State where it appears to the State Commission that such District Forum
- (i) Has exercised a jurisdiction not vested in it by law, or
 - (ii) Has failed to exercise a jurisdiction so vested, or
 - (iii) Has acted in exercise of its jurisdiction illegally or with material irregularity.

The jurisdiction of the State Commission shall be subject to other provisions of the Act.

- **Procedure (Sec. 18).**

The provisions of Sec. 12, 13 and 14 and the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

- **Consumer Disputes Redressal Forum (The National Forum)**

Composition (Sec. 20).

The National Commission shall consist of

- (a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President. However, no appointment under this Clause shall be made except after consultation with the Chief justice of India.;
- (b) 4 other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of these members shall be a woman. However, every appointment under this Clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following namely:-
 -
 - (i) A person who is a Judge of the Supreme Court, to be nominated by the Chief justice of India-Chairman.
 - (ii) The Secretary in the Department of Legal Affairs in the Government of India-Member,
 - (iii) Secretary of the Department dealing with consumer affairs Government of India-Member.

The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be prescribed by the Central Government.

Every member of the National Commission shall hold office for a term of 5 years or up to the age of 70 years, whichever is earlier and shall not be eligible for re-appointment.

Place of the National Commission. The office of the National Commission shall be located in the Union Territory of Delhi (Rule 5 of the Consumer Protection Rules, 1957).

Jurisdiction (Sec. 21).

Subject to the other provisions of this Act, the National Commission shall have jurisdiction

(1) To entertain

(i) Complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 1 Crore and

(ii) **Appeals** against the orders of any State Commission; and

(2) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission (i) has exercised a jurisdiction not vested in it by law, or (it) has failed to exercise a jurisdiction so vested, or (iii) has acted in the exercise of its jurisdiction illegally or with material irregularity.

Procedure (Sec. 22).

The National Commission shall, in the disposal of any complaints or any proceedings before it, have

(1) The powers of a Civil Court as specified in Sec. 13.

(2) The power to issue an order to the opposite party directing him to do any one or more of the things referred to in Sec. 14.

The National Commission shall follow such procedure as may be prescribed by the Central Government.

6.9 Finding of Districts Forum And Appeal

(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

- (e) to remove the defects **in goods** or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

- (i) to provide for adequate costs to parties.

- (2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

- (2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

- (3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

- **Appeal.**

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less:

6.10 Definitions Of Various Terms Under This Act

1. Complainant [Sec. 2 (1) (b)]. "Complainant" means

- (i) A consumer; or
- (ii) Any voluntary **consumer association** registered under the Companies Act, 1956, or under any other law for the time being in force; or
- (iii) The **Central Government or any State Government**, who or which makes a complaint; or
- (iv) **One or more consumers**, where there are numerous consumers having the same interest.

2. Complaint [Sec. 2(1)(c)]. It means any allegation in writing made by a complainant. The allegation in writing must be that

- (i) An **unfair trade practice** or a **restrictive trade practice** has been adopted by any trader;
- (ii) The goods bought by him or agreed to be bought by him suffer from one or more **defects**
- (iii) The services hired or availed of or agreed to be hired or availed of by him suffer from **deficiency** in any respect;
- (iv) A trader has charged for the goods mentioned in the complaint a price in **excess of the price fixed** by or under any law for the time being in force or displayed on the goods or any package containing such goods with a view to obtaining any relief provided by or under this Act;
- (v) Goods which will be **hazardous to life and safety** when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

3. Consumer dispute [Sec. 2 (1) (e)]. It means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

4. **Defect [Sec. 2 (1) (f)].** It means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.
5. **Deficiency [Sec. 2 (1) (g)].** It means any fault, imperfection, shortcoming or inadequacy in the quantity, nature and manner of performance which (i) is required to be maintained by or under any law for the time being in force, or (ii) has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.
6. **Goods [Sec. 2 (1) (i)].** It means a goods as defined in the Sale of Goods Act 1930. According to Sec. 2 (7) of the Sale of Goods Act, 1930, goods means kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale."
7. **Manufacturer [Sec. 2 (1) (j)].** "Manufacturer" means a person who
 - (i) **Makes** or manufactures any goods or parts thereof; or
 - (ii) Does not make or manufacture any goods but **assembles** parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself; or
 - (iii) puts or causes to be **put his own mark** on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself,

Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office.

8. **Person [Sec. 2 (1) (m)].** "Person" includes
 - (i) a firm whether registered or not;
 - (ii) a Hindu undivided family;
 - (iii) a co-operative society;
 - (iv) every other association of persons whether registered under the Societies Registration Act, 1960 or not.
9. **Restrictive trade practice [Sec. 2 (1) (nn)].** It means any trade practice which requires a consumer to buy, hire or avail of any goods, or as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services;
10. **Trader [Sec. 2 (1) (q)].** "Trader" in relation to any goods means a person who sells or distributes any goods for sale. It also includes the manufacturer of such goods. Where such goods are sold or distributed in package form, 'trader' includes the packer thereof.

❖ Exercise

• Descriptive Questions

1. Explain in detail various rights of a consumer.
2. If any damage is done to a consumer by a trader, what are the rights available to a consumer by which he can move to a consumer court to get compensation?
3. Define in detail the Central Consumer Protection Council.
4. Define in detail the State Consumer Protection Council.
5. Define in detail the composition and functioning of the District Forum.

• Short Notes

1. Consumer under Consumer Protection Act
2. Complaint according to Consumer Protection Act
3. Unfair Trade Practice under Consumer Protection Act
4. Manufacturer under Consumer Protection Act
5. Consumer Rights under Consumer Protection Act
6. National Council for consumer protection
7. State Council for consumer protection

• Multiple Choice Questions

1. According to the Consumer Protection Act which of the following is included under the description of a consumer?
 - a. Buyer of goods
 - b. user of goods
 - c. hirer of goods
 - d. all the above
2. A false representation about the standard, quality and quantity of goods, under the Consumer Protection Act is described as
 - a. fraud
 - b. misrepresentation
 - c. unfair trade practice
 - d. none of the above
3. Under the consumer protection act a consumer is the right to file a complaint against all those things that are against his interest. This right is better described in the act as;
 - a. Right to choose
 - b. Right to information
 - c. Right to Be Heard
 - d. Right to Goods and Services
4. The body responsible for making the laws for consumer protection at the national level is better known as
 - a. Central consumer protection Council
 - b. State consumer protection Council
 - c. district Forum
 - d. National redressal agency
5. The highest body formed for addressing consumer issues in the country is better known as;
 - a. Central consumer protection Council
 - b. State consumer protection Council

- c. district Forum
 - d. National redressal agency
6. Who of the following are considered to be fit to be called a 'Complainant' according to the Consumer Protection Act 1986.
 - a) A consumer
 - b) Any registered voluntary consumer association
 - c) The Central and State Government
 - d) All the Above
 7. Which among the following bodies establishes the Central Consumer Protection Council.
 - a) National Commission
 - b) State Government
 - c) Central Government
 - d) Appropriate Government
 8. Who is considered to be qualified to be the President of the National Consumer Disputes Redressal Commission?
 - a) A person qualified to be a Supreme Court Judge
 - b) A person qualified to be a High Court Judge
 - c) A person qualified to be a District Judge
 - d) All of the above
 9. When was the Consumer Protection Act passed in India?
 - a. 1968
 - b. 1986
 - c. 1984
 - d. 1976
 10. If the value of goods or services, along with the compensation claimed is more than 10 crores, then where can the complaint be filed.
 - a. District Commission
 - b. State Commission
 - c. National Commission
 - d. None of the above

MCQ Answer key

1	2	3	4	5	6	7	8	9	10
d	c	c	a	d	d	c	a	b	c

7.1 Introduction**7.2 Intellectual property rights- concept- industrial properties****7.3 Trademarks- definition- procedure for registration of trademarks****7.4 Patents- definition- kinds of patents-rights of patentee****7.5 Copyrights-definition-essential conditions of copyrights protection- rights of copyrights owners Infringement of copyrights****7.6 Trade secrets- Geographical indicators.****7.7 Right to Information Act 2005- Introduction-objectives of the Act.****❖ Exercise**

7.1 Introduction

Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest.

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

• What is Intellectual Property?

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.

• What is Intellectual Property Rights?

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

7.2 Intellectual property rights- concept- industrial properties

The concept of intellectual property is not new as Renaissance northern Italy is thought to be the cradle of the Intellectual Property system. A Venetian Law of 1474 made the first systematic attempt to protect inventions by a form of patent, which granted an exclusive right to an individual for the first time. In the same century, the invention of movable type and the printing press by Johannes Gutenberg around 1450, contributed to the origin of the first copyright system in the world.

Towards the end of 19th century, new inventive ways of manufacture helped trigger large-scale industrialization accompanied by rapid growth of cities, expansion of railway networks, the investment of capital and a growing transoceanic trade. New ideals of industrialism, the emergence of stronger centralized governments, and nationalism led many countries to establish their modern Intellectual Property laws. At this point of time, the International Intellectual Property system also started to take shape with the setting up of the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 1886. The premise underlying Intellectual Property throughout its history has been that the recognition and rewards associated with ownership of inventions and creative works stimulate further inventive and creative activity that, in turn, stimulates economic growth.

Over a period of time and particularly in contemporary corporate paradigm, ideas and knowledge have become increasingly important parts of trade. Most of the value of high technology products and new medicines lies in the amount of invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value, for example, brand-named clothing or new varieties of plants. Therefore, creators are given the right to prevent others from using their inventions, designs or other creations. These rights are known as intellectual property rights.

The Convention establishing the World Intellectual Property Organization (1967) gives the following list of the subject matter protected by intellectual property rights:

- literary, artistic and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and
- “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

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.

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, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property. The areas of intellectual property that it covers are:

- (i) Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organisations);
- (ii) Trademarks including service marks;
- (iii) Geographical indications including appellations of origin;
- (iv) Industrial designs;
- (v) Patents including protection of new varieties of plants;
- (vi) The lay-out designs (topographies) of integrated circuits;
- (vii) The undisclosed information including trade secrets and test data.

- **Industrial Property**

Industrial property is one of two subsets of intellectual property (the other being copyright), it takes a range of forms, including patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks, layout designs of integrated circuits, commercial names and designations, geographical indications and protection against unfair competition. In some cases, aspects of intellectual creation, although present, are less clearly defined. The object of industrial property consists of signs conveying information, in particular to consumers, regarding products and services offered on the market. Protection is directed against unauthorized use of such signs that could mislead consumers, and against misleading practices in general.

7.3 Trademarks- definition- procedure for registration of trademarks

A trade mark (popularly known as **brand name**) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

1. The selected mark should be capable of being represented graphically (that is in the paper form).
2. It should be capable of distinguishing the goods or services of one undertaking from those of others.

3. It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person.

Trade Marks are distinctive symbols, signs, logos that help consumer to distinguish between competing goods or services. A trade name is the name of an enterprise which individualizes the enterprise in consumer's mind. It is legally not linked to quality. But, linked in consumer's mind to quality expectation.

- **Key Features of Trademark**

1. Trademark must be Distinctive
2. Trademark must be used in Commerce

- **Types of Trademarks**

1. Trademark,
2. Service mark,
3. Collective mark,
4. Certification Mark

- **Functions of Trademark**

Trademark performs four functions –

1. It identifies the goods / or services and its origin;
2. It guarantees its unchanged quality;
3. It advertises the goods/services;
4. It creates an image for the goods/ services.

- **Registration of Trade Marks**

The process whereby a trade mark is entered on the register of the trademarks is referred to as registration.

Any person, claiming to be the proprietor of a trade mark used or proposed to be used by him, can apply for registration of a trade mark to the Trade Mark Registry under whose jurisdiction, the principal place of the business of the applicant falls, in the prescribed manner for the registration of his trade mark. In case of a company about to be formed, anyone may apply in his name for subsequent assignment of the registration in the company's favour.

The provisions contained in Rules 25 to 31 and 33 to 36 of the Trade Marks Rules, 2002 prescribe the procedure for application of trade marks.

- **Registration Procedure**

The registration procedure in India is based on the 'first to file' system. It is therefore important that the rights holder applies for the registration of its mark as soon as possible. The registration of a trade mark in India typically takes about 2 to 3 years, subject to the trade mark not being opposed by a third party. The Office of the Controller General of Patents, Designs and Trade Marks is the appropriate office for filing of a trade mark application in India. This office has branches in Mumbai, Delhi, Chennai, Ahmedabad and Kolkata. A trade mark application may be filed in any of

these offices based on the territorial jurisdiction. The different steps that are involved in the registration process in India are as follows:

- **Who May Apply for Trade Mark**

As per Section 18 of the Trade Marks Act, 1999 any person “claiming to be the proprietor” of the trade mark ‘used’ or ‘proposed to be used’ by him may make an application in the prescribed manner for registration of his trade mark.

“Any person” is wide enough to include any individual, company, or association of persons or body of individuals, society, HUF, partnership firm, whether registered or not, Government, trust etc. [Section 3(42), General Clauses Act, 1897].

- **Filing and Prosecuting Trade mark Applications**

As per rule 4, an application for registration of a trade mark may be made on Form TM-1 with prescribed fee of ` 2500/- at one of the five offices of the Trade Marks Registry located at Mumbai, Delhi, Kolkata, Chennai and Ahmedabad depending on the place where the applicant resides or has his principal place of business.

In the case of joint applicants, the principal place of business in India of the applicant will be that of the person whose name is first mentioned as having a place of business. If the applicant has no principal place of business in India, he should file the application at that office within whose territorial jurisdiction, the address for service in India given by him (as per mandatory provision in Rule 18) is located. No change in the principal place of business in India or in the address for service in India shall affect the jurisdiction of the appropriate office once entered (Rule 5).

Furthermore, trade mark applications can be filed electronically through the website (www.ipindiaonline.gov.in/etmr/).

- **Review by the Trade Marks Office**

After the application has been filed, the Trade Marks Office reviews it to ensure that it is complete in all respects and thereafter allots an application number to the applications. If the trade mark is registered, the application number becomes the registration number.

- **Preliminary Approval and Publication, Show Cause Hearing or Rejection of the Application**

During the process of examination, the Trade Marks Office determines if the trade mark is barred for registration either under absolute grounds for refusal and/or relative grounds for refusal as prescribed in the Trade Marks Act, 1999. Accordingly, they issue an examination report and the Applicant must respond to the objections that have been raised in the examination report within a period of one month from the issuance of the examination report. Thereafter and based on the response to the examination report that has been filed by the Applicant, the Registrar of Trade Marks determines if the application should be refused, accepted for advertisement, accepted subject to certain limitations or put up for a “show cause” hearing, during which the application might be accepted, rejected or accepted subject to certain limitations. Should the application be rejected, the Applicant can approach the Intellectual Property Appellate Board to appeal the order of the Registrar of Trade Marks.

- **Registration**

Within three months of the publication of the trade mark in the Trade Marks Journal, should the trade mark not be opposed by a third party, it will proceed for registration and the Trade Marks Registry will accordingly issue a registration certificate.

7.4 Patents- definition- kinds of patents-rights of patentee

Patent is a grant for an invention by the Government to the inventor in exchange for full disclosure of the invention. A patent is an exclusive right granted by law to applicants / assignees to make use of and exploit their inventions for a limited period of time (generally 20 years from filing). The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration of this period. In return for exclusive rights, the applicant is obliged to disclose the invention to the public in a manner that enables others, skilled in the art, to replicate the invention. The patent system is designed to balance the interests of applicants / assignees (exclusive rights) and the interests of society (disclosure of invention).

Sec.2(1)(J) – “Invention” means a **new** product or process involving an inventive step and capable of industrial application

What is meant by ‘New’? The invention to be patented must not be published in India or elsewhere, or in prior public knowledge or prior public use with in India or claimed before in any specification in India. A feature of an invention that involves technical advance as compared to the existing knowledge or have economic significance or both and makes the invention not obvious to a person skilled in the art.

“New invention” is defined as any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art [Section 2(1)(l); Where, capable of industrial application, in relation to an invention, means that the invention is capable of being made or used in an industry [Section 2(1)(ac)].

In *Raj Prakash v. Mangat Ram Choudhary* AIR 1978 Del.1, it was held that invention, as is well known, is to find out some thing or discover something not found or discovered by anyone before. It is not necessary that the invention should be anything complicated. The essential thing is that the inventor was first to adopt it. The principal therefore, is that every simple invention that is claimed, so long as it is something which is novel or new, it would be an invention and the claims and specifications have to be read in that light.

Therefore, the conditions of patentability are:

- Novelty
- Inventive step (non-obviousness) and
- Industrial applicability (utility)

- **Salient Features of the Act**

1. 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.
2. Exclusivity of right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder.
3. This right is available only for a limited period of time. However, the use or exploitation of a patent may be affected by other laws of the country which has awarded the patent. These laws may relate to health, safety, food, security etc. Further, existing patents in similar area may also come in the way.
4. A patent in the law is a property right and hence, can be gifted, inherited, assigned, sold or licensed.
5. As the right is conferred by the State, it can be revoked by the State under very special circumstances even if the patent has been sold or licensed or manufactured or marketed in the meantime.
6. The patent right is territorial in nature and inventors/their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries.
7. 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 which is **20 years at present**.
8. As per the Supreme Court, the object of Patent Law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial utility.
9. The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which, after the expiry of the fixed period of the monopoly, passes into the public domain [*M/s Bishwanath Prasad v. Hindustan Metal Industries, AIR1982 SC 1444*].
10. By granting an exclusive right, patents provide incentives to individuals, offering them recognition for their creativity and material reward for their marketable inventions. In return for the exclusive right, the inventor has to adequately disclose the patented invention to the public, so that others can gain the new knowledge and can further develop the technology. The disclosure of the invention is thus an essential consideration in any patent granting procedure.

- **Types of Patent Applications**

1. Ordinary Application
2. Application for Patent of Addition (granted for Improvement or Modification of the already patented invention, for an unexpired term of the main patent).
3. Divisional Application (in case of plurality of inventions disclosed in the main application).
4. Convention application, claiming priority date on the basis of filing in Convention Countries.
5. National Phase Application under PCT.

7.5 Copyrights-definition-essential conditions of copyrights protection- rights of copyrights owners Infringement of copyrights

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact,

it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777).

According to Section 14 of the Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely: -

(a) In the case of a literary, dramatic or musical work, not being a computer programme, -

- (i) To reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) To issue copies of the work to the public not being copies already in circulation;
- (iii) To perform the work in public, or communicate it to the public;
- (iv) To make any cinematograph film or sound recording in respect of the work;
- (v) To make any translation of the work;
- (vi) To make any adaptation of the work;
- (vii) To do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) In the case of a computer programme, -

- (i) To do any of the acts specified in clause (a);
- (ii) To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) In the case of an artistic work, -

- (i) To reproduce the work in any material form including depiction in three dimensions of a two-dimensional work or in two dimensions of a three-dimensional work;
- (ii) To communicate the work to the public;
- (iii) To issue copies of the work to the public not being copies already in circulation;
- (iv) To include the work in any cinematograph film;
- (v) To make any adaptation of the work;
- (vi) To do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) In the case of cinematograph film, -

- (i) To make a copy of the film, including a photograph of any image forming part thereof;
- (ii) To sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) To communicate the film to the public;

(e) In the case of sound recording, -

- (i) To make any other sound recording embodying it;
- (ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) To communicate the sound recording to the public.

Explanation: For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

Indian Copyright Act affords separate and exclusive copyright protection to the following 7

- **clauses of work:**

1. Original Literary Work
2. Original Dramatic Work
3. Original Musical Work
4. Original Artistic Work
5. Cinematograph Films
6. Sound recording
7. Computer Programme

- **Infringement of copyrights**

Copyright protection gives exclusive rights to the owners of the work to reproduce the work enabling them to derive financial benefits by exercising such rights. If any person without authorisation from the owner exercises these rights in respect of the work which has copyright protection it constitutes an infringement of the copyright. If the reproduction of the work is carried out after the expiry of the copyright term it will not amount to an infringement.

In *Penguin Books Ltd., England v. M/s India Book Distributors & Others* AIR 1985 Del. 29, it was observed that whenever there is misappropriation of intellectual property of which the primary beneficiary is the copyright owner there is infringement of copyright. Copyright is a property right.

Throughout the world it is regarded as a form of property worthy of special protection in the ultimate public interest. The law starts from the premise that protection would be as long and as broad as possible and should provide only those exceptions and limitations which are essential in the public interest.

Section 51 of the Act contemplates situations where copyright in a work shall be deemed to be infringed. As per this section copyright in a work is infringed when any person without a licence granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority does —

Anything for which the exclusive right is conferred upon the owner of the copyright, or

permits for profit any place to be used for the communication of the work to public where such a communication constitutes an infringement of the copyright in the

work, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright.

When any person (i) makes for sale or hire or lets for hire or by way of trade display or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade, exhibits in public, or (iv) imports into India any infringing copies of the work. However, import of one copy of any work is allowed for private and domestic use of the importer. Explanation to Section 51 clarifies that the reproduction of literary, dramatic, musical or artistic work in the form of cinematograph film shall be deemed to be an infringing copy.

The copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything, the sole right to do which is conferred on the owner of the copyright. *Kartar Singh Giani v. Ladha Singh & Others* AIR 1934, Lah 777 (DB).

The concept of honest and concurrent user found in Section 12(3) of the 1958 Act for securing concurrent registration is totally irrelevant as defence in a suit for infringement and copyright arising out of a different Act, namely, 1957 Act (*M/s Power Control Appliances & Others v. Sumeet Machines Pvt. Ltd.* (1994) 2 SCC 448).

In *Ushodaya Enterprises Ltd v T.V. Venugopal*, 2001 PTC 727, the division bench of the Andhra Pradesh High Court held that even though the defendant has registered the carton under the Trademark Act, that may not come to the aid of the defendant as the case of the plaintiff is that it owns a copyright of the artistic work under the Copyright Act and no registration is required for the same. Thus, the court held that the plaintiff was justified in alleging infringement of his artistic work.

One of the surest tests to determine whether or not there has been a violation of copy right is to see if the reader, spectator, or the viewer after having read or seen both the works would be clearly of the opinion and get an unmistakable impression that the subsequent work appears to be a copy of the first. In other words, dealing with the question of infringement of copy right of the applicant's work by the respondent's work, the Court is to test on the visual appearance of the object and drawing, design, or artistic work in question and by applying the test viz., 'lay observer test' whether to persons who are not experts in relation to objects of that description, the object appears to be a reproduction. If to the 'lay observer', it would not appear to be reproduction, there is no infringement of the artistic copy right in the work. A bare look at these two artistic works 'Sharp' and 'Sharp tools'. Moreover, the work 'sharp' in the work of the appellant is embedded in a semi-circle design with rays emitting from it as if it were a rising Sub; whereas, in the respondent's work it is plainly 'Sharp Tools' with no design superimposing it. Judging by the eye alone, they appear to Court to be totally different. One does not think that anyone looking at these two works would say that they are similar in any manner nor do any one would say the design, the lay-out and the manner in which the words written in the works of the respondent was on obvious imitation, much less an imitation of the appellant's work.

Applying the various tests set out above, it cannot be said that the respondent had committed an act of piracy by way of copying the copyright of the appellant. As rightly pointed out by the Copyright Board that there can be no copyright in the word or words, but the right can only be in the artistic manner in which the

same is written, and in this case the works were totally dissimilar. [Associated Electronic & Electrical] Industries (Bangalore) Pvt. Ltd. v. M/s Sharp Tools AIR 1991 Kar 406]. M/s. Video Master & another v. M/s. Nishi Productions & others, 1998(3) Bom. CR 782. The given case examined the circumstances under which the exhibition of film by various modes infringed copy rights. The plaintiff was assigned video playback and cable T.V rights and he objected to the defendants being given the satellite broadcasting rights. The Court observed that there were various modes of communication to public and each one was separate and divisible. It was held that each of the modes of communication could exist in different persons at the same time without infringing copy right of the other.

The Bombay High Court in Hindustan Lever Ltd., v. Nirma Private Limited, Ahmedabad, AIR 1991 held that the dissimilarities were totally inadequate to wipe out general impression of the unwary purchaser. Thus, there was prima facie infringement of copyright. The case dealt with the infringement of the copyright in the label when there were only few changes made in the colourable imitation of label.

In Eastern Book Company & Others v. Navin J. Desai & Another 2001 PTC (21) 57 Del., Delhi High Court has held: Copyright is a limited monopoly having its origin in protection. There cannot be any monopoly in the subject matter which the author has borrowed from public domain. Others are at liberty to use the same material. Material in which no one has a copyright is available to all. Every man can take what is useful from the, improve, add and give to the public the whole comprising the original work with his additions and improvements. Under the guise of the copyright, the plaintiffs cannot ask the Court to restrain the defendants from making this material available to public. Judgements/orders published by the plaintiffs in their law reports 'Supreme Court Cases' is not their original literary work but has been composed of, compiled and prepared from and reproduction of the judgements of the Supreme Court of India, open to all. Merely by correcting certain typographical or grammatical mistakes in the raw source and by adding commas, full stops and by giving paragraph numbers to the judgement will not their work as the original literary work entitled to protection under the Copyright Act. Plaintiffs, therefore, have no copyright in the judgements published in their law reports. There being no copyright in the plaintiffs, there is no question of the defendant infringing any alleged copyright. Plaintiffs have failed to make out any prima facie case in their favour and are, therefore, not entitled to any relief in the application.

In Godrej Soaps (P) Ltd. v. Dora Cosmetics Co. 2001 PTC (21) 407 Del. It was held that the Delhi High Court held that where the carton was designed for valuable consideration by a person in the course of his employment for and on behalf of the plaintiff and the defendant had led no evidence in his favour, the plaintiff is the assignee and the legal owner of copyright in the carton including the logo. Crowning Glory carton was designed for valuable consideration by a person who produced the said work in the course of his employment with advertising company under a contract of service for and on behalf of the plaintiff. By the reason of the circumstances in which the said artistic work was produced, the plaintiff is the owner of the legal and equitable title in the artistic work. As a matter of abundant caution, the copyright in the carton was assigned to the plaintiff. Plaintiff has proved that it is the assignee of the copyright in the carton for 'Crowning Glory'

- **The Criminal Offence**

Any person who knowingly infringes or abets the infringement of the copyright in any work commits criminal offence under Section 63 of the Copyright Act. The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

7.6 Trade secrets- Geographical indicators

A trade secret is any kind of information that is secret or not generally known in the relevant industry giving the owner an advantage over competitors. Generally, it has been stated that any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable to afford an actual or potential economic advantage over others is a trade secret. Examples of trade secrets include formulas, patterns, methods, programs, techniques, processes or compilations of information that provide one's business with a competitive advantage. The precise language by which a trade secret is defined varies by jurisdiction (as do the precise types of information that are subject to trade secret protection). However, there are three factors that (though subject to differing interpretations) are common to all such definitions: a trade secret is some sort of information that (a) is not generally known to the relevant portion of the public, (b) confers some sort of economic benefit on its holder (which means this benefit must derive specifically from the fact that it is not generally known, not just from the value of the information itself), and (c) is the subject of reasonable efforts to maintain its secrecy.

Trade secrets are not protected by law in the same manner as trademarks or patents. Probably one of the most significant differences is that a trade secret is protected without disclosure of the secret. A trade secret might be a patentable idea but not always. Unlike patent, a trade secret does not have to pass the test of novelty; nevertheless, the idea should be somewhat new, unfamiliar to many people including many in the same trade.

Trade secrets are not registered like other forms of intellectual property and are not creatures of statutes. Instead, the judicial system of each country determines the requirements for obtaining trade secrets protection. In India, trade secrets are not covered under any law.

The TRIPS Agreement under Article 39 protects trade secrets in the form of “undisclosed information”, and provides a uniform mechanism for the international protection of trade secrets. Such information must be a secret, i.e. not generally known or readily accessible to person within the circles that normally deal with all kinds of information in question. Also, the information must have commercial value because it is secret and the information must be subject to reasonable steps by its owners to keep it secret.

TRIPS Agreement requires the member countries to provide effective remedies for trade secret misappropriation including:

- Injunctive relief;
- Damages; and
- Provisional relief to prevent infringement and to preserve evidence.

Trade secrets are by definition not disclosed to the world at large. So long as trade secret remains a secret, it is valuable for the company. Once the information enters the public domain, it is lost forever. Therefore, companies should take every precaution to keep the information secret. Instead, owners of trade secrets seek to keep their special knowledge out of the hands of competitors through a variety of civil and commercial means, not the least of which is the employment or confidentiality agreements and/or nondisclosure agreements. In exchange for the opportunity to be employed by the holder of secrets, a worker will sign an agreement not to reveal his prospective employer's proprietary information. Often, he will also sign over rights to the ownership of his own intellectual production during the course (or as a condition) of his employment. Violation of the agreement generally carries stiff financial penalties, agreed to in writing by the worker and designed to operate as a disincentive to going back on his word. Similar agreements are often signed by representatives of other companies with whom the trade secret holder is engaged in licensing talks or other business negotiations.

If a trade secret is well protected, there is no term of protection. Trade secret protection can, in principle, extend indefinitely and in this respect offers an advantage over patent protection, which lasts only for a specified period. It is equally possible that a company may decide not to patent as for instance formula for Coca-Cola which is considered to be one of the best well protected trade secrets.

Companies often try to discover one another's trade secrets through lawful methods of reverse engineering on one hand and less lawful methods of industrial espionage on the other.

Acts of industrial espionage are generally illegal in their own right under the relevant governing laws, of course. The importance of that illegality to trade secret law is as follows: if a trade secret is acquired by improper means (a somewhat wider concept than "illegal means" but inclusive of such means), the secret is generally deemed to have been misappropriated. Thus, if a trade secret has been acquired via industrial espionage, its acquirer will probably be subject to legal liability for acquiring it improperly. (The holder of the trade secret is nevertheless obliged to protect against such espionage to some degree in order to safeguard the secret. As noted above, under most trade secret regimes, a trade secret is not deemed to exist unless its purported holder takes reasonable steps to maintain its secrecy.)

The test for a cause of action for breach of confidence in the common law world is set out in the case of *Coco v. A.N. Clark (Engineers) Ltd.*, (1969) R.P.C. 41:

- The information itself must have the necessary quality of confidence about it;
- That information must have been imparted in circumstances imparting an obligation of confidence;
- There must be an unauthorized use of that information to the detriment of the party communicating it.

The "quality of confidence" highlights the fact that trade secrets are a legal concept. With sufficient effort or through illegal acts (such as break and enter), competitors can usually obtain trade secrets. However, so long as the owner of the trade secret demonstrates that reasonable efforts have been made to keep the information confidential, the information remains a trade secret and is legally protected as such. Conversely, trade secret owners who do not demonstrate reasonable effort at protecting confidential information, risk losing the trade secret even if the

information is obtained by competitors illegally. It is for this reason that trade secret owners shred documents and do not simply recycle them. Presumably an industrious competitor could piece together the shredded documents again. Legally the trade secret remains a trade secret because shredding the document is considered to have kept the quality of confidence of the information.

- **Geographical Indications**

Geographical Indications of Goods are defined as that aspect of industrial property which refers to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. A product's quality, reputation or other characteristics can be determined by where it comes from.

Geographical indications (GIs) are place names (in some countries also words associated with a place) used to identify products that come from these places and have these characteristics (for example, "Champagne", 'Scotch whisky' "Tequila" or "Roquefort").

Geographical indications serve to recognize the essential role geographic and climatic factors and/or human know-how can play in the end quality of a product. Like trademarks or commercial names GIs are also IPRs, which are used to identify products and to develop their reputation and goodwill in the market. The Agreement on Trade Related Aspects of Intellectual Property (TRIPS), prescribes minimum standards of protection of GIs and additional protection for wines and spirits.

- **What is a Geographical Indication?**

1. It is an indication
2. It originates from a definite geographical territory.
3. It is used to identify agricultural, natural or manufactured goods
4. The manufactured goods should be produced or processed or prepared in that territory.
5. It should have a special quality or reputation or other characteristics

- **Examples of Indian Geographical Indications –**

1. Solapur Chaddar
2. Solapur Terry Towel
3. Basmati Rice
4. Darjeeling Tea
5. Kanchipuram Silk Saree
6. Alphonso Mango
7. Nagpur Orange

The Object of the Geographical Indications of Goods (Registration and Protection) Act, 1999 is three-fold, firstly by specific law governing the geographical indications of goods in the country which could adequately protect the interest of producers of such goods, secondly, to exclude unauthorized persons from misusing geographical indications and to protect consumers from deception and thirdly, to promote goods bearing Indian geographical indications in the export market.

- **Salient Features Geographical Indications of Goods (Registration and Protection) Act, 1999**

The salient features of Geographical Indications of Goods (Registration & Protection) Act, 1999 are as under:

1. Definitions and interpretations of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor", "authorized user" etc.
2. Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B and use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.
3. Registration of geographical indications of goods in specified classes.
4. Prohibition of registration of certain geographical indications.
5. Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.
6. Compulsory advertisement of all accepted geographical indication applications and for inviting objections.
7. Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.
8. Provisions for higher level of protection for notified goods.
9. Prohibition of assignment etc. of a geographical indication as it is public property.
10. Prohibition of registration of geographical indication as a trademark.
11. Appeal against Registrar's decision would be to the Intellectual Property Appellate Board established under the Trade Mark legislation.
12. Provision relating to offences and penalties.
13. Provision detailing the effects of registration and the rights conferred by registration.
14. Provision for reciprocity powers of the registrar, maintenance of Index, protection of homonymous geographical indications etc.

7.7 Right to Information Act 2005- Introduction-objectives of the Act.

Information is the currency that every citizen requires to participate in the life and governance of society. Executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Ultimately the most effective systemic check on corruption would be where the citizen herself or himself has the right to take the initiative to seek information from the state, and thereby to enforce transparency and accountability.

Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. If transparency and

accountability are the imperatives for sustaining democratic governance, access to information is a vital instrument of societal transformation. When a government is transparent, there is less chance for corruption and more room for accountability. That's why *Freedom of Information Acts (FOIAs)* are becoming standard good practice in the international arena.

- **Origin And Trends:**

The first RTI law was enacted by Sweden in 1766, followed by the US, which enacted its first law in 1966 and then by Norway in 1970. By 1990, the number of countries with FOI laws climbed to 13. A big step forward was the EU Charter of Fundamental Rights in 2000, which included both freedom of expression and the right of access to documents. The Right to information gained power when Universal Declaration of Human Rights was adopted in 1948 providing everyone the right to seek, receive, information and ideas through any media and regardless of frontiers. Also, The International Covenant on Civil and Political rights 1966 says that *"Everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kind, regardless of frontiers."*

By 2010, more than 85 countries have national-level RTI laws or regulations in force including the major developing countries like China and India. Of all these, Mexico has taken the lead with one of the best examples of a well-functioning FOIA in the world. The law passed in 2002 represents a vital element of Mexico's democratic transition, and became a model worldwide. Handling over 200,000 requests in its first five Years, have resulted in Mexico setting a new international standard for transparency legislation.

- **Right To Information in India**

Right to Information is an integral part of the freedom of speech and expression enshrined in Article 19(1)(a) of the constitution, which is regarded as the first condition of liberty. It occupies preferred position in the hierarchy of liberties giving succour and protection to other liberties. The expression "freedom of speech and expression" in Article 19(1)(a) has been held to include the right to acquire information and disseminate the same. It includes the right to communicate it through any available media whether print or electronic or audio-visual, such as, advertisement, movie, article or speech, etc.

The Right of information is an inalienable component of freedom of speech and expression guaranteed by Article 19(1) (a) of Indian constitution. Beside Article 19(1) (a), the other articles which give right to information under Indian constitution are Articles 311(2) and 22(1). **Article 311(2) provides for a govt. servant to know why he is being dismissed or removed or being demoted and representation can be made against the order.** By way of Article 22(1) a person can know the grounds for his detention. According to Justice B N Srikrishna – *"Right to information emerges from right to personal liberty guaranteed by article 21 of constitution."*

In order to promote, transparency and accountability in administration, Parliament passed "Right to Information Bill, 2004 on 15th June, 2005, "The Right to Information Act" was notified in the Gazette of India on 21st June, 2005, after repealing the Freedom of Information Act, 2002. **The "Right to Information Act" has become fully operational from 12th October, 2005 so as to enable a citizen**

of India to secure access to information under the control of Public Authorities.

The RTI Act mandates timely response to citizen requests for government information. It applies to all States and Union Territories of India, except the State of Jammu and Kashmir, which is covered under a State-level law. Prior to the Act being passed by the Parliament, the RTI Laws were first successfully enacted by the state governments of Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). Some of these State level enactments have been widely used. While the Delhi RTI Act is still in force, Jammu & Kashmir has its own Right to Information Act of 2009, the successor to the repealed J&K Right to Information Act, 2004 and its 2008 amendment.

• **Salient Features of Right to Information Act, 2005:**

1. The term Information includes any mode of information in any form of record, document, e-mail, circular, press release, contract sample or electronic data etc.
2. Any citizen (excluding the citizens within J&K) may request information from a ‘public authority’ (a body of Government or ‘instrumentality of State’) which is required to reply expeditiously or within thirty days.
3. Citizens have a right to: request any information (as defined); take copies of documents; inspect documents, works and records; take certified samples of materials of work; and obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode.
4. The Act relaxes the Official Secrets Act of 1889 which was amended in 1923 and various other special laws that restricted information disclosure in India. In other words, the Act explicitly overrides the Official Secrets Act and other laws in force as on 15 June 2005 to the extent of any inconsistency.
5. Applicant can obtain Information within 30 days from the date of request in a normal case. In specific circumstances Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person.
6. The Act also requires every public authority to computerise their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. The Act, in particular, requires every public authority to publish 16 categories of information. This includes the particulars of its organisation, functions and duties; powers and duties of its officers and employees; procedure followed in the decision-making process; norms set for discharge of its functions; rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; etc.
7. The Act enumerates the types of information(s) that are exempted from disclosure. However, these exempted information(s) or those exempted under the Official Secrets Act can be disclosed if public interest in disclosure outweighs the harm to the protected interest. Also, the exempted information(s) would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.

8. Penalty for refusal to receive an application for information or for not providing information is Rs. 250/- per day but the total amount of penalty should not exceed Rs. 25,000/-
9. If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the Central Information Commission (CIC)/State Information Commission (SIC) within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

- **Answer the following questions in detail:**

1. What are intellectual property rights? Explain the law in India with respect to its salient features.
2. Explain the intellectual property rights law in India in light of its historical background.
3. Explain in detail the laws related to patents.
4. Explain in detail the laws related to trademarks.
5. Explain in detail the laws related to designs.
6. Explain in detail the laws related to geographical indications.
7. What is the Right to Information. Define the salient features of The RTI Act, 2005.

- **Short Notes**

1. Patents under IPR Act
2. Trademarks under IPR Act
3. Designs under IPR Act
4. Copyrights under IPR Act
5. Geographical Indications under IPR Act
6. "Information" According to RTI Act
8. "Rights" According to RTI Act.

- **Multiple Choice Questions**

1. The law formed to protect the creations of the human mind like inventions artwork designs etc.
 - a. Consumer protection act
 - b. Intellectual Property Rights
 - c. Right to information act
 - d. none of the above
2. According to the Indian IPR act, creations like books, software and artwork are protected by;
 - a. Patents
 - b. Copyrights
 - c. Trademarks
 - d. Geographical Indications.
3. A brand name is a classic example of;
 - a. Patents
 - b. Copyrights
 - c. Trademarks
 - d. Geographical Indications.

4. What is the term of copyright for an author of a book?
 - a. 100 years
 - b. The life of the author
 - c. The life of the author plus 60 years
 - d. The life of the author plus 50 years
5. The use of information and ideas protected by IPR are of
 - a. Cultural value b. Moral value
 - c. Commercial value d. Ethical value
6. If a company develops a new technology that improves its main product. What type of IP can be used for its protection?
 - a. Patent b. Copyright
 - c. Trademark d. None of the above
7. What protects the intellectual property created by artists?
 - a. Copyright b. Patent
 - c. Trademark d. Registered design
8. What protects the intellectual property created by designer?
 - a. Copyright b. Patent
 - c. Trademark d. Registered design
9. Damages in legal terms means
 - a. Personal injury b. Property injury
 - c. Monetary compensation d. All of the above
10. The law that brings about transparency and accountability on the part of the government machinery;
 - a. law of contracts b. the Parliament
 - c. Right to information act d. labour laws
11. The present Right to Information Act in India was enacted in the year;
 - a. 2005 b. 1995
 - c. 2015 d. none of the above
12. Who from the following are eligible to get information under the RTI Act?
 - a. Corporations b. Citizens
 - c. Associations d. All the above
13. An RTI application can be sent
 - a. By registered post b. By email
 - c. By personal delivery d. Through any of these means
14. What is the time limit to get information under RTI Act 2005?
 - a. 15 days b. 30 days
 - c. 45 days d. 60 days
15. The objective of the RTI Act is to promote the following qualities in the working of every public authority

- | | |
|-----------------|----------------|
| a. Transparency | b. Punctuality |
| c. Efficiency | d. Reputation |

❖ **Exercise**

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7. What is the Right to Information. Define the salient features of The RTI Act, 2005.

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MCQ Answer key

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.
b	b	c	c	c	a	a	d	c	c	a	b	d	b	a

- 8.1 Introduction**
- 8.2 Nature of Labour Laws**
- 8.3 Need of Labour laws**
- 8.4 Objective and principles**
- 8.5 Social Justice in Labor Laws**
- 8.6 Fundamental rights**
- 8.8 Judicial Activism and Labour welfare in India**
- 8.9 Impact of liberalization and Globalization**
- 8.10 Labour Policy In India**

8.1 Introduction

Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In other words, Labour law defines the rights and obligations as workers, union members and employers in the workplace. Generally, labour law covers:

- Industrial relations – certification of unions, labour-management relations, collective bargaining and unfair labour practices;
- Workplace health and safety;
- Employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay.

There are two broad categories of labour law. First, collective labour law relates to the tripartite relationship between employee, employer and union. Second, individual labour law concerns employees' rights at work and through the contract for work.

The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to the social and economic development since the industrial revolution.

8.2 Nature of Labour Laws

8.2.1 Individual Rights and Protections

Labour laws focus on protecting the individual rights of employees. This includes safeguarding against unfair dismissal, discrimination, and harassment. Employees are entitled to due process when facing termination or disciplinary actions, ensuring that they have legal recourse to challenge any unjust treatment. This framework is essential for fostering a sense of security and fairness in the workplace.

8.2.2 Health and Safety Standards

One of the critical aspects of Labour laws is the establishment of health and safety standards. Employers are legally obligated to provide safe working

environments, which includes regular risk assessments, safety training, and necessary safety equipment. Labour laws aim to reduce workplace injuries and fatalities, promoting the overall well-being of employees. Compliance with these regulations not only protects workers but also enhances productivity and morale.

8.2.3 Wage and Hour Regulations

Labour laws govern wage practices, establishing minimum wage standards and regulations regarding overtime pay. These laws ensure that employees receive fair compensation for their work, helping to prevent exploitation and poverty. They also set guidelines for pay frequency, mandated breaks, and leave entitlements, ensuring that employees are treated equitably in terms of remuneration and work-life balance.

8.2.4 Collective Bargaining Rights

Labour laws support the right of workers to organize and engage in collective bargaining through trade unions. This allows employees to negotiate wages, working conditions, and benefits collectively, giving them a stronger voice against employer decisions. Laws governing collective bargaining establish procedures for union recognition, negotiation, and dispute resolution, fostering a more balanced power dynamic in the workplace.

8.2.5 Employment Contracts

Labour laws regulate the formation and enforcement of employment contracts. They specify the rights and obligations of both parties, ensuring that contracts are clear and legally binding. Key elements such as job description, compensation, benefits, and termination conditions must be defined within these agreements. This clarity helps prevent misunderstandings and disputes, providing a solid foundation for the employer-employee relationship.

8.2.6 Anti-Discrimination Provisions

Labour laws aim to promote equality in the workplace by prohibiting discrimination based on race, gender, age, disability, and other characteristics. These laws require employers to implement fair hiring practices and provide equal opportunities for all employees. They also mandate accommodations for individuals with disabilities and promote policies that support diversity and inclusion, fostering a more equitable work environment.

8.2.7 Mechanisms for Dispute Resolution

Labour laws provide structured mechanisms for resolving disputes between employers and employees. These mechanisms may include mediation, arbitration, and the establishment of Labour courts or tribunals. By outlining clear procedures for addressing grievances, Labour laws help to minimize conflicts and encourage dialogue. This proactive approach reduces the likelihood of strikes and industrial actions, promoting a more harmonious workplace.

8.2.8 Regulation of Temporary and Gig Work

With the rise of the gig economy and temporary employment, Labour laws are increasingly addressing the rights of non-traditional workers. These regulations aim to extend protections to freelance and contract workers, ensuring they receive fair treatment and compensation. Labour laws provide guidelines for job security, benefits, and working conditions, acknowledging the changing landscape of employment and the need for comprehensive protection.

8.2.9 Adaptability to Economic and Social Changes

Labour laws are inherently adaptable, evolving in response to shifts in the economy, technology, and societal norms. As industries change and new forms of work emerge, Labour laws must adjust to meet the challenges posed by these developments. This adaptability ensures that Labour laws remain relevant and effective in safeguarding workers' rights and addressing contemporary Labour issues.

8.2.10 Role in Economic Development

Labour laws play a crucial role in fostering economic development. By protecting workers' rights and promoting fair Labour practices, these laws contribute to a stable and motivated workforce. A well-regulated Labour market enhances productivity, reduces turnover, and encourages investment in human capital. Ultimately, effective Labour laws support economic growth and social cohesion, benefiting society as a whole.

8.3 Need of Labour laws

8.3.1. Protection of Workers' Rights

Labour laws are essential for safeguarding the rights of workers in various employment scenarios. They protect against exploitation, ensuring that employees are treated fairly in terms of wages, working conditions, and job security. By establishing a legal framework that recognizes and enforces these rights, Labour laws empower workers to stand up against unfair practices and seek redress when necessary.

8.3.2 Regulation of Minimum Wages

One of the critical needs for Labour laws is the regulation of minimum wages. These laws set a baseline for compensation, ensuring that workers receive fair pay for their Labour. This is particularly important in protecting low-income workers from exploitation and poverty. By establishing minimum wage standards, Labour laws help to ensure that workers can meet their basic needs and contribute to the economy effectively.

8.3.3 Promotion of Safe Working Conditions

Labour laws are crucial for promoting health and safety in the workplace. They require employers to implement safety standards, conduct regular inspections, and provide necessary training to prevent accidents and injuries. By mandating safe

working conditions, Labour laws reduce the risk of workplace hazards, contributing to the overall well-being of employees and improving productivity.

8.3.4 Establishment of Working Hours and Overtime Regulations

Labour laws regulate working hours, ensuring that employees are not subjected to excessive work without proper compensation. These regulations typically include provisions for overtime pay, breaks, and rest periods. By setting limits on working hours, Labour laws help to prevent burnout, promote work-life balance, and enhance overall job satisfaction.

8.3.5 Facilitation of Collective Bargaining

Labour laws support the right of workers to organize and engage in collective bargaining through trade unions. This is essential for empowering employees to negotiate their terms of employment collectively, rather than as individuals. By facilitating collective bargaining, Labour laws help to balance the power dynamics between employers and employees, promoting fair negotiations and better working conditions.

8.3.6 Prevention of Discrimination

Labour laws are vital in preventing discrimination in the workplace. They prohibit unfair treatment based on race, gender, age, disability, or other characteristics. By promoting equal opportunities, these laws help create a more inclusive workforce and ensure that all employees are treated fairly, regardless of their background. This not only fosters social justice but also enhances organizational diversity and innovation.

8.3.7 Mechanisms for Dispute Resolution

need for effective dispute resolution mechanisms is another critical aspect of Labour laws. They provide structured processes for resolving conflicts between employers and employees, such as mediation, arbitration, or Labour court systems. By establishing clear procedures for addressing grievances, Labour laws help to reduce tensions, prevent strikes, and promote a harmonious work environment.

8.3.8 Protection Against Unjust Dismissal

Labour laws protect employees from arbitrary or unjust termination. They often require employers to follow specific procedures before dismissing an employee, such as providing notice or justifying the termination. This protection ensures that workers cannot be fired without cause, contributing to job security and stability within the workforce.

8.3.9 Social Security and Benefits

Labour laws often encompass provisions for social security and employee benefits, including unemployment insurance, health care, and retirement plans. These laws create safety nets for workers, ensuring that they have access to necessary

support during times of need. By providing these benefits, Labour laws contribute to the overall welfare of employees and their families.

8.3.10 Adaptation to Economic Changes

Labour laws are essential for adapting to changing economic conditions and employment practices. As the workforce evolves—especially with the rise of the gig economy and remote work—Labour laws must adjust to protect workers in these new contexts. This adaptability ensures that all workers, regardless of their employment status, receive appropriate protections and benefits.

8.3.11 Encouragement of Fair Competition

Labour laws promote fair competition among businesses by setting standard practices for wages, working conditions, and Labour rights. This helps to prevent a "race to the bottom" where companies cut costs by exploiting workers. By ensuring that all businesses adhere to fair Labour practices, these laws contribute to a more equitable marketplace and foster sustainable economic growth.

8.3.12 Contribution to Economic Stability

Ultimately, Labour laws contribute to broader economic stability by ensuring a well-functioning Labour market. By protecting workers' rights and promoting fair practices, these laws foster a stable and motivated workforce. A strong Labour market encourages consumer spending, supports economic growth, and enhances overall social cohesion, benefiting society as a whole.

8.4 Objective and principles

Labour laws serve as the backbone of the employer-employee relationship, shaping how work is structured and how rights are protected. The formation of Labour laws is driven by various objectives aimed at enhancing workplace conditions, fostering economic growth, and promoting social justice. Understanding these objectives is crucial for grasping the importance of Labour laws in contemporary society.

8.4.1 Establishing a Legal Framework for Employment Relationships

One of the primary objectives of Labour law formation is to create a robust legal framework that defines the rights and responsibilities of all parties involved in the employment relationship. This framework ensures clarity and transparency, enabling both employers and employees to understand their roles and obligations. Key elements include:

- **Definition of Employment Terms:** Labour laws stipulate essential elements such as job descriptions, compensation structures, and performance expectations. This clarity helps prevent misunderstandings and conflicts.
- **Legal Recourse:** A well-defined legal framework allows employees to seek redress through established channels in cases of disputes, harassment, or discrimination.

8.4.2 Ensuring Economic Efficiency

Labour laws aim to enhance economic efficiency by promoting a productive workforce. This is achieved through regulations that incentivize both employers and employees to work collaboratively towards common goals. Objectives include:

- **Promoting Fair Competition:** By establishing baseline standards, Labour laws help level the playing field, ensuring that businesses compete based on innovation and quality rather than exploitative Labour practices.
- **Encouraging Productivity:** Well-structured Labour laws can lead to increased employee satisfaction and retention, ultimately enhancing overall productivity and reducing turnover costs for employers.

8.4.3 Facilitating Social Dialogue

An essential objective of Labour law formation is to encourage social dialogue between various stakeholders, including government bodies, employers, and trade unions. This dialogue is crucial for:

- **Understanding Diverse Perspectives:** Engaging all parties in discussions about Labour issues fosters a better understanding of differing needs and priorities, leading to more effective and inclusive policies.
- **Developing Collaborative Solutions:** Social dialogue can result in the development of solutions that address the concerns of all parties, contributing to a more harmonious industrial relations climate.

8.4.4 Protecting Vulnerable Workers

Labour laws are particularly important for protecting vulnerable groups within the workforce. This includes women, minorities, and individuals with disabilities, who often face higher risks of exploitation. Objectives related to this protection include:

- **Targeted Regulations:** Laws can include specific provisions to safeguard the rights of vulnerable workers, ensuring they receive equal pay, fair treatment, and access to opportunities.
- **Support for Work-Life Balance:** Policies such as maternity leave, flexible working hours, and child care support can help protect vulnerable workers while promoting gender equality in the workplace.

8.4.5 Enhancing Employee Engagement

Labour laws contribute to the objective of enhancing employee engagement, which is vital for organizational success. Engaged employees are more likely to be productive and committed to their work. Key components include:

- **Participation in Decision-Making:** Labour laws can promote employee participation in organizational decision-making processes, leading to a sense of ownership and accountability.

- **Recognition of Contributions:** Laws that encourage the acknowledgment of employee contributions help foster a positive work environment, where workers feel valued and motivated.

8.4.6 Mitigating Labour Market Disruptions

Another objective of Labour law formation is to mitigate disruptions in the Labour market, such as strikes, protests, and Labour disputes. By establishing clear protocols for conflict resolution, Labour laws help to:

- **Prevent Industrial Actions:** When workers have access to effective grievance mechanisms, they are less likely to resort to strikes or protests, maintaining productivity and stability in the workplace.
- **Foster Long-term Relationships:** Effective Labour laws promote trust and cooperation between employers and employees, leading to long-term relationships that benefit both parties.

8.4.7 Encouraging Workforce Diversity and Inclusion

Labour laws aim to promote diversity and inclusion within the workplace. This is crucial for fostering innovation, creativity, and a broader range of perspectives. Objectives in this area include:

- **Prohibiting Discriminatory Practices:** Laws that explicitly prohibit discrimination based on gender, race, or other characteristics encourage diverse hiring practices and create an inclusive work environment.
- **Supporting Diversity Training:** Labour laws can mandate training programs aimed at promoting cultural competency and awareness, helping organizations embrace and celebrate diversity.

8.4.8 Addressing Emerging Work Patterns

With the evolution of work patterns, such as remote work and gig employment, Labour laws must adapt to meet new challenges. This objective includes:

- **Protection for Gig Workers:** Laws can extend protections to gig workers, ensuring they receive fair pay, benefits, and job security, similar to traditional employees.
- **Regulating Remote Work Practices:** Labour laws can establish guidelines for remote work, including expectations for availability, data security, and reimbursement for work-related expenses.

8.4.9 Supporting Global Labour Standards

Labour laws can contribute to the establishment of global Labour standards, promoting ethical business practices across borders. This objective involves:

- **Alignment with International Conventions:** Countries can incorporate international Labour standards into their national laws, ensuring that workers are protected regardless of where they work.
- **Encouraging Corporate Social Responsibility:** Labour laws can incentivize businesses to adopt socially responsible practices, enhancing their reputations and ensuring they adhere to ethical Labour practices.

8.4.10 Balancing Employer and Employee Interests

An essential objective of Labour law formation is to strike a balance between the interests of employers and employees. This involves:

- **Fairness in Negotiations:** Labour laws create frameworks for negotiations that ensure both parties have equal footing, fostering a fair bargaining process.
- **Promoting Mutual Benefits:** By establishing win-win scenarios, Labour laws can facilitate agreements that benefit both employers and employees, contributing to a more stable work environment.

8.4.11 Enhancing Workforce Mobility

Labour laws also play a role in enhancing workforce mobility, which is crucial for addressing skills shortages and matching workers with available jobs. Objectives include:

- **Facilitating Job Transitions:** Laws can support workers in transitioning between jobs by providing retraining programs and unemployment benefits during periods of job loss.
- **Encouraging Relocation for Work:** Regulations can promote relocation assistance programs, helping workers move to areas with better job opportunities.

8.4.12 Ensuring Compliance and Accountability

Finally, an important objective of Labour law formation is to ensure compliance and accountability among employers. This includes:

- **Establishing Enforcement Mechanisms:** Labour laws typically include provisions for enforcement, allowing regulatory bodies to monitor compliance and address violations effectively.
- **Promoting Transparency:** Employers can be required to maintain records related to wages, working conditions, and employee treatment, promoting transparency and accountability in Labour practices.

8.5 Social Justice in Labor Laws

Social justice in labour laws is a fundamental aspect of ensuring fair treatment, equity, and rights for all workers, regardless of their background or circumstances. This concept encompasses various dimensions, including equitable wages, safe

working conditions, anti-discrimination protections, and support for vulnerable populations. This detailed exploration of social justice in labour laws will highlight its principles, historical context, and contemporary relevance.

8.5.1 Historical Context

The evolution of labour laws is closely tied to the labour movement, which emerged in response to the industrial revolution's harsh working conditions. Early labour laws were primarily concerned with basic worker protections, such as limiting working hours and regulating child labour. Over time, as societal awareness of inequality and exploitation grew, the scope of labour laws expanded to encompass broader issues of social justice.

8.5.2 Core Principles of Social Justice in Labor Laws

1. Equitable Wages and Fair Compensation

At the heart of social justice in labour laws is the principle of equitable compensation. This includes:

- **Minimum Wage Laws:** These laws set a legal minimum that employers must pay their workers. Establishing a minimum wage helps ensure that employees earn enough to cover basic living expenses. However, debates continue about whether the minimum wage should be indexed to inflation or adjusted to reflect the cost of living in different regions.
- **Equal Pay for Equal Work:** This principle mandates that employees performing the same work under similar conditions receive equal pay, regardless of gender, race, or other characteristics. Legislation like the Equal Pay Act in the United States was a significant step toward addressing wage disparities.
- **Living Wage Campaigns:** Advocates argue for a living wage that goes beyond the minimum wage, reflecting the actual cost of living in a given area. This movement seeks to ensure that workers can support themselves and their families without reliance on social services.

2. Safe and Healthy Working Conditions

Ensuring worker safety is a critical aspect of social justice in labour laws:

- **Occupational Safety and Health Administration (OSHA):** In the U.S., OSHA regulates workplace safety and health standards. It sets guidelines that employers must follow to minimize risks and protect employee well-being. Compliance with these standards is vital for preventing workplace accidents and health issues.
- **Right to Refuse Unsafe Work:** Workers should have the right to refuse tasks that pose imminent dangers to their health and safety. This right empowers employees to advocate for their safety without fear of retaliation.

3. Anti-Discrimination Protections

Social justice in labour laws emphasizes the elimination of discrimination in the workplace:

- **Equal Employment Opportunity Laws:** These laws prohibit discrimination in hiring, promotion, and termination based on race, gender, age, disability, and other protected characteristics. The Civil Rights Act of 1964 in the U.S. is a landmark legislation that addresses employment discrimination.
- **Affirmative Action Policies:** These policies aim to increase diversity in the workplace by encouraging employers to actively recruit and promote individuals from underrepresented groups. While controversial, affirmative action is seen by many as a necessary measure to level the playing field.

4. The Right to Organize

The right to organize is a cornerstone of labour rights and social justice:

- **Collective Bargaining Rights:** Workers have the right to form unions and engage in collective bargaining to negotiate wages, benefits, and working conditions. Collective bargaining helps balance power dynamics between employers and employees.
- **Protection Against Retaliation:** Laws must protect workers from retaliation for participating in union activities or reporting unfair labour practices. This protection encourages more workers to assert their rights without fear of job loss or other negative consequences.

5. Support for Vulnerable Populations

Social justice in labour laws pays special attention to marginalized and vulnerable workers:

- **Protections for Immigrant Workers:** Many immigrant workers face exploitation due to their vulnerable status. Labor laws must provide protections against wage theft, unsafe working conditions, and discrimination based on immigration status.
- **Child Labor Laws:** Regulations prohibiting child labour ensure that minors are not exploited in the workforce and have access to education and development. These laws are crucial for protecting the rights of children and promoting their well-being.

6. Work-Life Balance and Family Rights

Balancing work and personal life is increasingly recognized as vital for worker well-being:

- **Paid Family Leave:** Laws providing paid leave for family-related events, such as childbirth or caregiving, support workers in managing their responsibilities. Countries with strong family leave policies tend to have better health outcomes for families and children.
- **Flexible Work Arrangements:** Promoting flexible hours and remote work options helps employees balance work responsibilities with personal commitments, contributing to job satisfaction and productivity.

7. Access to Legal Protections

Ensuring that workers can assert their rights is crucial for social justice:

- **Legal Aid and Resources:** Providing access to legal assistance helps workers understand their rights and navigate the complexities of labour law. Organizations that offer pro bono legal services play a vital role in this context.
- **Whistle-blower Protections:** Laws protecting whistle-blowers encourage employees to report unethical or illegal practices without fear of retaliation. These protections are essential for fostering a culture of accountability in the workplace.

8. Global Perspective on Labor Rights

Social justice in labour laws extends beyond national borders:

- **International Labor Standards:** Organizations like the International Labour Organization (ILO) advocate for global labour rights, promoting decent work conditions and fair treatment of workers worldwide. This includes efforts to combat child labour, forced labour, and exploitation in supply chains.
- **Corporate Social Responsibility (CSR):** Businesses are increasingly held accountable for their labour practices, both domestically and internationally. CSR initiatives encourage companies to adopt fair labour practices and promote ethical supply chains, ensuring that workers' rights are respected globally.

8.5.3 Contemporary Relevance

The relevance of social justice in labour laws continues to grow in today's economy. The rise of gig and platform work has highlighted the need for updated labour protections that address the unique challenges faced by workers in non-traditional employment arrangements. Additionally, the COVID-19 pandemic underscored existing inequalities in the labour market, emphasizing the need for robust protections for frontline workers and those in precarious employment situations.

8.6 Fundamental rights

8.6.1 Freedom of Association

The right of workers and employers to form and join organizations of their own choosing is an integral part of a free and open society. In many cases, these organizations have played a significant role in their countries' democratic transformation. From advising governments on labour legislation to providing education and training for trade unions and employer groups, the ILO is regularly engaged in promoting freedom of association.

The ILO's Committee on Freedom of Association was set up in 1951 to examine violations of workers' and employers' organizing rights. The committee is tripartite and handles complaints in ILO Member States whether or not they have ratified freedom of association conventions. Through the Committee on Freedom of Association and other supervisory mechanisms, the ILO has frequently defended rights of trade unions and employers' organizations.

8.6.2 Forced labour, modern slavery and trafficking in persons

Forced labour is a severe violation of human rights affecting 28 million of men, women and children in all countries and all economic sectors. It is rooted in poverty, discrimination and lack of social protection, and it disrupts fair competition between businesses. The issue has been at the heart of the ILO mandate to promote Fundamental Principles and Rights at Work, leaving no one behind.

8.6.3 Child Labour

Not all work done by children should be classified as child labour that is to be targeted for elimination. The participation of children or adolescents above the minimum age for admission to employment in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as being something positive. This includes activities such as assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children's development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life.

The term child labour is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

It refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children; and/or
- interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.

Whether or not particular forms of work can be called child labour depends on the child's age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. The answer varies from country to country, as well as among sectors within countries.

8.6.4 Equality and discrimination

Hundreds of millions of people suffer from discrimination in the world of work. This not only violates a most basic human right, but has wider social and economic consequences. Discrimination stifles opportunities, wasting the human talent needed for economic progress, and accentuates social tensions and inequalities. Combating discrimination is an essential part of promoting decent work, and success on this front is felt well beyond the workplace.

Issues linked to discrimination are present throughout the ILO's sphere of work. By bolstering freedom of association, for example, the ILO seeks to prevent discrimination against trade union members and officials. Programmes to fight forced labour and child labour include helping girls and women trapped in prostitution or coercive domestic labour. Non-discrimination is a main principle in the ILO's code of practice on HIV/AIDS and the world of work. ILO guidelines on labour law include provisions on discrimination, and in countries such as Namibia and South Africa, the ILO has provided advice on legislative change in this area.

8.6.5 Safety and Health at Work

At its 110th Session in June 2022, the International Labour Conference decided to include "a safe and healthy working environment" in the ILO's framework of fundamental principles and rights at work and to designate the Occupational safety and health Convention 1981 All Members, even if they have not ratified these two conventions, now have an obligation arising from the very fact of membership in the ILO to respect, to promote and to realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental right to a safe and healthy working environment.

The Office will support Members to progressively respect and realize the preventive principles contained in Convention, Nos 155 and 187 promoting the development and implementation of national OSH policies, programmes and systems and the establishment of a national preventative safety and health culture. In addition, a vital tool to ensure a safe and healthy working environment is the active implementation of an efficient and effective occupational safety and health management system.

8.7 Directive Principles:

- Background: The source of the concept of Directive Principles of State Policy (DPSP) is the Spanish Constitution from which it came in the Irish Constitution.
- The concept of DPSP emerged from Article 45 of the Irish Constitution.
- Constitutional Provisions: Part IV of the Constitution of India (Article 36–51) contain the Directive Principles of State Policy (DPSP).
- Article 37 of the Indian Constitution States about the application of the Directive Principles.

- These principles aim at ensuring socioeconomic justice to the people and establishing India as a Welfare State.

8.7.1 Fundamental Rights Vs DPSP:

- Unlike the Fundamental Rights (FRs), the scope of DPSP is limitless and it protects the rights of a citizen and work at a macro level.
- DPSP consists of all the ideals which the State should follow and keep in mind while formulating policies and enacting laws for the country.
- Directive Principles are affirmative directions on the other hand, Fundamental Rights are negative or prohibitive in nature because they put limitations on the State.
- The DPSP is not enforceable by law; it is non-justiciable.
- It is important to note that DPSP and FRs go hand in hand.
- DPSP is not subordinate to FRs.
- Classification of Principles: The Directive Principles are classified on the basis of their ideological source and objectives. These are Directives based on:
 - Socialist Principles
 - Gandhian Principles
 - Liberal and Intellectual Principles

8.7.2 Directives based on Socialist Principles

- Article 38: The State shall strive to promote the welfare of the people by securing and protecting a social order by ensuring social, economic and political justice and by minimising inequalities in income, status, facilities and opportunities
- Articles 39: The State shall in particular, direct its policies towards securing:
 - Right to an adequate means of livelihood to all the citizens.
 - The ownership and control of material resources shall be organised in a manner to serve the common good.
 - The State shall avoid concentration of wealth in a few hands.
 - Equal pay for equal work for both men and women.
 - The protection of the strength and health of the workers.
 - Childhood and youth shall not be exploited.
- Article 41: To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disability.
- Article 42: The State shall make provisions for securing just and humane conditions of work and for maternity relief.
- Article 43: The State shall endeavour to secure to all workers a living wage and a decent standard of life.
- Article 43A: The State shall take steps to secure the participation of workers in the management of industries.
- Article 47: To raise the level of nutrition and the standard of living of people and to improve public health.

8.7.3 Directives based on Gandhian Principles

- Article 40: The State shall take steps to organise village panchayats as units of Self Government
- Article 43: The State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.
- Article 43B: To promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies.
- Article 46: The State shall promote educational and economic interests of the weaker sections of the people particularly that of the Scheduled Castes (SCs), Scheduled Tribes (STs) and other weaker sections.
- Article 47: The State shall take steps to improve public health and prohibit consumption of intoxicating drinks and drugs that are injurious to health.
- Article 48: To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

8.7.4 Directives based on Liberal-Intellectual Principles

- Article 44: The State shall endeavour to secure for the citizen a Uniform Civil Code through the territory of India.
- Article 45: To provide early childhood care and education for all children until they complete the age of six years.
- Article 48: To organise agriculture and animal husbandry on modern and scientific lines.
- Article 48A: To protect and improve the environment and to safeguard the forests and wildlife of the country.
- Article 49: The State shall protect every monument or place of artistic or historic interest.
- Article 50: The State shall take steps to separate judiciary from the executive in the public services of the State.
- Article 51: It declares that to establish international peace and security the State shall endeavour to:
 - Maintain just and honourable relations with the nations.
 - Foster respect for international law and treaty obligations.
 - Encourage settlement of international disputes by arbitration.

8.8 Judicial Activism and Labour welfare in India

Judicial Activism refers to a judicial philosophy or approach where judges interpret laws and the constitution in a way that goes beyond traditional legal analysis and actively seeks to bring about social changes. In the context of labour law, judicial activism can manifest in judges interpreting labour laws in a way that supports worker's rights and protections, even if such interpretations go beyond the letter of the law. Judicial activism in labour law has been seen in various cases, such as those dealing with the rights of workers to form and join unions, the protection of workers'

health and safety, and the regulation of employment practices. For example, in the United States, the Supreme Court's decision in *National Labour Relations Board v. Jones & Laughlin Steel Corp.* (1937) upheld the constitutionality of the National Labour Relations Act, which protects workers' right to organize and bargain collectively. This decision represented a significant expansion of federal power over labour relations and is an example of judicial activism in support of workers' right.

8.8.1 Judicial Activism In Context Of Labour Welfare

Judicial activism refers to the tendency of judges to interpret and apply the law in a way that goes beyond the traditional bounds of legal interpretation. In the context of labour welfare, judicial activism can be seen as a means of using the law to protect the rights and interests of workers, even if this requires interpreting the law in a more expansive way. When it comes to labour welfare, judicial activism has often played a crucial role in protecting the rights of workers and ensuring that they receive fair treatment and compensation from their employers. For example, in cases where workers have been unfairly dismissed or denied compensation for work-related injuries, the courts have often stepped in to provide relief and ensure that justice is served.

One example of judicial activism in the context of labour welfare is the use of the doctrine of 'fairness' in employment law. This doctrine, which has been developed by courts in many jurisdictions, requires employers to act fairly towards their employees in all aspects of employment, including in the provision of wages, benefits, and working conditions. By using this doctrine, courts can require employers to provide better working conditions and benefits to their employees, even if there is no explicit legal requirement to do so. Another example of judicial activism in the context of labour welfare is the use of the concept of 'constitutional morality' in interpreting labour laws. Constitutional morality refers to the values and principles that underlie the Constitution, such as the protection of human dignity, equality, and social justice. By interpreting labour laws in light of these values and principles, courts can require employers to act in a way that is consistent with the broader goals of the Constitution, including the protection of workers' rights and interests.

8.8.2 MEASURES TAKEN BY INDIAN JUDICIARY IN LABOUR WELFARE

The Indian judiciary has taken several initiatives to implement and enforce labour laws in the country. Some of these initiatives include:

- Strict Interpretation of Labour Laws:** The Indian judiciary has adopted a strict interpretation of labour laws and has been proactive in ensuring that employers comply with these laws. For instance, the judiciary has been quick to penalize employers who violate minimum wage laws or fail to provide benefits to workers under the Employees' Provident Fund (EPF) and other labour laws.
- Legal Aid:** The Indian judiciary has also taken several initiatives to provide legal aid and assistance to workers who are unable to afford legal representation. Several free legal aid programs have been established to help workers understand their rights and obtain redress in case of labour law violations.
- Guidelines for Employers:** The judiciary has also issued several guidelines for employers to ensure compliance with labour laws. For instance, the Supreme Court of India has issued guidelines for the effective implementation of minimum wage laws and for the prevention of sexual harassment in the workplace.
- Speedy Redressal of Labour Disputes:** The Indian judiciary has taken steps to expedite the resolution of labour disputes. The Industrial Disputes Act, 1947 provides for the establishment of labour courts and industrial tribunals to resolve disputes related to wages, employment

conditions, and other labour-related matters. Protection of Workers' Rights: The judiciary has also been proactive in protecting workers' rights. For instance, the Supreme Court has issued several orders to protect the rights of workers in the unorganized sector and to prevent the exploitation of child labour. Overall, the Indian judiciary has played a crucial role in implementing and enforcing labour laws in the country, and has taken several initiatives to protect the rights of workers and ensure compliance with labour laws.

8.9 Impact of liberalization and Globalization

The ascent of Rajiv Gandhi on the Indian political scene was accompanied by his vision of liberal Indian economy. The economic reforms process initiated by him gained momentum in 1991 and finally culminated into Liberalization, Privatization, Globalization (LPG) model of development. The LPG model was already established in several countries world over so India could not encapsulate itself from the process for long. Once India adopted this model of development the concomitant effects and pressures ensued. There were intensified competitive pressures in product markets, increased segmentation of labour markets and greater mobility of capital.

The highly competitive environment witnessed rising individualism and increasingly differentiated work-force resulting in weakened commitment towards trade unions. Increased customer awareness dramatically changed public perception towards trade unions, particularly when the unions opposed pro-customer changes. Globalization, market forces and severe competitiveness in terms of price, quality, and customer focus further reduced the role of unions.

Privatization and liberalization that closely succeeded the process of globalization gradually

Reduced the role of public sector – the main stay of trade unions. The government and political parties were not able to support either the redundant manpower or the concept of protected economies. Lack of political or governmental support further weakened the status of unions. At the same time, global institutions like the World Bank, IMF and WTO were pressurizing the nation states to rationalize their labour laws and undermine the rights of trade unions to facilitate the functioning of MNCs. This overall anti-trade union trend gave a bargaining advantage to the capitalist viz-a-viz unions and the market logic forced the state to relent to the capitalist.

- **Demand for Labour Reforms in India**

After introduction of LPG model of development in India, the capitalist class started demanding the implementation of neo-liberal reform agenda which included outlawing strikes, weakening union power, individualizing labour relations, diluting labour laws, privatizing public enterprises, freedom to hire and fire workers, enabling laws to introduce technological changes, closing undertakings, removal of law regarding prohibition of contract labour and repealing of legal provisions. The employers argued that these measures will help them to reduce costs and get a competitive advantage. Trade unions had already become apprehensive about the deleterious impact of introducing neo-liberal policies and technological changes.

They opposed and boycotted the implementation of various neo-liberal measures announced by the government. The strong resistance from trade unions thus obstructed any amendment in section V-b of the Industrial Dispute Act. But in practice, the State only winked at downsizing of labour force or the increasing percentage of contract workers. As

indicated by the data of Annual Survey of Industries, the proportion of contract workers increased from 19.7 per cent in 1999-00 to 34.6 per cent in 2011-12. 95.93 per cent of these contract workers are in the private sector. As things stand today the wage share of the organized sector is only 10 per cent while that of the unorganized sector is 90 per cent.

Encouraged by reduced state intervention as well as tacit state approval for market-based economy the employers used various methods to reduce the size of the labour force and weaken the trade unions.

- **These methods were:**

- Decentralization of production.
- Shift of production to non-union areas.
- Downsizing or sub-contracting various operations.
- Replacement of regular workers by part time and contract

- **workers to cut wage costs.**

- Lockouts to retrench workers.
- Prolonged lockouts as instruments to pressurize labour to

- **accept humiliating conditions of work.**

- Use of voluntary or coercive methods to reduce employment.
- Automating certain tasks and functions.
- Employing smaller work forces with diverse, multiple skills.

These measures led to further fragmentation of labour movement and increased the helplessness of unions. They also helped the employers to reduce costs and earn handsome profits. However,

no benefit of these profits reached the labour. The capitalist class appropriated all the benefits of growth at the cost of labour class

8.10 Labour Policy In India

After independence it was largely felt that the labour policy must emphasise upon self-reliance on the part of the workers. Since independence till 1954, the period when V.V. Giri was the labour Minister, all official pronouncements emphasised that labour should become self-reliant. An equally forceful view had happened to prefer reliance upon the Government.

This cross-current of approach to the labour policy gave place to a new approach known as “Tripartism”. Thus “Tripartism” became the central theme in the so-called “Nanda-period” that began in 1957. During this period the government paid reliance on three party approach, namely the trade union representing the workers, the employers, and the government. In this kind of approach, the representatives do not decide anything but their role is mainly advisory.

They meet together, discuss anything but their role is mainly advisory. They meet together, discuss the points in dispute and strive to reach a consensus and if they agree they make recommendations. Out of the three, the role of the government is more important. Annual labour conference and the permanent standing labour committees served as the chief instrument of Tripartism. These conferences advocated amongst many things; worker’s participation in management workers education works committees, and minimum wage legislations. At the sixteenth conference held in 1958 a momentous advancement was made by adopting a Code of Discipline in industry. The code pledged the parties to avoid

strikes and lock-outs without notice, and to eschew unilateral actions, and to rely on settlement of disputes by discussion by voluntary arbitration or by adapting to such measures as the law may provide. It also pledged them to avoid coercion and victimization, to avoid partial strikes and lock-outs, and to follow grievance procedure. Tripartism is an approach which lays stress on the identity of interests between labours and capital i.e., they are the partners in the maintenance of production and the building up of the national economy. The labour policy has proceeded on a realization that the community as a whole, as well as individual employers are under an obligation to protect the welfare of workers and to secure to them their due share in the gains of economic development. This led to enacting of the payment of Bonus Act, 1965 which aimed at providing for the payment of bonus on the basis of profits or on the basis of production or productivity.

- **The main postulates of labour policy may be summed up as follow:**

1. Recognition of the State as the custodian of the interests of the community, as the catalyst of “change” and welfare programmes.
2. Recognition of the right of workers to peaceful direct action if justice is denied to them.
3. Encouragement to mutual settlements, collective bargaining and voluntary arbitration.
4. Intervention by the state in favour of the weaker party to ensure fair treatment to all concerned.
5. Primary to maintenance of individual peace.
6. Evolving partnership between the employer and employees in a constructive endeavour to promote the satisfaction of the economic needs of the country in the best possible manner.
7. Ensuring fair wage standards and provisions of social security.
8. Co-operation for augmenting production and increasing productivity
9. Adequate enforcement of legislation
10. Enhancing the status of the workers in industry.
11. Tripartite consultation.

- **Answer the following questions in detail:**

1. Explain nature and need of Labour Laws
2. What are Objectives and Principles of Labour Laws?

- **Write Short Notes on:**

1. Fundamental Rights.
2. Social Justice and Directive Principles

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9.1 Introduction**9.2 Meaning & Definition and Objectives****9.3 Features of Labour Welfare****9.4 Types of Labour Welfare****9.5 Intra Mural and Extra Mural****9.6 Importance of Labour Welfare****9.7 Agencies of Labour Welfare****9.8 Kinds of Welfare Facilities****9.9 Theories of Labour Welfare****9.10 Principles of labour Welfare****Exercise**

9.1 Introduction

Labour welfare relates to taking care of the well-being of workers by employers, trade unions, governmental and non-governmental institutions and agencies. Welfare includes anything that is done for the comfort and improvement of employees and is provided over and above the wages. Welfare helps in keeping the morale and motivation of the employees high so as to retain the employees for longer duration. Employee welfare includes monitoring of working conditions, creation of industrial harmony through infrastructure for health, industrial relations and insurance against disease, accident and unemployment for the workers and their families.

According to ILO, labour welfare can be defined as a term, which is understood to include such services, facilities, and amenities as may be established in or in the vicinity of undertakings to enable the persons employed in them to perform their work in healthy, congenial surroundings and to provide them with amenities conducive to good health and high morale.

Employees are one of the most important resources of the organisation and it is important that the physical and mental well-being of the employees is ensured. For this, the organisation has to view employees as an investment rather than as an expense. This is essential as the profitability of the organisation is directly linked with the productivity of the workforce.

The productivity of the employees depends on the environment of the organisation and the welfare measures taken by the organisation. The main aim of undertaking employee welfare measures is to earn and retain the goodwill and loyalty of the employees and their union.

9.2 Meaning and Definition

- **Meaning**

Employee welfare means anything done for the comfort and improvement, intellectual or social of the employees over and above the wages paid which is not a necessity of the industry. The term “Welfare” refers to a staff of living of an individual or a group in the context of his physical, social and psychic environment. The concept of labour welfare has undergone considerable change. Social and economic development of the country has to be towards the enactment of labour welfare and labour protective legislations. An individual’s adjustment to his environment is required for his existence in the industrial world.

A worker is paid for the types of his services but payment depends on nature of work, his efficiency, capacity of the industry to pay and significance of his work in that particular industry. A worker has to maintain balance at workplace. He has to adjust with the physical working conditions as well as with type of supervision, co-workers, etc.

The acceptance, respect, goodwill, attention and recognition, which a worker gets from his work group, community, family and neighbourhood forms an integral part of the modern concept of labour welfare. Capacity of the worker to satisfy his physiological needs like food, clothing and shelter from his pay packet refers to physical concept of labour welfare.

9.2.1 Definition

- According to Industrial Labour Organisation (ILO), “Labour welfare may be understood and including such services facilities and amenities which may be established in vicinity of undertaking to perform their work in healthy and congenial environment and to avail of facilities which improve their health and bring high morale.”
- According to Arthur James Todd, “Labour welfare means anything done for the comfort and improvement, intellectual and social, of the employees over and above the wages paid which is not a necessity of the industry”.
- According to S.T. Edwards, “One can buy a man’s time, his physical presence at a particular space, even a few muscular movements, but enthusiasm, initiative, loyalty and devotion to duty cannot be bought. They will have to be created through right employer-employee relations, provision of constructive opportunities for satisfying the major motivating desires of human action.”
- According to N.M. Joshi, “Employee welfare covers all the efforts which employers make for the benefits of their employees over and above the working conditions fixed by the Factories Act and the provisions of the social legislation providing against accident, old age, unemployment and sickness.”

9.2.3 Objectives of Employee Welfare

The primary purpose of employee welfare measures is the improvement of the employer employee relations within an organization. However, an organization can also determine various objectives while developing employee welfare measures. Typically, an organization aims at accomplishing long term as well as short term objectives through employee welfare measures. Employee welfare is

directed at creating a motivational environment by arousing cooperation from the employee towards the plans and objectives of the organization. It concentrates on retaining the talent within the organization for a long term. Organizations look for obtaining high employee involvement, commitment and satisfaction by conducting welfare activities. The long- term purpose of welfare measures is to achieve a high level of efficiency productivity, and performance and from the employees. Organizations make an effort to generate good will for themselves in the labour market through welfare measures which would, in turn, assist them to attract the best talents.

Employee welfare strives to create a strong bond between the organization and the employee. This bonding, based on real loyalty, should enable the organization to meet the tough situations confidently with the help and support of its workforce. Employee welfare helps the organization avoid jealousy and fault-finding among the employees and facilitates the development of team spirit and cooperation among them. By removing the anxieties of the employees about their future through relevant welfare measures, an organization aims to focus their entire attention and devotion on their jobs.

9.3 Features of Labour Welfare

The following are the features of Labour welfare:

- 1) Labour welfare is a voluntary activity of the organisation which is done for the general well-being of the employees.
- 2) It is usually an activity which is over and above the statutory and contractual obligations of the organisation.
- 3) Objectives and strategies of the organisation provide a broad outline of the policies of employee welfare.
- 4) Such measures enhance the mental, physical, intellectual and moral wellbeing of the employees.
- 5) It is a continuous and ongoing process and not a one-time activity.
- 6) Such activity can extend even to the personal life of the employees.

9.4 Types of Labour Welfare

The term labour welfare is a very comprehensive concept and is wide in its scope. It includes in its fold all efforts in the form of amenities and activities which vary from place to place, industry to industry and time to time.

These are the types of employee welfare:

1. Intramural Facilities
2. Extramural Facilities
3. Statutory Facilities
4. Mutual Facilities
5. Voluntary

Statutory provisions relating to welfare of workers have been promulgated by the government of India in different enactments viz. Factories Act, 1948; Mines

Act, 1952; The Motor transport Workers Act, 1961; Dock Workers Safety, Health Act, 1951; The Merchant Act 1961; Plantation Labour Act, 1951, The Merchant Shipping Act, 1958; Coal Mines Labour Welfare Fund Act, 1974 and Mines Labour Welfare Fund etc.

The provisions contained in these Acts provide the minimum standards of health, safety and welfare of workers. Employers are supposed to adhere to these provisions.

1. Intramural Facilities

The facilities provided inside the factory are known as intramural facilities. These facilities include activities relating to minimization of industrial fatigue, provision of safety measures like fencing and covering of machines, good layout of the plant and machinery, sufficient lighting conditions, first aid appliances etc. Provisions of such facilities are also obligatory in all industrial establishments all over the world.

2. Extramural Facilities

Facilities offered to the workers outside the factory are known as extramural facilities. They include better housing accommodations, indoor and outdoor recreation facilities, sports, educational facilities etc. The provocation of these facilities is voluntary. Earlier, due attention was not given to the provision of extramural facilities to the workers but now it is realized that these facilities are very important, for the general welfare and enlistment of the workers.

3. Statutory Facilities

Under this category, welfare facilities are provided according to the labour legislation passed by the Government. The nature and coverage of these facilities vary from country to country. Again, these facilities very are either intramural facilities or extramural facilities. These facilities must be provided by all the employers and cannot be ignored.

Any contravention of the statutory provisions shall render the employer punishable under the Act concerned. The National Commission of Labour has divided all the statutory measures under two distinct heads. Facilities have to be provided irrespective of the size of the establishment e.g., drinking water. Facilities which are to be provided subject to the employment of a specified number of persons, e.g., crèches.

4. Mutual Facilities

These facilities are usually outside the scope of the statutory facilities. These activities are voluntarily undertaken by the workers themselves for their own interest. As such the employer has no say in it. Mutual welfare is “a corporate enterprise” undertaken by the workers themselves or their organisation called trade unions. In India, the trade unions are financially weak and are unable to undertake such activities on the large scale. However, in advanced countries the labour welfare activities are the important functions of trade unions.

5. Voluntary

The facilities which are voluntarily provided by the employers come under this category. Hence these are not statutory. No doubt, the activities under this category ultimately lead to an increase in the efficiency of workers. Voluntary welfare includes all those activities which employers undertake for their employees on voluntary basis. It is a philanthropic approach on the part of the employer to provide various welfare facilities to the workers over and above the statutory measures. Some of the important voluntary welfare activities on the part of the employers may be provision of housing facilities, transportation, recreational facilities, formation of cooperative societies, children's education, and loans for purchasing scooters, cars and grains, provision of library, leave travel concessions, uniforms and gifts etc.

9.5 Intra mural and Extra Mural

The Committee of experts on welfare facilities for Industrial workers constituted by the I.L.O. in 1963 had divided the welfare services into two groups.

(a) Welfare amenities within the precincts of the establishment (intra-mural):

Latrines and urinals, washing and bathing facilities, creches, rest rooms and canteens, arrangements for drinking water, arrangements for prevention of fatigue, health services including occupational safety, administrative arrangements within a plant to look after welfare, uniforms and protective clothing and shift allowance.

(b) Welfare amenities outside the establishments (extra-mural):

Maternity benefit, social insurance measures including sports, cultural activities, library and reading room, holiday homes and leave travel facilities, workers' co-operatives including consumers co-operative stores, fair price shops and co-operative thrift and credit societies, vocational training for dependents of workers, other programmes for the welfare of women, youth and children and transport to and from the place or work.

Thus, labour welfare is very comprehensive and embraces a multitude of activities of employers, state, trade unions and other agencies to help workers and their families in the context of their industrial life. Thus, the scope of labour welfare is fairly wide.

The concept of labour welfare embraces a multitude of activities including all extra-mural, intra-mural activities, as well as statutory and non-statutory welfare measures undertaken by the employees, the government and the trade unions to help workers and their families in the context of their industrial life.

It is, therefore, concluded that labour welfare is a convenient term to cover all those aspects of industrial life which contribute to the well-being of a worker.

9.6 Importance of Labour Welfare

Labour welfare is a critical aspect of organizations' efforts to promote the well-being, health, and safety of their employees. In today's rapidly evolving workplace, the significance of labour welfare cannot be overstated. It plays a crucial

role in ensuring a balanced workforce, fostering employee satisfaction, and driving organizational success.

1) Ensuring safe and healthy working conditions

Providing a clean and secure work environment is a fundamental objective of labour welfare. Organizations should implement regular cleaning and maintenance schedules, promote proper waste management, and enforce hygiene protocols to prevent the spread of infectious diseases. Furthermore, implementing safety measures and protocols is paramount.

Companies must prioritize the safety of their workforce by conducting regular risk assessments, providing safety training programs, and ensuring the availability of protective equipment. Promoting occupational health and well-being is equally essential. Employers should invest in occupational health programs to address the physical and mental health needs of employees. This may involve providing access to healthcare services, offering ergonomic workstations, and promoting wellness initiatives.

2) Promoting employee well-being and morale

The objective of ensuring employee well-being and high morale is a crucial component of labour welfare. Organizations can achieve this by ensuring fair wages and benefits. This includes providing competitive wages, healthcare coverage, and paid leave to foster employee satisfaction and motivation.

Offering opportunities for skill development and career growth is another important aspect. Companies should invest in training workshops, mentorship programs, and tuition reimbursement to support employees' professional growth and encourage their long-term commitment. Encouraging work-life balance is equally crucial.

Organizations can promote flexible work arrangements, such as remote work options or flexible hours, to help employees manage their personal and professional responsibilities effectively. Recognizing and rewarding employee achievements is vital in creating a positive work environment. Implementing an employee recognition program or offering performance-based incentives can boost employee engagement and foster a culture of appreciation.

3) Enhancing social security and employee protection

A significant objective of labour welfare is to enhance social security and protect employees' rights. Providing comprehensive insurance and medical benefits is crucial. Employers should offer health insurance coverage and other social security benefits to protect employees and their families during unforeseen circumstances.

Establishing pension and retirement plans also plays a vital role in supporting employees' long-term financial security and providing them with a sense of stability. Furthermore, organizations must safeguard employee rights and ensure fair treatment. Clear policies should be in place to prevent discrimination, harassment, and unfair practices. By implementing training programs and establishing complaint resolution mechanisms, organizations can foster a fair and inclusive work culture.

4) Fostering employee engagement and participation

Promoting employee engagement and participation is an integral part of labour welfare. Effective communication channels are essential in achieving this objective. Organizations should establish regular feedback mechanisms, conduct town hall meetings, and provide platforms for employees to share their ideas and concerns. Facilitating employee involvement in decision-making processes is equally important. By including employees in decision-making, organizations can benefit from their diverse perspectives and increase employee satisfaction. Additionally, promoting employee representation and collective bargaining empowers employees to voice their concerns collectively and negotiate for better working conditions.

5) Ensuring equality and non-discrimination

Another key objective of labour welfare is ensuring equality and non-discrimination in the workplace. Organizations should actively promote diversity and inclusion by implementing diversity policies, providing equal opportunities for career advancement, and combating biases. Preventing workplace harassment and discrimination is crucial in creating a safe and inclusive work environment. Establishing anti-harassment policies, conducting awareness training, and enforcing strict disciplinary actions against offenders are essential steps in achieving this objective. Furthermore, organizations should implement policies to address gender and pay equity. Regularly assessing compensation structures, identifying pay gaps, and taking corrective measures ensure gender equality and fair pay for all employees.

6) Encouraging employee welfare initiatives

Encouraging employee welfare initiatives is a significant objective of labour welfare. Organizations can support employee welfare programs and initiatives to demonstrate a genuine concern for employee well-being. This may involve investing in employee assistance programs, wellness initiatives, or financial planning workshops.

Providing access to counselling and support services is crucial in helping employees cope with personal or work-related challenges. By offering access to counselling services, whether through in-house counsellors or external resources, organizations show their commitment to supporting employees' mental health. Facilitating work-based social and recreational activities is also important. Organizing social events, team-building activities, and recreational programs within the workplace promotes employee well-being and creates a positive work culture.

9.7 Agencies of Labour Welfare

There are four labour welfare agencies of India. The agencies are as follows.

1. Central Government
2. State Government
3. Employers
4. Trade Union

1. Central Government

The Central Government has enacted a number of Acts for the welfare of various types of workers. It also administers the implementation of industrial and labour laws. The important Acts which have measures for the workers welfare are: Factories Act, 1948, Indian Mines Act, Employment of Children Act, Maternity Benefits Act, Plantation Labor Act, etc. These Acts require employers to provide certain welfare facilities to the workers.

Ours is a welfare state wedded to the policy of doing welfare to the people of the country. For the economic rejuvenation of the country, the toiling masses must be taken care of, their lots must be improved. In this regard, the Government has an active role to play. The Government has to come forward to bring about intellectual, physical, moral and economic betterment of the workers, so that their whole-hearted and willing co-operation may be readily available for the economic upliftment of the country in our Plan objectives, workers have been accepted as an essential part of the Apparatus of industrial and economic administration of the country. The Central Government has paid attention to improve the conditions of workers. Various enactments have been promulgated to safe-guard the interests of workers, to extend to them economic benefits and social security.

The Factories Act, for example, is a bold attempt to extend various facilities to factory workers their housing facilities, economic benefits, social securities and physical safety etc. The Mines Act is another piece of legislation that aims at providing welfare to mine workers. So far as mines are concerned, Coal Mines Labour Welfare Fund has been instituted to boost the morale of coal mine workers under the Coal Mines Labour Welfare Fund Act.

Similarly, Mica Mines Labour Welfare Fund and Iron Ore Mines Labour Welfare Fund have been created by specific Acts of the Central Government. Again, we find Plantation Labour Act for the welfare of plantation workers. Besides the various Acts passed for the welfare of labour in mines, plantations and factories, the Central Government has kept its Labour Ministry alive to the conditions of workers. Measures have now been adopted to provide medical aid, legal and financial aid to workers under various schemes.

To ensure industrial safety, various precaution-ary measures have also been enforced. Prevention of the possibility of accidents has been one of the objectives of the Government's welfare measures and actually the incidence of accidents has come down. The Government of India has introduced an industrial housing scheme for the accommodation of industrial workers. Social Security legislations such as The Workmen's Compensation Act, Maternity Benefit Act and The Employees' State Insurance Act have been in force.

2. State Government

The Central Government has enacted a number of Acts for the welfare of various types of workers. It also administers the implementation of industrial and labour laws. The important Acts which have measures for the workers welfare are: Factories Act, 1948, Indian Mines Act, Employment of Children Act, Maternity Benefits Act, Plantation Labor Act, etc. These Acts require employers to provide certain welfare facilities to the workers.

The State Governments in India were more or less indifferent to labour welfare, prior to independence. But now various State Governments are very alive to the conditions of labour and are up and doing for the upliftment of the lots of the workers. There are popular governments in some states where workers are adequately taken care of. Labour fronts of different political parties are now sufficiently strong to press the demands of workers to the Government and the link between the State Governments and the labour wings of political parties is so close that various facilities are now being made available to the workers through the State Government's machinery.

3. Employers

Employers in India today have started realizing that they should identify their interest with those of the employees. No prudent management can now ignore the interests of their workers and expect to reap the benefits of higher labour productivity. So, for their own interest, employers are being compelled to adopt welfare measures for the workers. There are only a few employers in India who have been sympathetic to labour welfare but others are extending various benefits to workers only under compulsion.

Several industries such as cotton, jute, textile, engineering, sugar, cement, glass, chemical etc. have been brought under legislative measures to give facilities provided by different industries either under legal compulsion or under union pressure. We can say that employers in India with their professional training background are becoming more and more conscious about the workers whom they now consider the most essential tool to gear up their organisational activities. Employers who are still maintaining a negative attitude or an indifferent attitude towards workers are surely to pay for their foolishness. Days have changed. All over the world is the slogan for workers to unite. Moreover, employers who fail to understand the potentialities of the labour force, the fullest utilisation of which can bring miraculous results for the organisation, are sure to suffer. Employers have to play a major role in providing welfare facilities to industrial workers. Many employers on their own provide voluntarily welfare amenities along with the statutory welfare facilities including accommodation to employees, medical facilities, transportation patronizing sports teams of employees. Employers' associations provide welfare facilities individually or collectively.

4. Trade Union

Last but not the least important agent for the welfare of workers is the "Workers' union." Conflicts between labour and capital existed since industrialisation; they still exist and will continue to exist. The complete harmony and amity between the two opposite-interest groups cannot be achieved. Not only in India, but nowhere in the world has industrial peace been ensured? Here is the role for the Trade Union to play in the matter of bargaining. Various facilities of different nature economic, social, cultural are made available to workers by Trade Unions. The Indian Trade Unions have not yet been able to do much to ameliorate the lot of their members. Their participation in this sphere has been mainly through their association with the Labour Welfare Advisory Committees constituted by the Governments.

It is worthwhile to mention that trade unions in the textile industry (Textile Labour Association) and the Mazdoor Sabha have made provisions for various

welfare facilities to the workers. Educational and cultural upliftments through trade unions have been made possible. With the change in the attitude of the employers (many of whom are governments themselves), the nature of trade unions in India from militancy to conciliatory is now noticeable. Various welfare services are now made available to the workers through Trade Unions after the trade union leaders' direct discussions and deliberations with the employers across the table

However, trade unions should take some measures for the welfare of workers. They should come forward to assist the employers and the Government in formulation and administration of welfare schemes. To find out the needs of the workers and to bring them to the notice of the employers should also come under the purview of trade union activities. Trade Unions are expected to raise the welfare of workers and to provide certain welfare facilities to their members. Often trade unions also provide educational and cultural facilities to their members. Some trade unions like the Rashtriya Mill Mazdoor Sangh are doing good work of labour welfare. In addition, Textile Labor Association, Ahmedabad provides certain educational facilities, social centres, libraries, legal aid, etc. to the textile workers.

9.8 Kinds of Welfare Facilities

Welfare amenities related to physical and social well-being of the employees exist both within and outside the organization. The provision of medical assistance, recreation, libraries, canteens, rest rooms, etc. includes the welfare within the organization. Meals and refreshments supplied free of cost or at subsidized rates to the employees may also be included. But outside the organization, welfare arrangements include provision of housing accommodation, education of children of employees, sports fields, medical facilities for the family, etc.

Classification of Welfare: The welfare provisions are divided into two categories:

1) Statutory welfare

2) Non-statutory welfare

1) Statutory welfare includes those facilities which have to be provided without consideration of size of establishment, say, drinking water. Also, those which have to be provided subject to the employment of a specified number of employees, e.g. Crèche for working women is also part of statutory welfare amenities.

2) Non-Statutory Welfare: In the case of certain amenities, there are no minimum standard are laid down as housing, medical assistance, recreation, transportation and educational facilities. This is left to the discretion of the employer.

Statutory Welfare Amenities Provisions of Factories Act Regarding Labor Welfare: Sections 42 to 49 of the Factories Act, 1948 contain specific provisions relating to welfare of labour. Sec.42 to 45 applies to all factories irrespective of the number of workers employed. Sections 46 to 49 are applicable to factories employing more than a specified number of workers. These provisions are discussed below:

Washing Facility (Sec.42):

In every factory: (a) sufficient and appropriate facilities for washing are made available and retained so that the workers may make use of them. (b) separate and adequately screened facilities be provided for male and female workers; (c) conveniently accessible and be kept clean.

Facilities for Storing and Drying Clothing (Se.43):

The State Government in respect of any factory or class or description of factories, may make rules asking for provision therein of suitable space for keeping clothes not worn during duty hours and for the drying of wet clothes.

Facilities for Sitting (Sec.44):

The Factories Act requires that the employer of every factory, appropriate sitting arrangements shall be provided and maintained for all workers required to work in a standing posture, in order that they may take benefit of any opportunities for rest occurring during their work.

First Aid Appliances (Sec.45):

There shall in every factory be provided and maintained, readily accessible during all working hours first aid appliances or cupboards with the prescribed contents, and the number of such boxes or cupboards to be provided and maintained not be less than one for every 150 workers ordinarily employed at any one time in the factory. In every factory wherein larger than five hundred workers are ordinarily employed, there be provided and maintained an ambulance of the prescribed size, with the prescribed equipment and in the charge of prescribed medical and nursing staff and those facilities shall always be made available during the working hours of the factory.

Canteens (Sec.46):

The State Government may make rules to requiring any specified factory ordinarily employing more than 250 workers, to provide and maintain a canteen or canteens for so that the workers may use them.

Shelters, Rest Rooms and Lunch Rooms (Sec.47):

Every such factory which ordinarily employs greater than one hundred and fifty workers is required to make provision for adequate and suitable shelters of rest rooms and a suitable lunch room, make available drinking water, where workers can take their meals, shall be provided and maintained for the use of the workers.

Creches (Sec.48):

In every factory which ordinarily employs greater than 30 women workers, shall be provided and maintain a suitable room or rooms for the use of children under the gage of six years of such women.

Welfare Officers (Sec.49)

The Factories Act, 1948, The Plantations Act, 1951 and Indian Mines Act, 1952 requires the employers to appoint welfare officers. Every factory wherein five

hundred or more workers are employed, the occupier has to employ in the factory such number of welfare officers as may be prescribed. Further, other acts also have provisions have made provisions for the appointment of welfare officers. Sec.18 of the Plantations Labor Act, 1951 require the employer in every plantation wherein 300 or more workers are ordinarily employed, to appoint prescribed number of Welfare Officers. Section 58 of the Indian Mines Act, 1952 requires every employer to appoint welfare officer for every mine ordinarily employing 500 or more persons.

Voluntary Welfare Amenities

Voluntary welfare comprises those activities undertaken by their employers for their workers at their own sweet will. Many employers, nowadays, offer the following welfare amenities voluntarily.

i. Education Facilities

Many organizations encourage their employees to pursue further studies in various forms such skill development through training programs or sponsoring formal education in external educational institutes. Organizations usually provide reading room facilities, libraries, news bulletins, and literary discussion facilities to their employees. Education facilities help the employees execute their career goals and plan with improved skills and knowledge. They enable the employees to participate in the organizational and societal activities. They also facilitate the employees understanding and learning health and safety aspects of the job quickly and effectively. Education facilities are provided to the children of the employees also in different forms either by setting up their own educational institutes to impart quality education to the children of the employees at subsidized rates provide different forms of educational assistance in the form of scholarships to employee's children to help them pursue their studies successfully.

ii. Housing

The purpose of offering housing facilities is to improve the standard of living of the employees. Like Providing houses near the workplace enable the employers to get the services of their employees quickly and reliably. The employees can also be punctual in attending to duty. Organizations offer these facilities in two forms allotting houses to the employees on a rental basis and sanctioning housing loans to them to buy their own houses or flats. Although there are a few acts which deal with the provision of housing facilities, many organizations provide such facilities voluntarily to their employees.

iii) Transportation

Transport facilities are provided by an organization to carry its employees to and from their homes. For this, the organization may use its own transport vehicles. It may also hire the services of the public transport companies for transporting the employees. These facilities are made available to the employees either free of cost or at a subsidized rate. In fact, the problem of distance is easily overcome with the help of transport facilities. Transport facilities help the employees save time and energy and avoid inconvenience. As far as the organization is concerned, these facilities help it locate its factories in an ideal place without worrying about distance. Some organizations provide vehicle loan facilities and/or petrol allowance

to their employees to facilitate their employees to facilitate them in commuting in their own vehicles.

iv) Recreation

Recreational facilities, including indoor and outdoor games, music art, gymnasium and club membership, may also be provided to the employees to keep them physically and mentally strong. Many organizations view sports and games as an effective tool in stress reduction and management. However, an organization should be careful in choosing the games as some forms of games can cause grievous injuries to the employees.

v) Consumer Cooperative Stores

The Indian Labor Conference in 1963 recommended the establishment of consumer cooperative stores in all industrial enterprises including plantations and mines employing 300 or more workers. The employer is expected to extend help in the form of share capital, working capital, loans at concessive rates etc.

vi) Insurance Facilities

Some organizations provide insurance facilities to the employees to cover their medical expenses and to compensate for the loss arising out of the death of the insured employees. The expenses relating to the hospitalization and treatment of employees for accident, sickness and diseases are usually indemnified by the insurance company for the small premium paid by the employers at period intervals.

9.9 The theories of labour welfare

The theories of labour welfare reflect the evolution of the concept of welfare. Earlier, the Government had to compel the industrial organizations to provide basic amenities to their employees. Such compulsion was necessary because the employers used to exploit the labour and treated them in an unfair manner.

With the passage of time, the concept of welfare has undergone changes. Progressive managements today provide welfare facilities voluntarily and with enlightened willingness and enthusiasm. In fact, welfare facilities are no longer restricted to workers alone but also extended to social welfare also. In this regard, a brief description of the various theories of employee welfare is as below:

1. The Religious Theory
2. The Philanthropic Theory
3. The Trusteeship Theory
4. The Placating Theory
5. The Public Relations Theory
6. The Functional Theory

1. The Religious Theory

This theory is based on the concept that man is essential “a religious animal”. Even today, many acts of men are related to religious sentiments and beliefs. These religious feelings, sometimes, prompt an employer to take up welfare

activities in the expectation of future benefit, either in this life or in some future life. According to this theory, any good work is considered as “Investment”. In this case, both benefactor and the beneficiary are rewarded.

Many trusts and charitable institutions in India function on the basis of this belief. Another aspect of religious theory is the atonement aspect. Some people take up welfare work in a spirit of atonement for their sins.

Thus, the benevolent acts of welfare are treated either as an investment or an atonement. According to this theory, man is primarily concerned with his own welfare and only secondarily with the welfare of others. The religious basis of welfare, however, cannot be rational.

2. Philanthropic Theory

This theory is based on man’s love for mankind. In Greek, ‘philo’ means love of and ‘anthropes’ means man. So philanthropic means loving mankind. Man is believed to have an instinctive urge by which he strives to remove the sufferings of others and promote their well-being. This drive may be a rather powerful one and may impel him to perform noble sacrifices. When some employers have compassion for their fellowmen, they may undertake labour welfare measures for the benefit of their workers.

3. Trusteeship Theory

This is also called the paternalistic theory of labour welfare, according to which “the industrialist or employer holds the total industrial estate, properties and profits”. These properties and profits, he uses for himself, for the benefit of his workers and also for society. Workers are like minors. They are ignorant because of lack of education and are not able to look after their own interests.

4. Placating Theory

This theory is based on the fact that labour groups are becoming more militant and are conscious of their rights and privileges than ever before. Their demand for higher wages and better standards cannot be ignored. According to this theory, timely and periodical acts of labour welfare can appease the workers. They are some kinds of pacifiers by way of friendly gestures. Sincerity may be lacking in these programs. Psychologically this theory is unsound, though it has often been acted upon to secure the worker’s cooperation.

5. Public Relations Theory

This theory provides the basis for an atmosphere of goodwill between labour and management and also between management and the public. Labour welfare programs, under this theory, work as a sort of an advertisement and help an industrialist to build up good and healthy public relations. This theory is based on the assumption that the labour welfare movement may be utilized to improve relations between management and labour.

6. Functional Theory

This is also called Efficiency Theory. Here, welfare work is used as a means to secure, preserve and develop the efficiency and productivity of labour. It is

obvious that if an employer takes good care of his workers, they will tend to become more efficient and thereby they step up production. But all this will depend on a healthy collaboration between union and management and their mutual concern for the growth and development of the organization.

9.10 Principles of Labour Welfare:

1. **Equity and non-discrimination:** Ensuring fair treatment and equal opportunities for all workers is a fundamental principle of labour welfare. Discrimination based on race, gender, religion, or any other characteristic must be actively eliminated. For instance, Salesforce, a leading technology company, has implemented equal pay policies to eliminate gender pay gaps and promote workplace equality.
2. **Adequate remuneration:** Fair wages and benefits that meet employees' basic needs are essential for their well-being. The Living Wage Foundation in the UK sets a benchmark for employers to pay wages that cover the cost of living. By paying a living wage, companies like IKEA and Lush Cosmetics demonstrate their commitment to employee welfare.
3. **Safe and healthy working conditions:** Providing a safe and secure workplace is crucial for protecting employees' physical and mental well-being. For example, Toyota's "Safety First" culture ensures rigorous safety protocols and regular training to prevent accidents and promote a culture of safety.
4. **Work-life balance:** Promoting work-life balance contributes to employees' well-being and job satisfaction. Companies like Microsoft have implemented flexible working arrangements and policies, allowing employees to manage their personal and professional commitments effectively. This approach improves work-life integration and reduces burnout.
5. **Employee participation and representation:** Empowering employees through participation and representation is a key principle of labour welfare. W.L. Gore & Associates, a global materials science company, has a unique "lattice" organizational structure that promotes collaboration, self-management, and employee involvement in decision-making processes. This fosters a sense of ownership and enhances job satisfaction.
6. **Skill development and training:** Providing opportunities for continuous learning and skill development contributes to employees' growth and job satisfaction. Google's "20% Time" policy allows employees to spend a portion of their workweek on projects of personal interest, encouraging skill diversification and fostering innovation.
7. **Social security and welfare benefits:** Offering comprehensive social security measures such as healthcare, insurance, pensions, and additional welfare benefits like housing or transportation provides workers with a sense of security. For example, Patagonia, an outdoor clothing company, provides on-site childcare facilities, ensuring work-life balance and supporting employees with families.

❖ **Exercise**

Q-1 Multiple Choice Questions:

1. International Labour Organization is an agency of _____

- A. IBRD
- B. Insecurity council
- C. International fund for agricultural development
- D. United nations

Answer- D. United nations

2. Which of these is an unfair labour practice on part of the employer?

- A. to incite or indulge in wilful damage to employer's property connected with the industry
- B. to advise or actively support or instigate any strike deemed to be illegal
- C. for a recognized union to refuse to bargain collectively in good faith with the employer
- D. None of the above

Answer- D. None of the above

3. India is permanent member of ILO Governing Body since _____

- A. 1922
- B. 1969
- C. 1972
- D. 1991

Answer- A. 1922

4. India a _____ member of ILO.

- A. Founding
- B. Only
- C. Sole
- D. Banned

Answer- A. Founding

5. Peace and harmony in organisation are very important for _____

- A. GDP
- B. Economic Development
- C. Manpower
- D. None of the above

Answer- B. Economic Development

6. For peace and harmony in industries, there is need of _____

- A. Reward
- B. Punishment
- C. Law
- D. None of the above

Answer- C. Law

7. Labour issues are solved in _____

- A. Labour Court
- B. District Court
- C. High Court
- D. Consumer court

Answer- A. Labour Court

8. Labour Law covers _____

- A. Industrial Relations
- B. Workplace Health and Safety
- C. Employment Standards
- D. All of the above

Answer- D. All of the above

Q-2 Answer the following Questions in detail:

- 1) Write the meaning and definition of Labour Welfare.
- 2) Discuss the objectives of Labour Welfare.
- 3) Explain the features of Labour Welfare.
- 4) State and explain the types of Labour Welfare.
- 5) Describe Intra Mural and Extra Mural concept.

Q-3 Write Short Notes on the following:

- 1) Importance of Labour Welfare.
- 2) Agencies of Labour Welfare.
- 3) Kinds of Labour Welfare.
- 4) Theories of Labour Welfare.
- 5) Principles of Labour Welfare.

10.1 Introduction**10.2 Objectives of the Act****10.3 Applicability of the Act (Section 1)****10.4 Interpretation (Section 2)****10.5 Submission of Draft Standing Orders (Section 3)****10.6 Appeals (Section 6)****10.7 Date of Operation of Standing Orders (Section 7)****10.8 Duration and Modification of Standing Orders (Section 10)****10.9 Penalties and Procedure (Section 13)****10.10 Delegation of Powers (Section 14A)****10.11 Power to make rules (Section 15)****10.12 Procedure and Modification under the Industrial Employment Act, 1946****10.13 Certification Procedure****10.14 Penalties****10.15 Significance of the Standing Orders Act****10.16 Case laws related to Standing Orders****❖ Exercise**

10.1 Introduction

In an earlier era, India didn't really have as many laws connected with suitable employment and labour practices, as it does now. As a result, workers did not have uniformity in their service conditions as enforced by the standing orders act. This led to a lot of disruptions, friction and productivity loss between these workers and their bosses and this was seen mostly in the industrial undertakings involving heavy workloads and multiple employees.

The Labour Committee 1944- 1946 was created and they immediately spotted the key cause of issues. There was a lack of understanding, on part of the employees, about employment conditions. This committee maintained that the workers had a right to know all terms and conditions related to their work and employment. They even wanted a distinct central law that made it obligatory for employers to frame and approve employment conditions and get them enforceable by law. The Industrial Employment (Standing Order) Act 1946 and this order act lists out laws governing the contract as devised, duly signed and eventually terminated by either party.

Broadly speaking, in Indian Industry the rules of service are not definitely set out and like all unwritten laws, where they exist, they have been very elastic to suit the convenience of employers. No doubt, several large-scale industrial establishments have adopted standing orders and rules to govern the day-to-day relations between the

employers and workers, but such standing orders or rules are clearly one sided. Neither workers organisations nor Government are generally consulted before these orders are drawn up and more often than not, they have given the employers the upper hand in respect of all disputable points. It was to ameliorate these evils that the Industrial Employment (Standing Orders) Act, 1946 was passed to require the employers in industrial establishment to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

Before this Act, there was no law to prevent the employer from having different contracts of employment with workmen that led to confusion and discriminatory treatment. The Tripartite Labour Conference pleaded for defining the conditions of employment so as to create harmonious relations between employer and workmen.

10.1.1. Meaning of Standing Orders

Standing Orders is a set of rules guiding the conditions of service in an industrial establishment. It covers various aspects of employment, as an attempt to establish a standardised framework for employer employee relationships.

10.1.2. Contents of Standing Orders Act

These orders shall provide for the matters specified in the schedule to the Act, including,

- Classification of workmen
- Work hours, holidays, paydays, and wage rates
- Shift work
- Attendance and late-coming
- Leave and holiday procedures
- Entry and search procedures
- Closure and reopening of sections, temporary work stoppages
- Termination of employment and notice periods
- Suspension or dismissal for misconduct
- Grievance redressal mechanisms

10.2 Objectives of the Act

- Starting with the very objective the Standing Orders Act, out of which there are Three.
- The first objective states that the act is to provide regular standing orders for factories, workers and the main professional or working relationship.
- The second aim is to ensure that all employees recognize their employment terms and conditions they are expected to follow or adhere to. This is to help minimize the exploitation of workers against their will and knowledge.
- The third objective states that it also supports the promotion of industrial peace and harmony by supporting fair industrial practices.
- It tells employers the procedure for getting standing orders certified. If they fall under the Industrial Employment (standing order) Act, they are expected to register themselves by giving in five draft copies of those standing orders.

- The documents are sent to the certifying officers as appointed by the government, such as a regional labour commissioner for assessment. The assessment and final certification of those standing orders is successful provided when they have all of the following details.
- Classification of all workers into categories like temporary, probation, permanent, etc. The method through which workmen are informed about holidays, working hours.
 - i. Shift working, Temporary suspensions of work, notice periods and other provisions regarding the termination of employment, Attendance system to be followed by all employees, Workmen information and records
 - ii. All actions and inaction that are to be treated as misconduct and consequences for
 - iii. said faults. Grievance redressal procedure in cases of unfair treatment by the employer.
 - iv. The process followed for obtaining an accumulation of leaves, leave encashment
 - v. Employment termination as issued by employer and employees and notice thereof.
 - vi. To provide regular standing orders for factories, workers and the main professional or working relationship.
 - vii. To ensure that all employees recognize their employment terms and conditions they are expected to follow or adhere to. This is to help minimize the exploitation of workers against their will and knowledge.
 - viii. To support the promotion of industrial peace and harmony by supporting fair industrial practices.
 - ix. To provide for redressal of grievances arising out of employment or relating to unfair Treatment.

10.3 Applicability of the Act (Section 1)

- The Act extends to whole of India. It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months.
- Appropriate Government may extend this Act to any establishment employing less than 100 persons. For this purpose, it has to give at least 2 months' notice by a notification in the Official Gazette.
- Certain industrial establishments have been excluded from its application via various statutory provisions enlisted in this Act:
 - Section 1(4) excludes those establishments to which Chapter VII of the BIRA or MPIESOA applies unless controlled by the Central Government.
 - Section 13-B excludes those establishments whose workmen are subject to the Fundamental & Supplementary Rules; various Civil Services Rules; Industrial Railway Establishment Code; or any other rules provided by the 'appropriate Government'.
 - The provisions of Sections 10 and 12-A (1) do not apply to the establishments under the control of the States of Gujarat/Maharashtra
 - Section 14 empowers the appropriate Government to exempt any industrial establishment from being subject to all or any of the provisions of this Act, either conditionally/unconditionally.

10.4 Interpretation (Section 2)

- Appellate Authority: It refers to an authority which is appointed by the appropriate government to exercise functions of an appellate authority.
- If an appeal is pending before an Industrial Court or other authority before 1963 Amendment, that court or authority shall be appellate authority.
- Appropriate Government means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government. Certifying Officer means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, to perform all or any of the functions of a Certifying Officer under this Act.
- Employer means the owner of an industrial establishment to which this Act for the time being applies, and includes in a factory- manager in any industrial establishment under the control of any department of any Government in India- the authority appointed by such Government in this behalf, or where no authority is so appointed, the head of the department in any other industrial establishment, any person responsible to the owner for the supervision and control of the industrial establishment.

10.4.1 Formation of Standing Orders

The formation of standing orders involves several steps to ensure transparency and fairness. The process includes drafting, certification, and implementation.

- **Drafting**

The drafting process involves collaboration between the employer and employee representatives. Employers draft the initial document, outlining the terms and conditions of employment. This draft must align with the provisions of the Act and the model standing orders.

- **Certification**

The draft standing orders are submitted to the Certifying Officer, who examines them for fairness and reasonableness. The Certifying Officer may hold hearings, allowing both employers and employees to present their views. Modifications may be suggested to ensure the standing orders are just and equitable.

- **Implementation**

Once certified, the standing orders are implemented in the industrial establishment. They become the governing rules for employment conditions and are binding on both parties. Employers are responsible for communicating the standing orders to all employees and ensuring they are accessible.

10.5 Submission of Draft Standing Orders (Section 3)

- Within 6 months from the date on which this Act is applicable to an industrial establishment, the employer is required to submit to the certifying officer five

copies of the draft standing orders proposed to be adopted by him in his industrial establishment.

- These draft standing orders shall refer to every matter set out in the Schedule or model standing orders, if any.
- A statement giving prescribed particulars of the workmen employed in the industrial establishment and the name of the trade union shall be annexed to draft standing orders.
- Section 4 of the Act declares the conditions upon the fulfilment of which, a standing order can be certified. It thereby requires a standing order to provide for all the matters set out in the Schedule of the Act and be in conformity with the provisions of this Act
- Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.
- The procedure for certification of Standing Order, as prescribed under Section 5 of the Act, is threefold:
 - The Certifying Officer to send a copy of the Draft Standing Order to the workmen or trade union, along with a notice calling for objections, that shall be submitted to him within 15 days of receiving such notice.
 - Upon receipt of such objections, the employer and workmen to be given an opportunity of being heard, after which the Certifying Officer shall decide and pass an order for modification of the Standing Order.
 - Finally, the Certifying Officer shall certify such Standing Order, and thereby, within seven days, send a copy of it annexed with his order for modification passed under Section 5(2).

10.6 Appeals (Section 6)

- Any related party aggrieved by the order of the Certifying Officer may appeal to the appellate authority within 30 days, provided that its decision, of confirming such Standing Order or amending it, shall be final.
- The appellate authority shall thereafter send copies of the Standing Order, if amended, to the related parties within seven days.
- The appellate authority has no power to set aside the order of the Certifying Authority. It can confirm or amend the Standing Orders.

10.7 Date of Operation of Standing Orders (Section 7)

- Standing orders shall, unless an appeal is preferred, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent.
- Register of standing orders (Section 8) -A copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefore on payment of the prescribed fee.

- Posting of standing orders (Section 9)- The text of the standing orders as finally certified under this Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and, in all departments, thereof where the workmen are employed.

10.8 Duration and Modification of Standing Orders (Section 10)

A Certified Standing Order cannot be modified, except on agreement between the related parties, until six months from the last modification or operation of such standing order under Section 7.

Further, subject to Section 10(1) and other provisions of this Act, the parties may apply to the Certifying Officer for modifications in the standing order by annexing five copies of the proposal or a certified copy of the agreement for modifications.

Section 10-A of the Act stipulates for the payment of subsistence allowance by the employer to a workman who is suspended, pending the investigation/ inquiry of his misconduct, at the rate of 50% for the first 90 days, and 75% for the remaining period if the delay is not attributable to the workman.

The Act also allows an appeal to the Labour Court constituted under Industrial Disputes Act-1947 in case of a dispute relating to such subsistence allowance, whose decision shall be final.

Moreover, it declares that the provisions applicable to a particular State, if more beneficial, shall prevail over this Section.

Section 12-A provides that in spite of the provisions under Section 3 – 12, in the period between the applicability of this Act and operation of the Certified Standing Orders, Model Standing Orders is to be adopted, with Sections 9, 13(2), and 13-A applying in the same way as would apply to a Certified Standing Order.

10.8.1 Payment of subsistence allowance

In 1982, a new Section 10-A was added to make a provision for subsistence allowance to suspended workmen which provides:

- 1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension, and (b) at the rate of 75% of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.
- 2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1) the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947) within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situated and the Labour

Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

- 3) However, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence in that State,

10.9 Penalties and Procedure (Section 13)

Section 13 of the Act prescribes the penalties and procedure in case of violation of the provisions of the Act. It says:

- 1) An employer who fails to submit draft Standing Orders as required by Section 3 or who modifies his standing orders otherwise than in accordance with Section 10, shall be punishable with fine which may extend to five thousand rupees, and in the case of a continuing offence with a further fine which extend to two hundred rupees for every day after the first during which the offence continues.
- 2) An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.
- 3) No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government.
- 4). No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the second class shall try any offence under this section.

It is explained in table form as below:

An employer who ➤ Fails to submit draft standing orders as per Section 3 ➤ Modifies standing orders otherwise than in accordance with Section 10 Continuing Offence	Fine which may extend to Rs 5000
Continuing Offence	Further Fine up to Rs 200 per day
Penalty for contravention of standing orders finally certified Continuing Offence	Fine which may extend to Rs 100 Further Fine up to Rs 25 per day

- No prosecution for an offence punishable under this section shall be instituted except with the previous sanction of the appropriate Government
- No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the second class shall try any offence under this section.

10.10 Delegation of Powers (Section 14A)

The appropriate Government may delegate its powers under the Act to an Officer/Subordinate Authority to the Central or the State Government, as the case may be, and subject to such directions as may be provided under the notification.

10.11 Power to make rules (Section 15)

The Act empowers the appropriate Government to make rules for the purpose of this Act, in consultation with representatives of related parties, relating to:

- Additional matters to be included in the Schedule & the procedure for modification
- Set out Model Standing Orders
- Procedure to be followed by Certifying Officers & appellate authorities
- The fee to be charged for the copies of registered standing orders, and any other matter so prescribed.

10.12 Procedure and Modification under the Industrial Employment Act, 1946

The concept of standing orders is enshrined within the industrial employment (standing orders) act, 1946. Standing orders serve as the fundamental rules governing the conduct of industrial workers and regulating the terms of employment. They ensure uniformity, clarity, and transparency in the employer-employee relationship.

10.12.1 Procedure for Certification of Standing Orders

The process of certification involves the submission, scrutiny, and approval of standing orders by the competent authority. Here's a step-by-step breakdown:

- 1. Submission of draft standing orders-** The employer drafts the standing orders in accordance with schedule i of the act the draft is then submitted to the certifying officer.
- 2. Notice to workmen**

The certifying officer sends the draft to the workers' representatives for comments.

- 3. Hearing and settlement of objections**

A hearing is conducted to address any objections.

The certifying officer may make necessary modifications.

- 4. Certification**

If the draft is found to be fair and reasonable, it is certified by the certifying officer.

The certified standing order becomes operative.

- 5. Appeal**

Aggrieved parties may appeal to the appellate authority within 30 days of certification.

10.12.2. Modification of Standing Orders

Standing Orders can be modified by following these steps:

1. Proposal for modification

The employer or workers may propose changes, but not before six months from the last certification or modification.

2. Notice and objection handling

The proposal is sent to the other party, and objections are handled as in the certification process.

3. Certification of modification

The certifying officer reviews the proposed modifications and can certify them if deemed appropriate.

10.13 Certification Procedure

- It is the duty of the Certifying Officer to adjudicate the fairness and reasonableness of the Standing Orders. After receiving the draft, the Certifying Officer has to forward a copy to the trade union of the workmen (if no trade union, then to the workmen) along with a notice inviting any objections within 15 days.
- The Certifying Officer holds a hearing, allowing the employer and workmen (or their representatives) to present their case.
- The Certifying Officer decides what changes or modifications are required to make the draft certifiable. The Certifying Officer certifies the draft after incorporating all such changes which may be required and sends certified copies to the employer and workmen (or their agents) within seven days.

❖ Certifying Officers and their Appointments, Powers and Duties

The Certifying Officers under the IESOA means as Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the official Gazette, to perform all or any of the functions of Certifying Officer under the Act. He is "the statutory representative of the Society. "Section 11 (1) vests certifying officer and appellate authority with all the power of a Civil Court for the purposes of. (i) 'receiving evidence; (ii) enforcing the attendance of witnesses; and (iii) compelling the discovery and production of documents. He shall also be deemed to be the 'Civil Court' within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973.

❖ Appeals against Certification

Section 6 provides that any employer, trade union or other prescribed representatives, aggrieved by the order of Certifying Officer made under Section 5 (2) may appeal to the appellate authority within thirty days of the service.

❖ **Date of operation of standing orders**

Section 7 of the Act provides that Standing Orders shall, unless an appeal is preferred under Section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of Section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent under sub-section (2) of Section 6. The standing orders become mandatory provisions thereafter and must be followed if an industrial dispute arises.

❖ **Register of Standing Orders**

Section 8 of the Act provides that a copy of all standing orders as finally certified under this Act shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy thereof to any person applying therefore on payment of the prescribed fee.

Section 9 of the Act requires that the text of Standing Orders as finally certified in accordance with the provisions of this Act be permanently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and, in all departments, thereof where the workmen are employed.

10.13.1. Appeals

- Parties aggrieved, including employers, workmen, trade unions or their agents can appeal against an order passed by the Certifying Officer within 30 days.
- The appellate authority decides finally either by confirming the certified Standing Orders or by amending them.
- Copies of the order along with the certified Standing Orders are forwarded by the appellate authority to the Certifying Officer, employer and workmen (or their representatives) within seven days.

10.13.2 Operation Date

- Certified Standing Orders take effect after 30 days of the date of issuance, if no appeal is filed, or after seven days of the date of Order of the appellate authority if an appeal is filed.

10.13.3 Registration and Posting

- The Certifying Officer registers certified Standing Orders and upon request, provides copies thereof for a fee
- The employer shall ensure that text of certified Standing Orders is posted in English and in the majority language of workmen concerned in such places and manner as may be desired.

10.13.4 Modification

- Standing Orders can only be modified after six months from its effective date, and this modification must be agreed to by the employer and the workmen (or their representatives).
- An employer or workman (or their representatives) can apply for modification to the Certifying Officer by submitting five copies of the proposed changes.
- If alterations are proposed by agreement, a certified copy of that agreement must be filed with the application.
- The certification process for amendments is the same as that applied to initial Standing Orders.
- The amendment related provisions do not apply to establishments in Gujarat and Maharashtra.

10.13.5 Subsistence Allowance

- The suspended workmen are entitled to subsistence allowance.
- The allowance is 50% of wages for the first 90 days of suspension and 75% for the remaining period if delay in the disciplinary proceedings is not the workman's fault.
- The power to settle disputes concerning subsistence allowance has been granted to the Labour Court whose verdict is final and binding
- If state laws provide for more beneficial subsistence allowance provisions, then those will be applicable in that state.

10.13.6 Powers of Certifying Officer and Appellate Authority

- These functionaries have the powers of the Civil Court to take evidence, administering oaths and compelling the attendance of witnesses and document production.
- They are considered as Civil Courts under Code of Criminal Procedure, 1973.
- They have the power to correct clerical mistakes and omissions in their orders.

10.13.7 Prohibition of Contradictory Evidence

- Oral evidence which contradicts the certified Standing Orders is not admissible in the Court.

10.13.8 Temporary Operation of Model Standing Orders

- Prescribed Model Standing Orders are operative from the date the Act becomes applicable to an establishment until certified Standing Orders of the establishment.

- This provision is not applicable to establishments in the States of Gujarat and Maharashtra.
- Where there are certified Standing Orders for one class of workmen (e.g. daily-rated) but not for any other class (e.g. monthly rated), the Model Standing Orders shall be applicable to the latter class of workmen until they have certified Standing Orders of their own.

10.14 Penalties

- Employers are liable for penalties for failing to submit draft Standing Orders, make wrongful amendments or violating certified Standing Orders.
- Prosecution requires prior approval from the government.
- Only Metropolitan or Judicial Magistrates of the second class or above courts are empowered to try these offences.

10.14.1 Interpretation

Issues relating to the application or interpretation of certified Standing Orders can be referred to the Labour Courts as mentioned under the Industrial Disputes Act, 1947 and their decision shall be final.

10.14.2 Exemptions and Delegation of Power

The government can exempt any establishment or class of establishments from the provisions of the Act. The government can delegate any of the powers conferred by the Act to subordinate officers or state governments.

10.14.3 Rule-Making Power

- The government can make rules to implement the Act, including defining additional matters for the Schedule, set out Model Standing Orders, and prescribe procedures.
- Representatives of employers and workmen shall be consulted before the government makes any rule relating to the Schedule.
- The rules framed by the Central Government rules are always under the scrutiny of the parliament.

10.15 Significance of the Standing Orders Act

The Standing Orders Act, 1946, plays a pivotal role in shaping industrial relations in India. Its significance lies in the following aspects:

1) Standardization of Employment conditions

The Act standardizes employment conditions across industrial establishments, reducing ambiguity and potential conflicts. By clearly defining the terms of employment, it ensures that both employers and employees are aware of their rights and obligations.

2) Promotion of Industrial Peace

By providing a structured framework for resolving disputes, the Act promotes industrial peace. The certification process ensures that the standing orders are fair and acceptable to both parties, thereby reducing the likelihood of conflicts and strikes.

3) Protection of workers' rights

The Act protects workers' rights by ensuring that employment conditions are fair and reasonable. It provides a legal framework for addressing grievances and disputes, thereby safeguarding workers from unfair treatment.

4) Flexibility for Employers

While the Act mandates certain provisions, it also offers flexibility for employers to customize the standing orders to suit their specific needs. This balance between regulation and flexibility helps maintain a productive and harmonious work environment.

10.15.1 Challenges and Criticisms

Despite its significance, the Standing Orders Act, 1946, faces several challenges and criticisms.

1) Inadequate Enforcement

One of the primary challenges is the inadequate enforcement of the Act. In many cases, employers fail to submit draft standing orders or comply with certified standing orders, leading to disputes and grievances.

2) Complexity and Bureaucracy

The certification process can be complex and bureaucratic, causing delays in the implementation of standing orders. This can hinder the timely resolution of employment issues and affect industrial relations.

3) Need for Modernization

The Act, enacted in 1946, requires modernization to keep pace with changing industrial practices and employment trends. Updating the Act to reflect contemporary work environments and practices is essential for its continued relevance.

10.16 Case laws related to Standing Orders

❖ U.P. State Electricity Board and Ors vs. Hari Shanker Jain and Ors (1978)

The Court held that the Industrial Employment (Standing Orders) Act, 1946 is a special enactment relating to matters enumerated in its schedule. To this end, the rules framed by the Electricity Board on the said matters are invalid unless they are notified by the Government under Section 13-B of the Act or certified by the Certifying Officer under Section 5 of the Act. The Court stated that the Industrial Employment (Standing Orders) Act was specifically enacted to define and safeguard

reasonable terms of employment for workers in industrial settings. It requires employers to make and to have their Standing Orders certified by a quasi-judicial authority to ensure fairness and reasonableness.

❖ **Exercise**

Q-1 Multiple Choice Questions:

- 1) When did The Industrial Employment (Standing Orders) Act 1946, come into force?
A. 01 April 1936 B. 01 March 1937
C. 01 May 1935 D. 23 April, 1946
Answer (D) 23 April, 1946

- 2) Which section of The Industrial Employment (Standing Orders) Act 1946 deals with Posting of standing orders?
A. Section 12 of the Industrial Employment (Standing Orders) Act 1946
B. Section 9 of the Industrial Employment (Standing Orders) Act 1946
C. Section 14 of the Industrial Employment (Standing Orders) Act 1946
D. Section 20 of the Industrial Employment (Standing Orders) Act 1946
Answer (B)- Section 9 of the Industrial Employment (Standing Orders) Act 1946

- 3) Which section of the Industrial Employment (Standing Orders) Act 1946 deals with Oral evidence in contradiction of standing orders not admissible?
A. Section 12 of the Industrial Employment (Standing Orders) Act 1946
B. Section 14 of the Industrial Employment (Standing Orders) Act 1946
C. Section 13 of the Industrial Employment (Standing Orders) Act 1946
D. Section 18 of the Industrial Employment (Standing Orders) Act 1946
Answer (A) Section 12 of the Industrial Employment (Standing Orders) Act 1946

- 4) Section 8 of the Industrial Employment (Standing Orders) Act 1946 deals with_____
A. Appeals
B. Register of standing orders
C. Duration and modification of standing orders
D. Power to exempt
Answer- (B) Register of standing orders

- 5) Certifying Officers and appellate authorities to have power of Civil Court, is provided in section_____ of the Industrial Employment (Standing Orders) Act 1946
A. Section 14 of the Industrial Employment (Standing Orders) Act 1946
B. Section 12 of the Industrial Employment (Standing Orders) Act 1946
C. Section 11 of the Industrial Employment (Standing Orders) Act 1946
D. Section 13 of the Industrial Employment (Standing Orders) Act 1946

Ans- C. Section 11 of the Industrial Employment (Standing Orders) Act 1946

- 6) who is the authority to certify a draft of standing order?
A. Certifying Officer B. Labour commissioner
C. Regional labour commissioner D. All of the above

Answer- D. All of the above

- 7) Which section of the Industrial Employment (Standing Orders) Act 1946 deals with Penalties and procedure?
A. Section 7 of the Industrial Employment (Standing Orders) Act 1946
B. Section 4 of the Industrial Employment (Standing Orders) Act 1946
C. Section 13 of the Industrial Employment (Standing Orders) Act 1946
D. Section 9 of the Industrial Employment (Standing Orders) Act 1946

Answer – C. Section 13 of the Industrial Employment (Standing Orders) Act 1946

- 8) Which section of the Industrial Employment (Standing Orders) Act 1946 deals with the Power of exempt?
A. Section 7 of the Industrial Employment (Standing Orders) Act 1946
B. Section 14 of the Industrial Employment (Standing Orders) Act 1946
C. Section 4 of the Industrial Employment (Standing Orders) Act 1946
D. Section 5 of the Industrial Employment (Standing Orders) Act 1946

Answer B. Section 14 of the Industrial Employment (Standing Orders) Act 1946

- 9) An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to ----- rupees, and in the case of a continuing offence with a further fine which may extend to ----- rupees for every day after the first during which the offence continues.
(a) Rs.100/- & Rs.25/- respectively
(b) Rs. 500/- & Rs.100/- respectively
(c) Rs,1000/- & Rs.100/- respectively
(d) Rs.100/- & Rs.50/- respectively

Answer - (a) Rs.100/- & Rs.25/- respectively

- 10) No prosecution for an offence punishable under ----- section shall be instituted except with the previous sanction of the appropriate Government.
(a) Section 12 (b) Section 13
(c) Section 10 (d) Section 11

Answer - (b) Section 13

- 11) No Court inferior to that of ----- shall try any offence under section 13.
(a) High Court (b) Supreme Court
(c) Judicial Magistrate of the second class (d) None of the above

Answer - (c) Judicial Magistrate of the second class

12) If any question arises on the application or interpretation of a standing order certified under this Act, any employer or workmen (or a trade union or other representative body of the workmen) may refer the question to any one of the

- (a) Supreme Court
- (b) High Court
- (c) Judicial Magistrate of the second class
- (d) Labour Courts constituted under the Industrial Disputes Act, 1947

Answer - (d) Labour Courts constituted under the Industrial Disputes Act, 1947

13) Who have the power to exempt conditionally or unconditionally, any industrial establishment or class of industrial establishment from all or any of the provisions of this Act.

- (a) The appropriate Government by notification in the official Gazette
- (b) Supreme Court
- (c) High Court
- (d) Labour Courts constituted under the Industrial Disputes Act, 1947

Answer - (a) The appropriate Government by notification in the official Gazette

14) Nothing in this Act shall apply to.

- (a) Any industry to which the provisions of Chapter VII of the Bombay Industrial Relations Act, 1946 (Bombay Act II of 1947) apply
- (b) Any Industrial establishment to which the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (Madhya Pradesh Act 26 of 1961) apply
- (c) Both (a) & (b)
- (d) None of the above

Answer - (c) Both (a) & (b)

15) Which section states that 'the draft standing orders submitted under this section shall be, accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong'

- (a) Section 3(1)
- (b) Section 3(2)
- (c) Section 3(3)
- (d) Section 3(4)

Answer - (c) Section 3(3)

16) The objections, which the workmen may desire to make to the draft standing orders to be submitted to the Certifying Officer within ----- days from the receipt of draft standing order from the Certifying Officer.

- (a) 12 days
- (b) 30 days
- (c) 9 days
- (d) 15 days

Answer - (d) 15 days

17) Which section states that 'certifying officer and appellate have the powers of Civil Court'

- (a) Section 11 (b) Section 10
- (c) Section 9 (d) Section 12

Answer - (a) Section 11

18) Which section deals with conditions for certification of Standing Orders

- (a) Section 6 (b) Section 4
- (c) Section 3 (d) Section 7

Answer - (b) Section 4

19) Which section deals with register of Standing Orders

- (a) Section 7 (b) Section 9
- (c) Section 8 (d) Section 11

Answer - (c) Section 8

20) Which section states about duration and modification of standing orders

- (a) Section 13 (b) Section 11
- (c) Section 9 (d) Section 10

Answer - (d) Section 10

21) Which section deals with temporary application of Model Standing Orders

- (a) Section 12A (b) Section 13
- (c) Section 11 (d) Section 10

Answer- (a) Section 12A

22) Which section deals with penalties and procedure

- (a) Section 11 (b) Section 13
- (c) Section 12 (d) Section 9

Answer - (b) Section 13

23) Which Section states about the industrial establishments where this act not applicable

- (a) Section 11 (b) Section 12
- (c) Section 13B (d) Section 10

Answer - (c) Section 13

Q-2 Answer the following Questions:

- 1) Write the Objectives of the Industrial Employment Standing Order Act, 1946.
- 2) Explain the Applicability of the Industrial Employment Standing Order Act, 1946 (Section 1).
- 3) Explain the Submission of Draft Standing Orders (Section 3)

Q-3 Write Short Notes on:

- 1) Appeals (Section 6)
- 2) Duration and Modification of Standing Orders (Section 10)
- 3) Penalties and Procedure of Industrial Employment Standing Order Act, 1946
(Section 13)
- 4) Delegation of Powers (Section 14A)
- 5) Procedure and Modification under the Industrial Employment Act, 1946
- 6) Certification Procedure.
- 7) Penalties of Industrial Employment Standing Order Act, 1946
- 8) The Significance of the Standing Orders Act.

11.1 Introduction**11.2 History****11.3 Definition and Meaning****11.4 Objectives of Factories Act, 1948 and its Scope****11.5 Different Definitions****11.6 Provisions****11.7 Approval, Licensing and Registration of Factories****11.8 Advantages of Factories Act, 1948****11.9 Disadvantages of Factories Act, 1948****11.10 Annual Leave with Wages and Penalties****❖ Exercise**

11.1 Introduction

Factories Bill having been passed by the Legislature received the assent on 23rd September 1948. It came into force on 1st April 1949 as THE FACTORIES ACT, 1948(63 of 1948). It applies to factories, as defined in the Act, all over India, including the State of Jammu and Kashmir. In the British India the conditions of work and provisions for the safety, health and welfare of workers working in the factories were generally found to be inadequate and unsatisfactory and even such protection as is provided were also not extent to the large mass of workers employed in work places not covered by the Act. In view of the large and growing industrial activities in the country, a radical overhauling of the Factories law was essentially called for and cannot be delayed as there were demands from various trade union and political leaders to improve it at that time. The Factory Act of 1948 is more comprehensive than the previous Acts.

There has been rise of large-scale factory/ industry in India in the later half of nineteenth century. Major Moore, Inspector-in- Chief of the Bombay Cotton Department, in his Report in 1872-73 first of all raised the question for the provision of legislation to regulate the working condition in factories; the first Factories act was enacted in 1881. Since then, the act has been amended on many occasions.

The Factories Act 1934 was passed replacing all the previous legislation in regard to factories. This act was drafted in the light of the recommendations of the Royal Commission on Labour. This Act has also been amended suitably from time to time. The experience of working of the Factories Act, 1934 had revealed a number of defects and weakness which have hampered effective administration of the Act, and the need for wholesale revision of the act to extend its protective provisions to the large number of smaller industrial establishments was felt.

Therefore, the Factories Act, 1948 consolidating and amending the law relating to labour in factories, was passed by the Constituent Assembly on August 28, 1948. The

Act received the assent of Governor General of India on 23 September 1948 and came into force on April 1, 1949.

11.2 History

The history of Factory Act is more than 100 years old. As the process of modern industrialization came to India almost a century after its beginning in Great Britain, the beginnings of factory legislation had to wait for the same period of time. The Act was amended in the year 1891, 1911, 1922, 1934, 1948, 1976 and 1987. It was extensively amended in the year 1948. The Factory Act 1948 is more comprehensive than the previous act and focuses mainly on health, safety, welfare of the workers inside factories, working hours, minimum age to work, leave with pay etc. The first cotton textile factory was set up at Bombay as early as 1854. The pace was accelerated and by 1870 a large number of factories were setup at Bombay, Nagpur, Kanpur & Madras. The first Iron & Steelwork started at Bihar in 1873. Jute spinning mill were started at Rishra in 1855. By 1881 there were 5000 power looms at work in Bengal. In 1870, Bally Paper mills were setup at Hoogly & several tanning and leather factories were also setup at Kanpur which led to factory establishment existence in India. This brought factories evils such as employment of women and children at tender age, excessive hours of work and hazardous and insanitary working conditions.

Factory Act is a central legislation which came into existence in 1881. It regulates the working conditions of the workers and lays down various provisions which are related to health, safety, working conditions, hazardous processes of the workers. It also provides procedures for penalties in case of any contravention of provisions of factory Act.

With the establishment of a Cotton Mills in 1851, and a Jute Mill in Bengal in 1855, modern factory system was founded in India. Women and children were employed. There were excessive and long hours of work with little recreation. The employers used to have their way. This act is based on the provisions which are provided under Factory Act of Great Britain passed in the year

1937. Today however factory and industry are understood to be interchangeable. But this is incorrect. Industry is a steady and systematic activity in which trade is organized whereas factory refers to the place where such activities are carried on. The entire day to day activity taking place in the factory is governed by the Factory Act 1948. This act extends to the whole of India including Jammu and Kashmir.

Thus, protective labour legislations was embodied in Factory Act 1881. Thus, joint efforts of philanthropist, social workers in India and Lancashire manufacturers in Great Britain resulted in Factory Act 1881 (though with different considerations). The Act of 1881 was inadequate. Narayan Meghaji Lokhandey, a disciple of Mahatma Jyotiba Phule, emerged as the first labour leader in India. He was a storekeeper in a textile mill and devoted his whole life to the cause of labour movement. He presented a memorandum signed by 5300 workers and presented it to the Factory Commission appointed in 1884.

The Factory Commission was appointed by the Government of India in 1890. An act was passed in 1891 on the basis of the recommendation of this commission, whereby the definition of Factory was amended to include premises in which fifty persons or more were employed. The Local Governments were empowered to extend it to premises in which twenty persons or more were employed. It included provisions for

women employees and working hours for them were limited with a provision for thirty minute's interval for rest. The Factory act was amended from time to time. The First World War and the Russian Revolution of 1917 affected the labour movement. International Labour Organization (ILO) was set up in 1919. It was later amended twice in the year 1923 and 1926. On the basis of recommendations made by the Royal Commission on Labour 1929, the Act was thoroughly revised and redrafted in 1934.

The Bhopal Gas Tragedy in 1984 has made the people aware of the pollution and hazards of factories and therefore necessitated the government to take timely steps facilitating amendments in the act. Factory Act is applied to all factories employing 10 persons or more when it uses power and 20 persons when no power is used. The main provision of the act are safety, guarding of machines, health and cleanliness, drinking water, washing and latrine facilities, lunch rooms and rest rooms, sitting arrangements, first aid and dispensary facilities in factories employing more than 500 workmen, creches where more than 50 women are employed, welfare officer where more than 500 workmen are employed, spittoons, holidays with wages at the rate of one day for every 20 days worked, weekly hours 48 for adults and 27 for younger persons, regulations regarding young persons, rate of payment for overtime work, rest for half an hour after maximum of 5 hours of work, number of hours of work, and weekly holiday.

In 1987, Factories (Amendment) Act, 1987 was passed, a memorial to the victims of Bhopal. It provides better safeguards in the use and handling of hazardous substance in factories. It calls upon the management to provide for greater safety measures (including precautions regarding the use of portable electric light in the factories), appointment of safety officers in factories where 1000 or more workers are employed, or where in any manufacturing process or operation is carried on, which involves any risk of bodily injury, poisoning or disease, or any other hazard to health to the persons employed in the factory.

The Factories Act, 1934, was several times, amended and then the new Act of 1948 was passed. Under the 1934 Act, Provincial Government had power to apply the Act to the establishments where power was used and where more than ten persons were employed. It reduced the hours of work and aimed to improve the working condition in factories; provisions were also made for adequate inspection and enforcement of the Act.

In the year 1948, the Factories Act, 1934 was revised and its scope extended to include welfare, health, cleanliness, overtime payments and similar measures. The Factories Act was to ensure proper, safe and healthy working conditions in the factories, so that the workers may feel interest and while in factories, devote their time and labour in the working process of the factory without being afraid of bodily strain and without fear and danger of accidents. The Act was amended periodically up to 1976.

By this time a very large number of chemical factories had been set up involving the manufacture and handling of hazardous and toxic chemicals. This brought in more problems of safety and health. By the time the Government could assess the possible impact of the problem and foresee the possibilities of major disasters, the world's worst tragedy shocked Bhopal wiping out in hours thousands of innocent, ignorant, lives and rendering many more incapacitated.

The Act of 1911 was amended in 1922 to implement I.L.O. Convention of 1919 on Hours of Work. It was amended twice in 1923 and 1926. The Act was thoroughly

revised and redrafted in 1934 on the lines of recommendations made by the Royal Commission on Labour, which was appointed in 1929.

The Factories Act, 1948 (Act No. 63 of 1948), as amended by the Factories (Amendment) Act, 1987 (Act 20 of 1987), served to assist in formulating national policies in India with respect to occupational safety and health in factories and docks in India. It deals with various problems concerning safety, health, efficiency and well-being of the persons at workplaces. It was replaced by the Occupational Safety, Health and Working Conditions Code, 2020. With the industrial revolution, capital became an important factor of production with the technological advances; the employment in factories rose up tremendously. Two distinct classes emerged namely the capitalist class and the working class. The workers were largely untrained, uneducated, and unorganized and the capitalists of 'hard grind' nature exploited the workers and paid lower wages, working conditions remained unhygienic. There was a total lack of welfare measures.

In 1881, Indian Factories Act was passed which gave protection to the employees, especially to the children. The Factory Commission was appointed in 1890 by the Government of India. On the basis of the recommendations of the Commission an Act was passed in 1891, whereby the definition of Factory was amended to include premises in which fifty persons or more were employed.

The Local Governments were empowered to extend it to premises in which twenty persons or more were employed. There were provisions about women employees and hours of work for them were limited with a provision for thirty minute's interval for rest. The Act was amended from time to time. The Act is administered by the Ministry of Labour and Employment in India through its Directorate General Factory Advice Service & Labour Institutes (DGFASLI) and by the State Governments through their factory inspectorates. DGFASLI advises the Central and State Governments on administration of the Factories Act and coordinating the factory inspection services in the States.

11.3 Definition and Meaning

A 'factory' refers to "any premises, along with its surrounding area, where ten or more workers have been or are currently working and a manufacturing process is being carried out with the aid of power, or where twenty or more workers have been or are currently working and a manufacturing process is being carried out without the aid of power, within the past twelve months."

In general terms 'Factory' is a building or buildings where people use machines to produce goods. But whenever a thing becomes extremely complex and important, general terms are no longer valid. Hence, in 1948, the Factories Act, 1948 came into existence. Factories Act, 1948 does not only define things related to factories but also solves certain confusions.

11.4 Objective of Factories Act, 1948

The main objectives of the Indian Factories Act, 1948 are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories.

1. Working hours:

According to the provision of working hours of adults, no adult worker shall be required or allowed to work in a factory for more than 48 hours in a week. There should be a weekly holiday.

2. Health:

For protecting the health of workers, the Act lays down that every factory shall be kept clean and all necessary precautions shall be taken in this regard. The factories should have proper drainage system, adequate lighting, ventilation, temperature etc.

Adequate arrangements for drinking water should be made. Sufficient latrine and urinals should be provided at convenient places. These should be easily accessible to workers and must be kept cleaned.

3. Safety:

In order to provide safety to the workers, the Act provides that the machinery should be fenced, no young person shall work at any dangerous machine, in confined spaces, there should be provision for manholes of adequate size so that in case of emergency the workers can escape.

4. Welfare:

For the welfare of the workers, the Act provides that in every factory adequate and suitable facilities for washing should be provided and maintained for the use of workers. Facilities for storing and drying clothing, facilities for sitting, first-aid appliances, shelters, rest rooms and lunch rooms, creches, should be there.

5. Penalties:

The provisions of The Factories Act, 1948, or any rules made under the Act, or any order given in writing under the Act is violated, it is treated as an offence. The following penalties can be imposed: -

- (a) Imprisonment for a term which may extend to one year;
- (b) Fine which may extend to one lakh rupees; or
- (c) Both fine and imprisonment.

If a worker misuses an appliance related to welfare, safety and health of workers, or in relation to discharge of his duties, he can be imposed a penalty of Rs. 500/-.

❖ Scope of Factories Act 1948

Following is the scope of the Factories Act 1948:

1. Factories Act 1948 is applicable to production units (power driven) having 10 or more workers. It also covers manufacturing entities (non-power driven) having 20 or more workers on board.
2. Every factory owner is liable to register under this legislation by securing the Factory license granted by the State Labour Department.

3. Factories Act 1948 is a labour-supportive legislation that regulates various aspects such as workplace hygiene, safety, etc. for the well-being of labourers.

11.5 Different Definitions

The Act extends to whole of India. It applies to all factories including factories belonging to Central or any State Government unless otherwise excluded. The benefits of this Act are available to persons who are employed in the factory and be covered within the meaning of the term "worker" as defined in the Act. It would, therefore, be desirable to discuss the meaning and definition of the term "factory" and "worker". Since the term "factory" refers to manufacturing process, it would be helpful to know the meaning of the term "manufacturing process" as defined by the Act.

i) Factory

section 2 no of the factories Act, 1948 defines “factory” to mean: any premises including the precincts thereof- i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on whereon,

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

• Premises and Precinct

The word 'premises' means open land or land with building or building alone. Therefore, salt works where process of converting seawater into salt is carried on in the open comes within 'premises' as defined in the Act. [(ARDESHIR H. BHIWANDIWALA v. State of Bombay, A.I.R. 1962 SC 29.)] Precincts means a space enclosed by wall. [(in re K.V.V. Sharma v. Manager, Gemini Studio, Madras, A.I.R 1953 Mad. 29.)] Any 'premises' to be categorised as factory two conditions must be fulfilled.

i) Ten or more persons are employed in the premises using power or be employed not using power. ii) Twenty or more workers must be employed not using power.

ii) Manufacturing Process

The expression "manufacturing process" has been defined in Section 2(k) to mean any process.

- i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- ii) pumping oil, water, sewage, or any other substance; or
- iii) generating, transforming or transmitting power; or
- iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- v) constructing, reconstructing, refitting, finishing or breaking up ships or vessels; or
- vi) preserving or storing any article in cold storage.

iii) Worker

Section 2 (1) of the Factories Act, 1948 defines a "worker" means:

A person employed, directly or through any agency (including a contractor) with or without knowledge of principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

Broadly speaking, therefore, worker is a person

- i) who is employed;
- ii) who is employed either directly or through any agency;
- iii) who is employed in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with the manufacturing process or the subject of the manufacturing process.

If the aforesaid conditions are satisfied, then it is immaterial whether a person was employed for remuneration or not.

General duties of manufacturers etc. as regards articles and substances for use in factories (for the purpose of this section 7B, article includes plant and machinery). It lays down general duties of designers, manufacturers; importers, suppliers. As regard the articles and substances used in the factory, it would be the duty of the designers to ensure that the articles designed would be safe and without risk to the health of the workers. It would also be this duty to carry out necessary tests and provide adequate information regarding safety and risk to health.

iv) Occupier

Section 2 (n) of the Act defines "occupier" of a factory to mean," The person who has ultimate control over the affairs of the factory: Provided that -

- i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- ii) in the case of a company, any one of the directors shall be deemed to be the occupier;
- iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government.

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire,

- 1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under –
 - (a) Section 6, Section 7, Section 7-A, Section 7-B, Section 11 or Section 12;
 - (b) Section 17, in so far as it relates to the providing and maintenance of sufficient suitable lighting in or around the dock;

- (c) Section 18, Section 19, Section 42, Section 46, Section 47 or Section 49, in relation to the workers employed on such repair or maintenance;
- 2) the owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purpose of any matter provided for by or under Section 13, Section 14, Section 16 or Section 17 (save as otherwise provided in this provided) or Chapter IV (except Section 2'7) or Section 43, Section 44 or Section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or Section 108, Section 109 or Section 110, in relation to
- (a) the workers employed directly by him, or by or through any agency; and
 - (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other Officer in charge or person;

General Duties of the Occupier Section 7A has been inserted by the Factories (Amendment) Act and the new section lays down the general duties of an occupier as follows.

2. Plant maintenance that is safe and without risk to health of workers.
3. Safeguard health and safety with the use, handling, storage and transport of articles and substance.
4. Provide information, instruction, training and supervision to ensure health and safety of all workers.
5. Monitoring of work environment.

v) Other Definitions

- Adult means a person who has completed his 18th year of age. [Section 2 (a)]
- Adolescent means a person who has completed his 15th year of age but has not completed his 18th year. [Section 2 (b)]
- Calendar year means the period of twelve months beginning with the first day of January in any year. [Section 2 (bb)]
- Child means a person, who has not completed his 15th year of age. [Section (c)]
- Young person means a person, who is either a child or an adolescent. [Section 2 (d)]
- Day means period of twenty-four hours beginning at mid-night [Section 2 (e)]
- Week means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [Section 2 (f)]
- Power means electrical energy, or any other form of energy, which is mechanically transmitted and is not generated by human or animal agency. [Section 2 (g)]
- Prime Mover means any engine, motor or other appliance, which generates or otherwise provides power. [Section 2 (h)]
- Transmission Machinery means any shaft, drum, pulley, system of pulleys, coupling clutch, driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance, [Section 2 (i)]
- Machinery includes prime movers, transmission machinery and all other appliances, whereby power is generated, transformed, transmitted or applied. [Section 2 (j)]

- Managing Agent has the meaning assigned to it in the Indian Companies Act, 1913 (VII of 1913). [Section 2 (o)]
- Prescribed means prescribed by rules made by the State Government under this Act. [Section 2 (p)]
- Relay and Shift means where work of the same kind is carried out by two or more sets of workers working during different periods of the day, each of such sets is called a 'relay' and each of such period is called 'shift'. [Section 2 (r)].

11.6 Provisions

- The Factories Act, 1948, is a law in India that ensures factories are safe and workers are treated fairly. It has rules about work hours, safety, and worker conditions. This law aims to protect workers and make sure factories operate responsibly.
- The Factories Act of 1948 in India has served as an important shield for worker's welfare, evolving over more than a century to regulate employment and working conditions in factories. It started as a response to the exploitation of the workforce during the early stages of industrialization.
- The Act aimed to secure employees from hazardous conditions, emphasizing health, safety, and overall well-being. Looking back in history, it has undergone amendments, with the pivotal Factory (Amendment) Act of 1948 broadening its scope to address current labour conditions.

❖ Some key Provisions of Factories Act, 1948

1) Protection for Children

The Act elevated the minimum age for child labour from 12 to 14 and reduced their daily working hours from 5 to 4.5, acknowledging the need for a balanced and healthy work-life for young individuals.

2) Working hours for women and children

A protective measure embedded in the act prohibits women and children from working in factories between 7 p.m. and 6 a.m., emphasizing the significance of a safe and secure working environment during specific hours. Limits work hours to 48 hours per week and overtime to nine hours per day. Factory Schedule Rules exempt certain regulations during public holidays or emergencies.

3) Factory registration and licensing

The legislation mandates factory registration and licensing, with state governments ensuring compliance and periodic renewal, reinforcing accountability and adherence to regulatory standards.

4) Regulation of work hours and minimum wages

The Factories Act, 1948, governs work hours and mandates the payment of minimum wages.

Employers must pay a fixed minimum wage rate, and non-compliance of the same would result in legal consequences.

5) Worker welfare requirements

Employers are obligated to provide a weekly holiday to workers. Proper sanitary facilities and a clean potable water supply are mandatory in the workplace, with strict consequences for non-compliance.

6) Health and safety measures

Employers must establish first aid facilities, maintain records and arrange transportation for injured workers. Duties for employers with in-house medical facilities are outlined, along with the procedures for addressing complaints to the government's labour department.

7) Labour welfare

State governments or local authorities establish welfare funds in factories for specific or general purposes. Objectives of the Factories Act, 1948, include protecting worker health and safety, ensuring global best practices, providing fair livelihoods and reducing social or industrial tensions.

❖ Special Provisions for women under the Factories Act.

1. The Factories Act 1948 Act implicitly prohibits the employment of women on or near moving machinery. It states that if it becomes essential to examine any portion of machinery in a plant, such examination should be performed only by a professionally qualified adult male worker.
2. It also states that no woman shall be permitted to clean, lubricate, or adjust any part of a prime mover or transmission machinery while the prime mover or transmission machinery is in motion.
3. The Factories Act of 1948 Act requires that every factory with more than 30 women employees supply and maintain sufficient room/s, feeding breaks, and free milk or refreshment or both for children under the age of six.
4. The Factories Act 1948 provides for maternity leave with pay for expectant mothers for a maximum of 12 weeks

11.7 Approval, licensing and Registration of factories

Every factory shall on application for registration, furnish such information in such form and in such manner as shall be prescribed by the regulator. The regulator shall create such infrastructure, services and work flow system to facilitate electronic submission and processing of request for registration. It shall be as far as practicable be fully automated and web enabled.

Provisional registration shall be on real time on submission of self- certified declaration on the notified standards of safety, health, and occupational disease, hygiene and other conveniences of the work place.

The request shall be deemed approved on the expiry of 15 days of receipt of prescribed Certificates from the licensed safety auditor or licensed safety officer, as applicable, and NOCs from other statutory Authorities.

Provided a factory within the meaning of small Factories shall be deemed approved, under the Factories Act, on application, if it complies with the prescribed regulations. Provided every factory deposit such amount of fees as are required for servicing the application and towards the cost of public service. The money so collected

shall be apportioned between the regulator and chief inspector of factories in 50:50 and distribution among states on the basis of fees collected in the previous financial year. Section 6 and 7 of the Factories Act, 1948 delves into the provisional aspect concerning the approval, licensing and registration of the factories.

Sec.6 provides that the State Government may make rules requiring for the purposes of the Act previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction of any factory, the submission of plans and specifications and registration and licensing of factories as has been rightly pointed out in the case of Indian Railway Construction Co. vs Lal Mohd. and ors.

❖ APPLICATION FOR REGISTRATION:

To initiate the registration process, the occupier or owner of the factory needs to obtain the prescribed application form which are usually available on the official website of the State's Labour Department or can be obtained in person from the local Factory Inspectorate. Following this the form contents is required to be duly filled properly. The application form typically includes sections where you need to provide various details about the factory and its operations. Following is a simple brief regarding the required information:

- I. Name and Address of the Factory: This includes the full legal name of the factory and its complete address, including details like street address, city or district, and pin code.
- II. Name and Address of the Occupier: The occupier refers to the person or entity responsible for the overall management and operation of the factory. Their complete name and contact address should be enclosed with no ambiguity to any of the details.
- III. Nature of Manufacturing Process: The type of manufacturing or industrial process that is to be carried out in the factory is required to be described well. This would help the authorities to understand the nature of the work and the potential risks involved.
- IV. Number of Workers Employed: Specification of the correct number total workers currently employed in the factory is important. Further, it should also be ensured that this count complies with the threshold for registration based on the use of power.
- V. Details of Machinery and Equipment: All the machinery and equipment that are to be used in the manufacturing process are also required to be properly enclosed. The information such as the number, type, and capacity of machines are required to be included.
- VI. Factory Layout and Plans: Some states may require one to submit a layout plan of the factory, showing the arrangement of various sections, machinery, and safety measures and hence it should be prepared well to submit. This plan should be prepared by a qualified engineer or architect in compliance with concerned laws and regulations.
- VII. Ownership and Legal Status: Mentioning of the fact that whether the factory is owned by an individual, partnership, company, or any other legal entity is crucial.

Hence, complete details relating to the legal status of the factory should be provided.

The application form is required to be accompanied with certain necessary documents, which may include:

- Proof of ownership or occupancy of the factory premises.
- Any approvals or permissions required by local authorities.
- Documents related to the safety measures and facilities provided for workers, as required by the Factories Act.

Further, the application form must as well be accompanied along with registration fee as specified by the state authorities. Once the application form is completed and all required documents are attached, the application is submitted. This can usually be done in person or by mail, as per the state's guideline.

After submission, the Factory Inspector may schedule an inspection to verify compliance with safety and health standards. If the inspection is successful and all requirements are met, then a factory license is issued, allowing the factory to operate within the specified conditions.

- **Validity Of Factory License**

The validity of the issued factory license may be in effect from 1 year to utmost of 5 years depending on the enacted rule regarding it by the respective state. Hence, the validity is subject to variation depending on the state in which the factory is set up. However, renewal of license before the expiration of the validity of license is essential for the continued functioning of the factory or manufacturing operations.

- **Notice To Chief Inspector**

It is to be noted that a notice in writing to the Chief Inspector at least fifteen days before one intends to occupy or utilize any space as a factory needs to be furnished. Within a period of thirty days, the occupant of any establishment that becomes subject to the Act for the very first time must submit a notice in writing to the chief inspector and such notice must include the information stated in Sec.7(1).

- **Empolying Of New Manager**

The Sec.7 as well delineates that within seven days of the newly recruited manager assuming the control of the factory, the factory's administration is required to appropriately inform the principal auditor about such recruitment. Further, when no person has been assigned as the manager or when the assigned manager fails to oversee the factory then any individual functioning as the manager, or in the event of no such individual functioning as the manager, the one who occupies the functioning of factory, will be considered to act as the manager of factory for the reason of this legislation.

In the case of **Mohd. Ismail Khizer Hussain & Co. vs The State Of Madras And Anr**[2], it has been held that 'where a factory had been in existence and no previous permission for the site or the construction of the factory was required, this section does not enable the appropriate authority to demand that the owner of the factory should

obtain the approval of the appropriate authority for the site of the plans of the factory buildings.’

- **Renewal Of License**

The renewal of a factory license under the Factories Act, 1948 is a necessary process to ensure continued compliance with the law. It’s essential for factory owners to be proactive in renewing their factory license to ensure compliance with the Factories Act and to avoid any legal complications. The renewal application should be submitted before the current license expires to avoid any disruptions in factory operations. However, the specific requirements and processes for renewal may vary from state to state.

To renew obtain the prescribed renewal application form is required to be obtained. The renewal application form usually requires updating information about the factory’s status and operations. While the specific requirements may vary by state, here are some common elements you might need to provide:

- Current status of the factory, including any changes in ownership or management.
- Updated details on the manufacturing process and machinery used.
- Current number of workers employed.
- Any modifications or improvements made to the factory’s layout, safety measures, or facilities.
- A declaration of continued compliance with the Factories Act and relevant state regulations.

Further, the applicant may require the following necessary documents:

- Proof of payment of the renewal fee, which varies by state.
- Updated factory layout plans, if any changes have been made.
- Any documents or certificates related to safety measures and facilities.
- Photo-copy of the Original Factory License.

Upon receipt of the application, the relevant officer reviews it for accuracy. Following a thorough examination of the application, if the documents are deemed accurate, it proceeds to the approval stage under the jurisdiction of the competent authority. In cases where corrections are necessary, the applicant is promptly notified and requested to resubmit the revised application within a specified timeframe. Upon receiving the corrected documents from the applicant, the application is filed for further evaluation by the Competent Authority. Following approval, the renewed license, which bears the signature of the Competent Authority, is dispatched to the applicant via postal mail, accompanied by a formal covering letter.

Failure to renew the factory license on time can result in penalties, including fines and legal action. It can also lead to the suspension of factory operations until the renewal is completed.

- **Responsibilities Of The Owner Of Factory**

Sec.7A of the 1948 Act delineates the overarching responsibilities of the occupier in ensuring the well-being of workers in the factory. These duties encompass various aspects, which include:

- Maintaining safe plant and work systems.
- Ensuring safety in the handling, storage, and transport of materials.
- Providing necessary information, training, and supervision for worker safety.
- Keeping the workplace safe and accessible.
- Creating a safe and conducive work environment for workers' well-being.

In most cases, the owner must formulate and periodically update a written statement outlining their policies and procedures for worker health and safety. This statement should be communicated to all workers as prescribed by law, unless stated otherwise.

11.8 Advantages of Factories Act, 1948

The main purpose of the Indian Factories Act 1948 is to regulate working conditions in factories, regulate health, annual leave, safety, welfare, and to establish special provisions related to young people, women, and children working in factories.

- 1) **Safety and Health Measures:** This includes proper ventilation, lighting, cleanliness and the prevention of hazardous processes to ensure a safe working environment for the employees.
- 2) **Welfare Facilities:** The Act mandates the provision of welfare facilities for workers, such as canteens, restrooms, and first aid facilities.
- 3) **Working Hours and Overtime:** The Act stipulates the maximum number of working hours per week, which helps prevent the exploitation of labour.
- 4) **Child Labor Prohibition:** The Factories Act prohibits the employment of children below a certain age in factories. This ensures that young individuals are not subjected to hazardous working conditions and are protected from exploitation.
- 5) **Annual Leave with Wages:** The Act mandates the provision of annual leave with wages, allowing workers to take a break from work and receive compensation during their absence. This promotes work-life balance and employee well-being.

❖ **Advantages in case of large factories:**

- i. Childcare or, preschools are to be implemented if 30 or more women workers are engaged
- ii. Safety standards
- iii. Working hours
- iv. Pay wages
- v. Overtime wages are 2X times the rate of wages payable
- vi. Overtime should not exceed 60 hours in a week and total overtime hours in a section should not exceed 50. Records of overtime must be reported.

11.9 Disadvantages of Factories Act, 1948

1. **Exploitation and Hazardous Conditions:** Ignoring the Factories Act opens the door to potential exploitation of workers and exposes them to hazardous conditions, jeopardizing their health and safety.
2. **Legal Consequences:** Non-compliance results in penalties, emphasizing the stringent measures in place to maintain compliance. Legal consequences can result in financial burdens and damage to the reputation of the industry.
3. **Lack of Worker Welfare:** Ignoring the act means neglecting worker welfare requirements, including weekly holidays, proper sanitary facilities and clean water supply. This can lead to dissatisfaction among the workforce, affecting productivity.
4. **Compromised Health and Safety:** The Act mandates health and safety measures, such as first aid facilities and transportation for injured workers.
5. **Administrative Challenges:** The administrative measures outlined in the Act, including the constitution of a Child Labour Committee and the role of Labor Officers are crucial for maintaining a fair and safe work environment.

11.10 Annual Leave with wages and penalties

Factories Act states about the annual leave with wages.

Section 79. Annual leave with wages

(1) Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of:

- (i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;
- (ii) If a child, one day for every fifteen days of work performed by him during the previous calendar year.

Eligibility:

Cut-off date: Worked for 240 days or more in a factory during the calendar year.

Benefits of leave with Wages: During subsequent calendar year.

Calculation:

From previous calendar year:

Adult: one day for every 20 days work performed.

Child: One day for every 15 days work performed.

Leave Applicable: Exclusive of all holidays.

Concept of Penalties in Factories Act

Rules are an important part of any institution. They help in maintaining discipline and uniformity in work. But nobody can deny the fact that the seriousness of the rules can only be maintained if it's breaking leads to some sort of punishments.

Under the law, such punishments for breaking a law, rule or contract are called 'Penalties'. Penalties vary with the level of damage to the organization, repetition of mistakes, etc. Factories to define certain rules and regulations in order to maintain discipline in the factory. Similarly, the factories Act has certain rules in the form of provisions, breaking of which leads to penalties.

❖ Penalties (Under the Factories Act, 1948)

Section 92: General penalty for offenses

This section states that in case there is any kind of contravention with the laws of the Act, then the occupier and the manager of the factory will be equally responsible for the breaking of the law.

They will be punishable for with imprisonment up to 2 years and fine up to Rs.2 lakhs. In case, they continue the breach, they will be punishable with Rs. 10 thousand each day of the continuing breach.

Section 93: Liability of owner of premises under special circumstances

This section states that in case a factory is on lease to various occupiers, the owner of the factory is still responsible for providing and maintaining certain services like drainage, approach roads, water supply, electricity, lighting, sanitation, etc.

Section 94: Enhanced penalty after a previous conviction

This section states:

- (a) Firstly, if there is any person in a factory who does any general offense and repeats it, then he will be punishable with imprisonment up to 3 years or fine of at least Rs. 10 thousand (up to Rs. 2 lakhs) or both.
- (b) Secondly, in order to find the applicability of this provision, the managers should only count the offenses within the last 2 years of the latest offense.

Section 95: Penalty for obstructing an inspector

This section states that whoever obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an Inspector, then that person will be punishable with imprisonment up to 6 months or fine up to Rs. 10 thousand or both.

This also applies to the cases where a person prevents any worker in a factory from appearing before or being examined by an Inspector.

Section 96: Penalty for wrongfully disclosing results of analysis under section 91

This section states that any person who publishes or discloses to any other person the results of an analysis made by taking samples shall be punishable with imprisonment for a term which may extend to six months. Moreover, he will be punishable with a fine of at least Rs. 10 thousand.

Section 97: Worker's offenses

This section states that if any worker working in the factory contravenes with the rules or provisions of the Act, creating liabilities for other workers, will be punishable with a fine of at least Rs.500.

Section 98: False Certificate of Fitness

Fitness Certificate states the level of fitness of an individual for a particular job or work. In factories, this certificate plays an important role. This section punishes those workers who try to present a false 'Certificate of Fitness'.

If anyone tries to do so, he will be punishable with imprisonment of 2 months. Moreover, he may be punishable with a fine of at least Rs. 10 thousand. In certain cases, he is punished with fine and imprisonment.

Section 99: Double Employment of Child- This section states:

- (a) Firstly, if any child works in a factory and works with another factory on the same day, then his parents will be punishable. They will be punished with a fine of Rs.1000.
- (b) Secondly, this case also applies to the person who gets benefit from such child's wages.

Section 101: Exemption of occupier from liability in certain cases

This section provides an opportunity to the managers and the occupiers of the factories who have done an offense to prove themselves non-guilty. So, in order to prove themselves right, they have to give notice to the inspector within 3 days stating their interest of proving themselves non-guilty. Moreover, they have to prove 2 things by themselves:

- (a) Firstly, he has complied with all the provisions of the act.
- (b) Secondly, someone else is the real culprit and he didn't know about the offense being done by the real offender.

Section 102: Power of court to make orders

This section states that powers of the courts in case any manager does any offense under the Act. The court along with punishing the offenders can take steps in remedying the situation.

Section 103: Presumption as to employment

This section states that if any person is near any machinery in the factory during the working hours, then he will be considered as a worker of the factory. This provision does not apply in the case when a person is near any machinery during the intervals.

❖ Summary

The main objectives of the Indian Factories Act, 1948 are to regulate the working conditions in factories, to regulate health, safety welfare, and annual leave and enact special provision in respect of young persons, women and children who work in the factories. It is also intended to stop haphazard growth of industries. The Factories Act is meant to provide protection to the workers from being exploited by the greedy industrial

and business establishments and it also provides for the improvement of working conditions within the factory premises. Hence, a beneficial construction should be given and the provisions of the Act should be so construed or interpreted so as to achieve its object, i.e., the welfare of the workers and their protection from exploitation and unhygienic working conditions in the factory premises. The State Governments carry out the administration of the Act through Inspecting Staff, Certifying Surgeons, Welfare Officers and Safety Officers. There are many provisions stipulated in the Act which have to be taken by the factories for health, safety, welfare provisions of the workers. Apart from these some provisions are also taken relating to working hours of child, young persons and female workers. Many penalty provisions are also entered in the Act which can be imposed on the owner and the occupier of the factories if any provisions contravene this Act or any rules made there under.

❖ Exercise

Q-1 Multiple Choice Questions:

1) When did The Factories Act, come into force?

- A) 01st April 1966
- B) 01st March 1967
- C) 01st May 1960
- D) 01st April 1949

Answer - (D) 01st April 1949

2) Which section of the Factories Act, 1948 deals with power to exempt during public emergency?

- A. Section 12 of the Factories act,1948
- B. Section 5 of the Factories act,1948
- C. Section 14 of the Factories act,1948
- D. Section 20 of the Factories act,1948

Answer- (B) Section 5 of the Factories act,1948

3) Which section of the Factories act,1948 deals with Ventilation and temperature?

- A. Section 13 of the Factories act,1948
- B. Section 14 of the Factories act,1948
- C. Section 31 of the Factories act,1948
- D. Section 18 of the Factories act,1948

Answer – (A) Section 13 of the Factories act,1948

4) Section 28 of the Factories act,1948 deals with_____

- A. Investment allowance.
- B. Hoists and lifts.
- C. Precautions against dangerous fumes, gases, etc
- D. Safety of buildings and machinery

Answer- (B) Hoists and lifts.

5) Facilities for storing and drying clothing, is provided in section_____ of the Factories act, 1948

- A. Section 34 of the Factories act,1948
- B. Section 22 of the Factories act,1948
- C. Section 43 of the Factories act,1948
- D. Section 28 of the Factories act,1948

Ans- C. Section 43 of the Factories act,1948

6) Section 29 of the Factories act,1948 provides _

- A. Lifting machines, chains, ropes and lifting tackles
- B. Casing of new machinery
- C. Excessive weights.
- D. Precautions in case of fire.

Ans-A. Lifting machines, chains, ropes and lifting tackles

(7) Which section of the Factories act,1948 deals with Restriction on double employment.?

- A. Section 72 of the Factories act,1948
- B. Section 49 of the Factories act,1948
- C. Section 60 of the Factories act,1948
- D. Section 59 of the Factories act,1948

Answer – C. Section 60 of the Factories act,1948

(8) Section 47 of the Factories act,1948 deals with_____

- A. Shelters, rest rooms and lunch rooms.
- B. Extra wages for overtime
- C. . Register of adult workers.
- D. Further restrictions on employment of women.

Ans- A. Shelters, rest rooms and lunch rooms.

(9) Which section of the Factories act,1948 deals with Power to require medical examination.

- A. Section 72 of the Factories act,1948
- B. Section 75 of the Factories act,1948
- C. Section 73 of the Factories act,1948
- D. Section 74 of the Factories act,1948

Answer B. Section 75 of the Factories act,1948

10) Section 10 of the Factories act,1948 deals with_____

- A. Work on or near machinery in motion.
- B. Artificial humidification.
- C. Certifying surgeons.
- D. Lifting machines, chains, ropes and lifting tackles

Answer- C. Certifying surgeons.

11) Which Section of the Factories Act 1948 defines the term "occupier" of a factory as a person who has ultimate control over the affairs of the factory

- A. section 2(n)
- B. section 2(m)
- C. section 2(h)
- D. section 2(k)

Answer- A. section 2(n)

12) Which Section of the Factories Act 1948 deals with the conditions that exempt the occupier or manager from liability in certain cases?

- A. section 71
- B. section 101
- C. section 110
- D. section 95

Answer - B. section 101

13) Which Section of the Factories Act 1948 empower State Government to declare different departments to be separate factories or two or more factories to be a single factory?

- A. section 4
- B. section 3
- C. section 6
- D. section 5

Answer- A. section 4

14) As per Factories Act 1948, who shall be an Inspector for his district

- A. tahasildar
- B. sub divisional magistrate
- C. labour officer
- D. district magistrate

Answer- D. District magistrate

Q-2 Answer the following Questions in detail:

- 1) Write a detailed note on the history of Factories Act, 1948.
- 2) Define and explain the meaning of Factories Act, 1948.
- 3) State and Explain the Objectives of Factories Act, 1948.
- 4) Write a detailed note on the scope of Factories Act, 1948 .
- 5) What are the different Provisions under Factories Act, 1948? Discuss them in detail.
- 6) Discuss in detail Approval, Licensing and Registration of factories.

- 7) Explain Annual Leave with wages in short.
- 8) Write the Advantages and Disadvantages of Factories Act, 1948.
- 9) Write a note on Penalties (Under the Factories Act, 1948).

- 12.1 Introduction**
- 12.2 Prohibition of Employment of Children in certain occupations and processes**
- 12.3 Regulation of Conditions of Work of Children Weekly**
- 12.4 Notice to Inspector under the Child Labour (Prohibition and Regulation) Act, 1986**
- 12.5 Maintenance of Registers under the Child Labour (Prohibition and Regulation) Act, 1986**
- 12.6 Display of Notice under the Child Labour (Prohibition and Regulation) Act, 1986**
- 12.7 Penalties**

12.1 Introduction

The term "child" is considered equivalent to the universe for parents. Children are the source through which humanity exists. They are the most prone category to exploitation and abuse (both physical and mental). A child is deprived of the basic needs and facilities of education and health, which are significant for the growth and development of a child. Child labour has been in practice since ancient times and was considered normal. The Indian Constitution lays emphasis on the fact that no child below the age of 14 is allowed to work in any mine or factory as per Article 39. A child shouldn't be engaged in any sort of dangerous employment. But still, for many years, child labour has remained the biggest problem in the path of social development. In present times, child labour is the most crucial and detestable form of violation of a child's rights. The exploitation of the rights of children is not a recent issue but has now gained momentum with the growth of human rights. Many international organisations like the International Labour Organisation (ILO), UNICEF, etc. are working dedicatedly to protect the interests of children and facilitate them with basic amenities like education, Article 21A deals with compulsory education for children. The Government of India had promulgated the legislation of The Child Labour (Prohibition and Regulation) Act, 1986 to regulate provisions related to child labour practices in India. The Government made substantial changes in the provisions of the Act in the year 2016 and from there on a complete prohibition has been imposed on the employment of children who are below the age of 14 years. Many provisions have been made under the Act regarding the employment for the children who are above the age of 14 years.

12.2 Prohibition of Employment of Children in certain occupations and processes

Child Labour (Prohibition and Regulation) Act, 1985 aims to eradicate any kind of child abuse in the form of employment and prohibit the engagement of children in any kind of hazardous employment, who have not completed 14 years of age. The Act prohibits the employment of children in certain occupations and processes. The occupations which are prohibited are mentioned in the Act under the Schedule in Part

12.2.1 The prohibited occupations for children under 14 years are:

- Occupations that are related to the transport of passengers, goods or mails by railway;
- Cinder picking, clearing of an ash pit or building operation in the railway premises;
- Working in a catering establishment which is situated at a railway station and if it involves moving from one platform to another or from one train to another or going into or out of a moving train;
- The occupation which involves work related to the construction of a railway station or any other work where such work is done in close proximity to or between the railway lines;
- Any occupation within the limits of any port;
- Work which involves the selling of crackers and fireworks in shops having a temporary license;

12.2.2 Prohibited Process for children under age of 14 years are mention under the Schedule in Part-B. They are as follows: -

- The process involving the making of Bidi;
- The process which involves carpet-weaving;
- Manufacturing cement or bagging of cement;
- The processes such as Cloth printing, dyeing, and weaving;
- The processes that involve the manufacturing of matches, explosives, and fir
- Mica-cutting and splitting;
- Any manufacturing process such as shellac manufacture, soap manufacture,
- The process of wool-cleaning;
- Work that is related to the building and construction industry;
- Manufacture of slate pencils;
- Manufacture of products from agate;
- Manufacturing processes in which toxic metals and substances such as lead manganese, chromium, cadmium, benzene, pesticides and asbestos are used;
- Cashew and Cashew Nut descaling and processing;
- Soldering processes in electronic industries.

The Act in total prohibits approximately 13 occupations and 51 processes for the employment of children. Article 24 of the Indian Constitution includes the provision for the prohibition of employment of children in factories. The Act also lays down certain guidelines for employers, which is to be followed in case the employee is a child of age less than 14 years. According to the Act, the employer cannot make a child employee work between 7 p.m. and 8 a.m. and no overtime is allowed for them. It is not allowed for an employer to make a child work for more than 3 hours without an interval of at least one hour and in total, an employer should not make a child work for more than six hours a day. Adequate provisions must be made by the employer for the health and safety of the child employees. Basic facilities such as drinking water, toilets, disposal of waste, ventilation must be provided by the employer. The employer needs to notify the Factory Inspector if in case he employs a child for employment. Production of age certificate of the child employee is also needed according to the rules of the Act.

12.3 Regulation of Conditions of Work of Children Weekly

There are certain regulations provided under the Child Labour (Prohibition and Regulation) Act, 1986 which the employer needs to follow while employing a child in the establishment. Proper work conditions are to be provided by the employer.

12.3.1 Application of Part

The provisions of this Part of the Act shall apply to an establishment or any class of establishments in which the occupations or processes which are referred to in Section 3 are not being carried on.

12.3.2 Hours and period of work

As per the Act, no child employee shall be allowed to work in any establishment in excess of the number of hours that have been decided on and prescribed for such an establishment or class of establishment. The number of hours shall be fixed by the establishment and the child employee must not be allowed to work for more than three hours without a break of one hour. The total number of hours of work for a child employee shall not exceed six hours. Six hours shall also include one hour of interval. According to the Act, the employer cannot make a child employee work between 7 p.m. and 8 a.m. and no employer must permit the child employee to work overtime. If a child has already worked in an establishment in a day, then such a child must not be permitted to work in another establishment on the same day.

12.3.3 Weekly Holidays

Every child who is employed in an establishment shall mandatorily be allowed a holiday each week. The holiday must be for a whole day. The day of the week must be decided on which it would be a holiday for the employees of the establishment and the notice regarding the same must be exhibited in a conspicuous place of the establishment. The notice should be of a permanent nature and should not be altered more than once in three months.

12.3.4 Notice to Inspector

Notice is needed to be sent to the Inspector within whose local limits the establishment is situated by the employer of such establishment if he employs a child employee or by the occupier of an establishment in which a child is employed or is permitted to work. The notice to be sent must be in writing. It must contain the following particulars:

- the name of the establishment and place in which it is situated,
- name of the person who manages the establishment,
- the postal address of the establishment,
- the details such as the nature of occupation or process which is carried on in the establishment.

Every employer who permits a child to work in his establishment is needed to send a notice within 30 days to the Inspector within whose local limits the establishment is situated. Where a process is carried on by the occupier with the aid of Government or it receives assistance or recognition from Government for it then such establishment shall not be subject to the provisions of Section 7, 8, 9 of the Act.

12.3.5 Dispute as to age

In case if a question arises between an Inspector and an occupier on the age of the child who was permitted to work by the occupier in an establishment then the Inspector can prescribe a medical authority to decide on the age of such a child in case of absence of an age certificate.

12.3.6 Maintenance of register

The occupier shall maintain a register which shall include information with respect to children who are employed or permitted to work in his establishment. The register which is made available by the occupier for inspection at all times shall contain:

- The name and date of birth of the children who are employed by the occupier,
- Number of hours and period of work for which the child employee is made to work

12.3.7 Display of notice containing abstract of Sections 3 and 14

The notice containing abstract of Sections 3 and 14 of the Act shall be displayed by every occupier of the establishment in a conspicuous and accessible place of the establishment and in case the employer is a railway administration or a port authority then the notice must be displayed in a conspicuous and accessible place at every station or within the limits of a port as the case may be. The notice must be written in a local language and in the English language.

12.3.8 Health and Safety

The Government may by giving a notification to the Official Gazette make rules for the health and safety of the children who are employed or permitted to work in an establishment or any class of establishments if the Government feels necessary to do so. According to the Act the rules which must be followed by the establishment for the purpose of safety and cleanliness are as follows

- The cleanliness of the place of work must be taken care of and it should be free from any kind of nuisance;
- There must be a proper place for disposal of wastes and effluents;
- Proper provisions for ventilation should be made and an adequate level of temperature
- should be maintained in the place of work;
- Provisions should be made to reduce dust and fumes;
- Artificial humidification shall be made;
- Lighting must be proper in the place of work;
- Drinking water must be provided;
- Toilets must be made in the place of work for the employees;
- Spittoons should be provided order to keep the workplace clean;
- The machines which are in the workplace should be fenced properly;
- Children must not be allowed to work near machinery which is in motion;
- Children must not be permitted to work on dangerous machines;
- Children must be instructed, trained and supervised in relation to the employment of
- children on dangerous machines;
- Device for cutting off power should be used;

- Self-acting machines should be used in the workplace;
- Easing of new machinery;
- Proper floors should be made and proper means to access through stairs shall be made;
- Pits, sumps, openings in floor shall be made;
- Child employees shall not be permitted to lift excessive weights while working;
- Protection for eyes must be provided;
- Children must not be exposed to explosives or inflammable dust, gas, etc;
- In case fire is used in work, proper precautions must be taken;
- Proper maintenance of buildings and machinery shall be taken.

12.4 Notice to Inspector under the Child Labour (Prohibition and Regulation) Act, 1986

The Child Labour (Prohibition and Regulation) Act, 1986, represents a critical legal framework in India aimed at combating child labour and protecting children's rights. With a deep commitment to eradicating child labour, the Act prohibits the employment of children in hazardous industries and regulates the working conditions of children in non-hazardous occupations. The effective implementation of this Act largely depends on the role of inspectors, who are tasked with enforcing its provisions and ensuring compliance.

This document delves into the process of issuing a notice to an inspector under the Child Labour Act, detailing the objectives of the Act, the responsibilities of inspectors, the procedure for issuing notices, and the implications of such notices within the enforcement framework.

• Objectives of the Child Labour (Prohibition and Regulation) Act, 1986

The Child Labour Act is designed to fulfil several key objectives:

1. **Prohibition of Child Labour:** The Act prohibits the employment of children under the age of 14 in hazardous occupations and processes. This includes industries that may expose children to physical, mental, or moral harm.
2. **Regulation of Working Conditions:** For children who are permitted to work in non-hazardous sectors, the Act sets forth regulations regarding working hours, rest periods, holidays, and overall working conditions to ensure their health and well-being.
3. **Promotion of Education:** The Act emphasizes the importance of education and seeks to prevent child labour from interfering with a child's right to education. It mandates that children engaged in work should not be deprived of their educational opportunities.
4. **Awareness and Compliance:** Another critical objective is to create awareness among employers, parents, and society about the implications of child labour and to foster compliance with the law.

12.4.1 Role of Inspectors

Inspectors play an essential role in the enforcement of the Child Labour Act. Their responsibilities include:

- **Conducting Inspections:** Inspectors are empowered to inspect workplaces to assess compliance with the Act's provisions, focusing particularly on identifying instances of child labour.
- **Investigating Complaints:** They investigate complaints lodged by individuals, NGOs, or community members regarding the illegal employment of children.
- **Educating Employers and Workers:** Inspectors also have a duty to inform and educate employers and workers about the provisions of the Act and the rights of children.
- **Issuing Notices and Recommendations:** When violations are identified, inspectors can issue notices to employers, detailing the nature of the violation and the required corrective measures.
- **Collaboration with Authorities:** Inspectors work in collaboration with local authorities, law enforcement agencies, and social organizations to facilitate the enforcement of the Act.

12.4.2 Issuance of Notice to Inspectors

The process of issuing a notice to an inspector under the Child Labour Act can be initiated through various mechanisms. This section elaborates on the procedures involved in issuing a notice, the contents of such notices, and the subsequent actions expected from inspectors.

1. Initiation of Notice

Notices to inspectors may be initiated under several circumstances, including:

- **Government Directives:** State and central government authorities may issue directives to inspectors based on observations or reports of child labour in specific sectors or regions.
- **Public Complaints:** Community members, NGOs, or activists can file complaints about the employment of children. These complaints can trigger the issuance of a notice for investigation.
- **Routine Inspections:** During regular inspections, inspectors themselves may observe violations that necessitate issuing a notice to enforce compliance.

2. Contents of the Notice

A notice issued to an inspector must be comprehensive and clear. Typical contents of such a notice include:

- **Details of Allegations:** A thorough description of the alleged violations, including the specific nature of child labour observed or reported.
- **Location and Time of Violation:** Precise details about where and when the alleged violations occurred, which assists in the inspector's investigation.
- **Legal Provisions Violated:** References to the specific sections of the Child Labour Act that have been contravened, providing a legal basis for the investigation.

- **Required Actions:** Explicit instructions regarding the actions the inspector must undertake, such as conducting investigations, collecting evidence, and interviewing relevant individuals.
- **Deadline for Action:** A specified timeframe within which the inspector is expected to take action or provide a report back to the issuing authority.

3. Procedure for Issuing the Notice

The procedure for issuing a notice to an inspector involves several key steps:

1. **Drafting the Notice:** The notice is prepared by the concerned authority, ensuring that all relevant details are included. This draft must be clear, concise, and legally sound to facilitate the inspector's understanding and subsequent action.
2. **Formal Delivery:** The notice is formally delivered to the inspector, often requiring acknowledgment of receipt. This can be done through official communication channels, ensuring a documented trail of the issuance.
3. **Inspector's Response:** Upon receipt of the notice, the inspector is required to take prompt action. The expected steps include:
 - **Investigation:** The inspector will initiate an investigation, which involves visiting the workplace, interviewing workers and employers, and gathering evidence of child labour practices.
 - **Documentation:** All findings during the investigation must be thoroughly documented, including photographs, written statements, and other forms of evidence that substantiate the claims made in the notice.
 - **Assessment of Conditions:** Inspectors will assess the working conditions for children, looking into factors such as working hours, safety measures, and any potential hazards present in the workplace.
4. **Reporting Findings:** After completing the investigation, the inspector is expected to prepare a detailed report summarizing the findings. This report typically includes:
 - A summary of the investigation process.
 - Evidence collected during the investigation.
 - Identification of any legal violations observed.
 - Recommendations for corrective action.
5. **Follow-Up Actions:** The inspector may need to conduct follow-up inspections to ensure that the recommended actions have been implemented and that the workplace complies with the Child Labour Act.

12.4.3 Legal Implications

The issuance of notices and subsequent actions taken by inspectors carry significant legal implications. Understanding these implications is crucial for both employers and inspectors involved in the enforcement of the Act.

1. Penalties for Employers

Employers who violate the provisions of the Child Labour Act can face severe penalties, which may include:

- **Fines:** Monetary penalties are commonly imposed for each instance of child labour identified during inspections. The amount can vary depending on the severity and frequency of violations.
- **Imprisonment:** In more serious cases, especially where there is evidence of exploitation or hazardous working conditions, employers may face imprisonment. The duration of imprisonment can range from several months to a few years.
- **Revocation of Licenses:** Repeated violations can lead to the revocation of business licenses or permits, effectively shutting down operations.

2. Accountability of Inspectors

Inspectors are expected to perform their duties diligently and uphold the law. However, there are also implications for inspectors who fail to fulfil their responsibilities:

- **Disciplinary Action:** Inspectors who neglect their duties or fail to act upon a notice may face disciplinary measures, which can include suspension or termination of employment.
- **Legal Liability:** In cases where negligence on the part of an inspector leads to continued violations or harm to children, there may be grounds for legal action against the inspector.
- **Public Scrutiny:** Inspectors are often subject to public scrutiny, particularly in cases that garner media attention. This scrutiny can affect their professional reputation and the integrity of the enforcement process.

12.4.4 Challenges in Enforcement

Despite the robust framework provided by the Child Labour Act and the critical role of inspectors, several challenges persist in the effective enforcement of the Act. These challenges can undermine efforts to eliminate child labour and protect children's rights.

1. Lack of Awareness

Many employers and workers may not be fully aware of the provisions of the Child Labour Act. This lack of awareness can lead to unintentional violations. Educational initiatives targeting both employers and communities are necessary to improve understanding of child labour laws and their implications.

2. Corruption and Bribery

Corruption can significantly hinder the enforcement of child labour laws. In some cases, inspectors may be bribed to overlook violations or fail to report them, leading to continued exploitation of children. Establishing accountability mechanisms and promoting transparency are essential to combat this issue.

3. Insufficient Resources

Inspectors often face challenges related to limited resources, including inadequate staffing, funding, and training. This scarcity can impede their ability to conduct thorough investigations and follow-ups. Increasing investment in enforcement mechanisms and capacity building for inspectors is vital.

4. Cultural Attitudes

Cultural attitudes toward child labour can pose significant barriers to enforcement. In some communities, child labour may be viewed as a norm or necessity, making it challenging to change mindsets. Community engagement and advocacy efforts are crucial for fostering a cultural shift away from child labour.

5. Geographic and Logistical Challenges

In rural or remote areas, geographic and logistical challenges can impede the ability of inspectors to carry out their duties effectively. Limited access to certain locations can delay inspections and hinder the timely response to reports of child labour.

12.5 Maintenance of Registers under the Child Labour (Prohibition and Regulation) Act, 1986

12.5.1 Importance of Maintaining Registers

Maintaining registers under the Child Labour Act serves several critical functions:

1. **Documentation of Employment:** Registers provide a formal record of the employment of children, detailing their age, working hours, and nature of work. This documentation is crucial for ensuring compliance with the law.
2. **Facilitating Inspections:** Registers enable inspectors to conduct thorough assessments during inspections. They can quickly verify whether the employment conditions align with the provisions of the Act.
3. **Promoting Accountability:** By maintaining accurate records, employers are held accountable for their compliance with the Child Labour Act, reducing the likelihood of illegal employment practices.
4. **Data Collection:** Registers serve as a source of data for policymakers and researchers, aiding in the understanding of child labour trends and the effectiveness of interventions.
5. **Protecting Children's Rights:** Ultimately, the maintenance of registers helps to protect the rights of children by ensuring they are not subjected to exploitation and unsafe working conditions.

12.5.2 Types of Registers to be Maintained

Under the Child Labour Act, various types of registers may be required depending on the nature of the employment. Key registers include:

1. Employment Register

This register must contain detailed information about every child employed, including:

- **Name of the Child:** Full name as per official documents.
- **Date of Birth:** Documented proof of age to ensure compliance with the minimum age requirement.
- **Name and Address of the Guardian:** Contact details of the child's guardian or parent.

- **Nature of Work:** A description of the tasks assigned to the child.
- **Working Hours:** The number of hours the child is expected to work daily and weekly.

2. Wage Register

The wage register should document:

- **Wages Paid:** The amount paid to each child, including details of any deductions.
- **Payment Dates:** Records of when payments were made.
- **Mode of Payment:** Whether payments were made in cash or kind.

3. Attendance Register

This register is essential for tracking the presence of employed children:

- **Daily Attendance:** Records of each child's daily attendance.
- **Leave Records:** Documentation of any leave taken by the child, along with reasons.

4. Health and Safety Register

Employers must maintain a health and safety register to document:

- **Health Checks:** Records of any health checks conducted on child workers.
- **Safety Measures:** Details of safety measures implemented to protect the health and well-being of child workers.

5. Training Register

For children engaged in vocational training or skill development, this register should include:

- **Nature of Training:** Details about the skills being taught.
- **Duration of Training:** Timeframe over which the training is conducted.
- **Assessment Records:** Documentation of any assessments or certifications provided.

12.5.3 Procedures for Maintaining Registers

The maintenance of registers under the Child Labour Act involves specific procedures that employers must follow:

1. Record Keeping

Employers are responsible for ensuring that all registers are accurately maintained and updated regularly. This includes:

- **Timely Updates:** Registers should be updated promptly whenever there is a change in the status of employment, such as the hiring of new workers or termination of employment.
- **Correct Information:** All entries should be accurate and verifiable, with supporting documentation where applicable.

2. Accessibility

Registers must be kept in a location accessible to inspectors. Employers should ensure:

- **Organized Storage:** Registers are stored in an organized manner, making it easy for inspectors to review them during inspections.
- **Availability for Inspection:** Registers should be available at all times, allowing inspectors to conduct thorough assessments without delay.

3. Retention Period

Employers are typically required to retain registers for a specific period, often defined by regulatory authorities. This retention period ensures that records are available for review during inspections or in the event of legal proceedings.

4. Compliance with Formats

Certain states may prescribe specific formats for maintaining registers. Employers should adhere to these formats to ensure compliance with local regulations. This may include:

- **Standardized Templates:** Using government-provided templates for registers to ensure uniformity and compliance.
- **Electronic Records:** In some cases, employers may be permitted to maintain electronic records, provided they meet regulatory requirements for data integrity and security.

5. Training of Staff

Employers should ensure that staff responsible for maintaining registers are adequately trained. This includes:

- **Understanding Legal Requirements:** Staff should be familiar with the provisions of the Child Labour Act and the specific requirements for maintaining registers.
- **Data Management Skills:** Training on how to accurately enter data, update records, and manage documentation.

12.5.4 Implications of Non-Compliance

Failure to maintain registers as mandated by the Child Labour Act can lead to significant legal and social implications for employers:

1. Legal Penalties

Employers found in violation of register maintenance requirements may face:

- **Fines:** Monetary penalties can be imposed for each instance of non-compliance. The amount may vary based on the severity and frequency of violations.
- **Imprisonment:** In cases of serious violations, especially those involving the illegal employment of children, employers may face imprisonment.

2. Revocation of Licenses

Repeated violations of the Child Labour Act, including failure to maintain required registers, can lead to the revocation of business licenses. This action effectively halts operations and can have severe financial implications for the employer.

3. Increased Scrutiny

Non-compliance can result in increased scrutiny from regulatory authorities. Employers who fail to maintain registers may find themselves subject to more frequent inspections and audits.

4. Damage to Reputation

In today's socially conscious market, businesses found violating child labour laws risk significant reputational damage. This can affect customer trust, brand image, and ultimately, profitability.

5. Civil Liability

Employers may also face civil liability claims from affected parties, including parents or guardians of employed children, leading to potential financial compensation claims.

12.5.5 Role of Inspectors in Register Maintenance

Inspectors are crucial to ensuring compliance with the Child Labour Act, and their role in the maintenance of registers is multi-faceted:

1. Conducting Inspections

Inspectors are empowered to conduct inspections of workplaces to verify compliance with the Act, including the maintenance of registers. Their duties include:

- **Reviewing Registers:** Inspectors check the accuracy and completeness of registers during inspections.
- **Identifying Violations:** They identify any discrepancies in the records that may indicate violations of the Child Labour Act.

2. Providing Guidance

During inspections, inspectors can offer guidance to employers on best practices for maintaining registers. This includes:

- **Clarifying Requirements:** Inspectors can explain specific legal requirements related to register maintenance, helping employers understand their obligations.
- **Suggesting Improvements:** They may recommend improvements in record-keeping practices to enhance compliance.

3. Reporting Non-Compliance

Inspectors have a responsibility to report any non-compliance found during inspections. This includes:

- **Documenting Violations:** Inspectors document instances of non-compliance, including failures to maintain required registers.

- **Recommending Actions:** They may recommend corrective actions that employers should undertake to rectify violations.

4. Collaborating with Other Authorities

Inspectors often collaborate with other governmental and non-governmental organizations to enhance compliance efforts. This can include:

- **Coordinating Awareness Programs:** Working with NGOs to raise awareness about the Child Labour Act and the importance of register maintenance.
- **Engaging Community Leaders:** Collaborating with local leaders to foster a community-wide commitment to eradicating child labour.

12.5.6 Challenges in Register Maintenance

Despite the clear mandates regarding register maintenance under the Child Labour Act, several challenges persist:

1. Lack of Awareness Among Employers

Many employers may not fully understand the legal requirements regarding register maintenance, leading to unintentional non-compliance. Education and outreach programs are essential to address this gap.

2. Resource Constraints

Small-scale employers, in particular, may face resource constraints that hinder their ability to maintain accurate and comprehensive registers. Financial limitations, lack of trained personnel, and inadequate administrative systems can contribute to this challenge.

3. Corruption and Malpractice

Corruption can impede proper enforcement of the Child Labour Act, leading to instances where employers might manipulate or falsify records to avoid detection. Establishing robust accountability measures is necessary to combat this issue.

4. Geographic Barriers

In rural areas, geographic barriers can complicate compliance efforts. Employers may lack access to necessary resources and information, making it challenging to maintain registers effectively.

5. Technological Limitations

While electronic record-keeping is becoming more common, some employers may lack the technological infrastructure or skills needed to maintain digital registers, further complicating compliance.

12.5.7 Strategies for Effective Register Maintenance

To enhance compliance with the Child Labour Act and ensure effective register maintenance, several strategies can be employed:

1. Capacity Building

Investing in capacity building for employers and staff involved in record-keeping can significantly improve compliance. This may include training programs focusing on:

- **Legal Awareness:** Educating employers about their obligations under the Child Labour Act.
- **Record Management:** Training on best practices for maintaining registers, including data entry and document management.

2. Community Engagement

Engaging with the community to raise awareness about child labour and the importance of register maintenance can foster a collective commitment to compliance. This can involve:

- **Awareness Campaigns:** Organizing workshops and information sessions for employers, parents, and community members.
- **Partnerships with NGOs:** Collaborating with non-governmental organizations to implement community-based initiatives aimed at eliminating child labour.

3. Technology Adoption

Encouraging the adoption of technology for record-keeping can streamline the process and enhance accuracy. This may include:

- **Digital Registers:** Promoting the use of software or applications designed for maintaining compliance records.
- **Training on Digital Tools:** Providing training for employers and staff on how to use digital tools effectively.

4. Regular Audits and Inspections

Conducting regular audits and inspections can help ensure that employers are complying with register maintenance requirements. This includes:

- **Random Inspections:** Implementing random inspections to assess compliance and deter potential violations.
- **Feedback Mechanisms:** Establishing mechanisms for inspectors to provide feedback to employers on their record-keeping practices.

5. Creating Reporting Mechanisms

Establishing easy-to-access reporting mechanisms for violations can empower community members to report instances of child labour and non-compliance. This can involve:

- **Hotlines:** Setting up hotlines or online platforms for reporting violations anonymously.
- **Community Watch Programs:** Encouraging community members to participate in monitoring local workplaces for compliance

12.6 Display of Notice under the Child Labour (Prohibition and Regulation) Act, 1986

12.6.1 Importance of Displaying Notices

1. Raising Awareness

The display of notices is a crucial tool for raising awareness about child labour laws. By informing employers and employees about the legal prohibitions against child labour, these notices help ensure that everyone is aware of their rights and responsibilities under the law. This increased awareness can lead to greater compliance and a reduction in child labour practices.

2. Facilitating Compliance

Notices serve as a constant reminder to employers regarding their obligations under the Child Labour Act. By displaying these notices prominently in workplaces, employers are encouraged to adhere to the regulations set forth in the law, reducing the likelihood of violations.

3. Promoting Transparency

The display of notices enhances transparency in workplaces regarding child labour practices. It allows workers and the community to understand the legal standards that employers are expected to meet, thereby fostering an environment of accountability.

4. Empowering Workers and Communities

Notices empower workers, parents, and community members by informing them about their rights. Knowledge of the law can lead to greater advocacy against child labour, as individuals become more equipped to recognize and report violations.

12.6.2 Legal Requirements for Displaying Notices

1. Mandated by the Act

Under Section 6 of the Child Labour Act, every employer is required to display a notice in a conspicuous place within the workplace. This requirement is aimed at ensuring that all individuals present in the workplace are informed about the provisions of the Act.

2. Language and Accessibility

The notices must be displayed in a language that is understood by the majority of the workers in the workplace. This ensures that all employees, regardless of their educational background or language proficiency, can comprehend the information provided.

3. Conspicuous Location

The notices must be placed in a conspicuous location, such as near the entrance of the workplace or in common areas where workers frequently gather. This strategic placement is vital for ensuring that the notices are easily visible and accessible.

12.6.3 Content of the Notice

The content of the notices required under the Child Labour Act should include specific information to effectively inform the audience. Key elements that should be included in the notice are:

1. Prohibition of Child Labour

The notice should clearly state that the employment of children below the age of 14 years is prohibited under the law. This serves as a fundamental reminder to employers about the legal ramifications of employing child labour.

2. Definition of Child Labour

To avoid ambiguity, the notice should provide a clear definition of what constitutes child labour. This can include explanations of hazardous work and non-hazardous work as per the provisions of the Act.

3. Penalties for Violations

The notice should inform employers and employees about the penalties associated with violations of the Child Labour Act. This can include fines, imprisonment, or both, thereby highlighting the serious nature of the offence.

4. Rights of Workers

The notice should outline the rights of workers, including the right to report violations without fear of retribution. This information can empower workers to take action against illegal employment practices.

5. Contact Information for Reporting Violations

The notice should provide contact details for local authorities or child protection services where individuals can report instances of child labour. This ensures that community members have the means to report violations effectively.

6. Commitment to Compliance

The notice may also include a statement from the employer reaffirming their commitment to complying with the Child Labour Act and ensuring a safe working environment for all employees.

12.6.4 Procedures for Displaying Notices

1. Preparation of the Notice

Employers must prepare the notice in accordance with the legal requirements outlined in the Child Labour Act. This includes ensuring that the language, format, and content are appropriate and compliant with the Act.

2. Approval from Authorities

In some cases, employers may need to seek approval from local labour authorities or relevant government bodies before displaying the notice. This step can help ensure that the notice meets all legal standards.

3. Placement of the Notice

Once prepared and approved, the employer must display the notice in a conspicuous location within the workplace. Employers should regularly check to ensure that the notice remains visible and intact.

4. Regular Updates

Employers should be proactive in updating the notice as necessary. If there are changes in the law, penalties, or contact information for reporting violations, the notice should be revised accordingly.

12.6.5 Implications of Non-Compliance

Failing to display the required notice under the Child Labour Act can have significant consequences for employers:

1. Legal Penalties

Employers who do not comply with the notice display requirements may face legal penalties, including fines or other sanctions. The enforcement of these penalties serves to underscore the importance of compliance with child labour laws.

2. Increased Scrutiny from Authorities

Non-compliance can lead to increased scrutiny from labour inspectors and government authorities. Employers may be subjected to more frequent inspections and audits, potentially uncovering other violations.

3. Reputational Damage

Failure to display the notice can result in reputational damage for the employer. In today's socially conscious marketplace, businesses found violating child labour laws risk losing customer trust and facing backlash from advocacy groups.

4. Community Impact

Non-compliance can have broader implications for the community. If employers are not transparent about their practices, it can perpetuate cycles of exploitation and child labour, undermining community efforts to combat these issues.

12.6.6 Role of Inspectors in Enforcing Notice Requirements

Inspectors play a crucial role in ensuring compliance with the notice display requirements of the Child Labour Act. Their responsibilities include:

1. Conducting Inspections

Inspectors are tasked with conducting inspections of workplaces to verify compliance with the provisions of the Child Labour Act. During these inspections, they will check for the presence and adequacy of the required notices.

2. Assessing Compliance

Inspectors assess whether the notices are displayed in conspicuous locations and whether the content is accurate and in accordance with the law. They may also evaluate whether the notices are easily understood by the workforce.

3. Providing Guidance

During inspections, inspectors can provide guidance to employers on how to effectively display notices and comply with the requirements of the Child Labour Act. This may involve recommending best practices for notice preparation and placement.

4. Reporting Violations

If inspectors find that an employer is not complying with the notice display requirements, they are responsible for documenting the violation and reporting it to relevant authorities. This documentation is crucial for enforcing penalties and ensuring compliance.

5. Promoting Awareness

Inspectors also play a role in promoting awareness about the Child Labour Act and its requirements. They can engage with employers, workers, and community members to educate them about the importance of the notices and the broader objectives of the Act.

12.6.7 Challenges in Displaying Notices

Despite the legal requirements and the importance of displaying notices, several challenges persist:

1. Lack of Awareness Among Employers

Many employers may not fully understand their obligations regarding the display of notices. This lack of awareness can lead to unintentional non-compliance. Educational initiatives targeting employers are essential to address this issue.

2. Cultural Attitudes

In some communities, cultural attitudes towards child labour can pose barriers to compliance. Employers may not perceive child labour as a serious issue, leading to a lack of commitment to displaying notices and adhering to regulations.

3. Geographic and Logistical Barriers

In rural or remote areas, geographic barriers can complicate compliance efforts. Employers may have limited access to resources for preparing and displaying notices, making it challenging to meet legal requirements.

4. Corruption and Malpractice

Corruption can impede proper enforcement of the Child Labour Act. In some cases, employers may manipulate or falsify records related to notice display to avoid detection, undermining the intent of the law.

5. Limited Resources

Small-scale employers, in particular, may struggle with limited resources to prepare and maintain the required notices. Financial constraints can hinder their ability to comply with regulatory requirements.

12.6.8 Strategies for Effective Notice Display

To enhance compliance with the notice, display requirements under the Child Labour Act, several strategies can be employed:

1. Capacity Building

Investing in capacity building for employers can improve compliance rates. Training programs focused on the legal requirements related to notice display can help employers understand their obligations.

2. Community Awareness Campaigns

Engaging in community awareness campaigns can help educate the public about child labour laws and the importance of notice display. Collaborating with local NGOs can amplify the reach and impact of these campaigns.

3. Simplifying Notice Requirements

Regulatory authorities could consider simplifying the notice requirements to make compliance more accessible for employers, particularly small-scale businesses. Providing standardized templates can streamline the process.

4. Utilizing Technology

Encouraging the use of technology for displaying notices can enhance compliance. Digital displays or electronic notice boards can make it easier for employers to maintain accurate and up-to-date information.

5. Monitoring and Evaluation

Establishing a system for monitoring and evaluating compliance with notice display requirements can help identify areas for improvement. Regular audits can ensure that employers are adhering to the legal mandates.

6. Partnerships with Local Authorities

Collaboration between employers and local authorities can foster a supportive environment for compliance. Local authorities can provide resources and assistance to help employers meet their obligations.

12.7 Penalties

When an employer employs a child or permits a child to work in contravention of the provisions of Section 3, the employer shall be liable for punishment with imprisonment for a term which may extend to one year or with fine and the fine imposed shall not be less than rupees ten thousand and which may extend to rupees twenty thousand or with both.

Whoever is convicted of the said offence under Section 3 and repeats the same offence again in future then he shall be punished with imprisonment for a term which shall not be less than six months and can be extended to two years.

When an employer fails to give a notice as stated under Section 9 or fails to maintain a register comprising the details of child employees as required by Section 11 of the Act or if the employer makes any false entry in any such register, or fails to display a notice containing an abstract of Section 3, or if the employer fails to comply with or contravenes any other provisions of the Act or any of the rules which are made thereunder, he shall be punished with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both imprisonment and fine

- **Answer the following questions in detail:**

1. Explain in detail Prohibition of Employment of Children in certain occupations and processes with Regulation of Conditions of Work of Children Weekly.
2. What is Notice to Inspector under the Child Labour (Prohibition and Regulation) Act, 1986? Explain in detail.

- **Write Short Notes on: -**

1. Maintenance of Registers under the Child Labour (Prohibition and Regulation) Act, 1986.
2. Display of Notice under the Child Labour (Prohibition and Regulation) Act, 1986

- 13.1 Introduction, Definitions, Objectives**
- 13.2 Methods of Disputes resolution**
- 13.3 Other Methods of Dispute Resolution**
- 13.4 Authorities Established Under the Act**
- 13.5 Court of Inquiry:**
- 13.6 Labor Court Under the Industrial Disputes Act, 1947**
- 13.7 Industrial Tribunal and National Tribunal**
- 13.8 Provisions with respect to Strikes and Lockouts, Layoff and retrenchment, Special provisions relating to layoff, retrenchment and closure**
- 13.9 Offences and penalties, unfair labour practices, etc.**

13.1 Introduction

Industrial Disputes Act, 1947 is the Act that regulates the labour laws as it concerns all the workmen or all the people employed on the Indian mainland. It came into force on 1 April 1947. The capitalists or the employer and the workers always had a difference of opinion and thus, it leads to lots of conflicts among and within both of these groups. So, these issues were brought to the attention of the government and so they decided to pass this Act. This Act was formed with the main objective of bringing peace and harmony to industrial disputes between parties and solving their issues in a peaceful manner.

13.1.1 Definition

According to Section 2(k) of the Act, an "industrial dispute" is defined as any dispute or difference between employers and employees, or between employers and employees, concerning the terms of employment or conditions of labour. This broad definition allows for a wide range of issues to be addressed under the Act, including wage disputes, work conditions, layoffs, and retrenchments.

13.1.2 Objectives of the Industrial Disputes Act, 1947

The act was drafted to make provision for the investigation and settlement of industrial disputes and to secure industrial peace and harmony by providing mechanisms and procedures for the investigation and settlement of industrial disputes by conciliation, arbitration and adjudication which is provided under the statute.

This Act was passed with the key objective of “Maintenance of Peaceful work culture in the Industry in India” which is mentioned under the Statement of Objects & Reasons of the statute.

The Industrial Dispute Act also lays down:

1. The provision for payment of compensation to the workman on account of closure or layoff or retrenchment.
2. The procedure for prior permission of the appropriate Government for laying off or retrenching the workers or closing down industrial establishments

3. The actions to be taken against unfair labour practices on the part of an employer, a trade union or workers.

13.2. Methods of Dispute Resolution

The Industrial Disputes Act, 1947, provides several methods for the resolution of industrial disputes, which can be broadly categorized into three main approaches: conciliation, arbitration, and adjudication.

13.2.1 Conciliation

Conciliation is a voluntary process where a neutral third party (the conciliator) assists the disputing parties in reaching a mutually acceptable agreement. This method emphasizes dialogue and negotiation, aiming to foster understanding and cooperation.

❖ Role of the Conciliation Officer

The Act empowers the government to appoint Conciliation Officers under Section 4. Their primary responsibilities include:

- Investigating the dispute and gathering relevant facts.
- Facilitating communication between the parties.
- Suggesting possible solutions or compromises.
- Drafting a settlement agreement if the parties reach an accord.

Conciliation is typically the first step in the dispute resolution process, as it is less formal and less adversarial than other methods.

❖ Advantages of Conciliation

- **Speed:** The conciliation process can often be resolved quickly, allowing for a prompt return to normal operations.
- **Cost-effective:** It is generally less expensive than litigation or arbitration.
- **Preserves Relationships:** The collaborative nature of conciliation helps maintain and even strengthen relationships between employers and employees.

13.2.2 Arbitration

Arbitration is a more formal method of dispute resolution, where a neutral third party (the arbitrator) hears both sides of the dispute and makes a binding decision. The Act allows for arbitration under certain conditions, particularly when conciliation fails.

Types of Arbitration

1. **Voluntary Arbitration:** Both parties agree to submit their dispute to arbitration, and the arbitrator's decision is binding.
2. **Mandatory Arbitration:** In some cases, particularly in disputes involving significant labour issues, the government may mandate arbitration.

❖ Role of the Arbitrator

The arbitrator conducts hearings, examines evidence, and issues a decision known as an "award." The award is binding on both parties, and the process is governed by the Arbitration and Conciliation Act, 1996.

❖ **Advantages of Arbitration**

- **Finality:** The arbitrator's decision is generally final and enforceable, minimizing the chances of prolonged disputes.
- **Expertise:** Parties can choose arbitrators with specific expertise in labour relations or the industry in question.
- **Confidentiality:** Arbitration proceedings are typically private, protecting sensitive information.

13.2.3 Adjudication

Adjudication involves a formal judicial process where disputes are resolved by a designated tribunal or court. Under the Industrial Disputes Act, various adjudicatory bodies have been established to address industrial disputes.

❖ **Industrial Tribunals**

Section 7 of the Act empowers the establishment of Industrial Tribunals to adjudicate disputes. These tribunals have jurisdiction over a wide range of issues, including:

- Dismissals and terminations.
- Wage disputes and claims.
- Matters related to the closure of establishments.

❖ **Labor Courts**

Labor Courts are another adjudicatory body created under the Act. They handle disputes related to:

- Workmen's rights.
- Terms of employment.
- Conditions of labour.

❖ **Procedure**

Adjudication proceedings are more formal than conciliation and arbitration. They typically involve:

- Filing of a statement of claim by the aggrieved party.
- Summoning witnesses and presenting evidence.
- Cross-examination of witnesses.
- Issuing of a judgment or award by the adjudicating body.

❖ **Advantages of Adjudication**

- **Legal Authority:** The decisions of labour courts and industrial tribunals carry legal weight and are enforceable.
- **Public Accountability:** Proceedings are typically conducted in public, providing transparency.
- **Precedential Value:** Judgments can set precedents for future cases.

13.3 Other Methods of Dispute Resolution

In addition to conciliation, arbitration, and adjudication, the Industrial Disputes Act recognizes other methods for resolving disputes:

13.3.1 Voluntary Negotiation

Voluntary negotiation is an informal method where both parties engage directly to resolve disputes. This approach relies on good faith and mutual cooperation, often leading to faster resolutions. Trade unions frequently play a vital role in this process, representing workers' interests and facilitating negotiations with management.

13.3.2 Mediation

Mediation is similar to conciliation but often involves a mediator who has a more active role in suggesting solutions. Mediators help identify interests and explore options for settlement. While mediation is not specifically provided for in the Industrial Disputes Act, it is a recognized method in labour relations.

13.3.3 Collective Bargaining

Collective bargaining is a process of negotiation between employers and a group of employees (usually represented by a union) aimed at reaching agreements on wages, working conditions, and other employment terms. While not a formal method under the Act, successful collective bargaining can prevent disputes from escalating.

13.4. Authorities Established Under the Act

13.4.1 Authorities

The Industrial Disputes Act, 1947, establishes several key authorities responsible for the resolution of industrial disputes. These authorities include:

1. **Conciliation Officers**
2. **Board of Conciliation**
3. **Labor Courts**
4. **Industrial Tribunals**
5. **National Industrial Tribunal**
6. **Appellate Tribunal**

Each of these authorities plays a crucial role in the resolution process, offering different mechanisms and levels of formality.

13.4.1.1 Conciliation Officers

❖ Role and Appointment

Conciliation Officers are appointed by the appropriate government under Section 4 of the Act. Their primary function is to promote settlement between employers and employees during disputes. Conciliation Officers are often labour officers with expertise in industrial relations.

❖ Functions

- **Investigation of Disputes:** Conciliation Officers investigate disputes and gather facts to understand the issues involved.
- **Facilitating Dialogue:** They act as intermediaries between the disputing parties, encouraging open communication and negotiation.
- **Settlement Proposals:** Officers may suggest terms for settlement, aiming to resolve disputes amicably.
- **Recording Agreements:** If a settlement is reached, the Officer prepares a memorandum of the settlement, which is signed by both parties.

❖ Process of Conciliation

1. **Initiation:** Conciliation is initiated when a dispute arises and one party requests the appointment of a Conciliation Officer.
2. **Inquiry:** The Officer conducts an inquiry, meeting with both parties to discuss the issues.
3. **Proposals for Settlement:** After thorough discussions, the Officer may propose solutions based on the interests of both parties.
4. **Settlement or Report:** If a settlement is reached, it is recorded. If not, the Officer submits a report to the government.

13.4.1.2 Boards of Conciliation

❖ Establishment and Composition

The Board of Conciliation is constituted under Section 5 of the Act. It comprises a Chairman and two other members, one representing employers and the other representing employees. The Board is appointed by the appropriate government to promote settlement of disputes through conciliation.

❖ Functions

- **Investigate and Resolve Disputes:** The Board examines the dispute, engages both parties in dialogue, and seeks to facilitate an agreement.
- **Facilitate Settlements:** It functions similarly to Conciliation Officers but operates at a higher level, dealing with more complex disputes.
- **Submit Reports:** If a settlement is reached, the Board submits a report. If unsuccessful, it may recommend further action, such as adjudication.

❖ Process Involved

1. **Request for Constitution:** A dispute may be referred to the Board by the government or by one of the parties.
2. **Inquiry and Discussions:** The Board conducts inquiries and discussions to understand the issues better.
3. **Recommendation:** The Board may issue recommendations based on its findings. If a settlement is reached, it is recorded.

13.4.1.3 Labor Courts

❖ Establishment and Composition

Labor Courts are established under Section 7 of the Industrial Disputes Act, 1947. They consist of a single judge, appointed by the appropriate government, who possesses the requisite qualifications and experience in labour matters.

❖ Jurisdiction

Labor Courts have jurisdiction over specific types of disputes, including:

- Disputes relating to the rights of workmen.
- Issues concerning the terms of employment.
- Grievances related to dismissals, retrenchments, and layoffs.

❖ Functions

- **Adjudication of Disputes:** Labor Courts hear and decide disputes referred to them, delivering judgments that are binding on both parties.
- **Resolution of Grievances:** They address grievances raised by employees, ensuring justice and adherence to labour laws.
- **Interpretation of Laws:** Labor Courts also interpret various labour laws and their applicability in specific cases.

❖ Procedure

1. **Filing of Complaints:** Employees or employers file complaints regarding disputes.
2. **Summons and Hearings:** The Court issues summons to the parties and conducts hearings to gather evidence.
3. **Judgment:** After examining the evidence and arguments, the Labor Court delivers its judgment.

13.4.1.4 Industrial Tribunals

❖ Establishment and Composition

Industrial Tribunals are established under Section 7A of the Act and are constituted to adjudicate industrial disputes that are more complex and significant than those handled by Labor Courts. They consist of a presiding officer with judicial experience.

❖ Jurisdiction

Industrial Tribunals have broader jurisdiction, including:

- Disputes related to employment conditions.
- Matters regarding the termination of employment.
- Wage disputes and other significant labour issues.

❖ Functions

- **Adjudication:** Tribunals hear cases, examine evidence, and render decisions that are binding on both parties.

- **Handling Complex Disputes:** They are equipped to handle more intricate and serious disputes than Labor Courts.
- **Policy Guidance:** Tribunals often provide guidance on industrial relations practices and labour laws.

❖ **Procedure**

1. **Reference of Disputes:** Disputes are referred to the Tribunal by the government or parties involved.
2. **Hearing Process:** The Tribunal conducts hearings, gathers evidence, and hears testimonies.
3. **Award:** The Tribunal issues an award that is enforceable and binding on both parties.

13.4.1.5 National Industrial Tribunal

❖ **Establishment and Composition**

The National Industrial Tribunal is established under Section 7B of the Act. It is a higher authority designed to handle industrial disputes of national importance or those involving significant sectors of the economy.

❖ **Jurisdiction**

The National Industrial Tribunal has jurisdiction over:

- Disputes that affect multiple states or industries.
- Issues requiring a uniform solution across different regions or sectors.

❖ **Functions**

- **Adjudication of High-Profile Disputes:** It addresses disputes that have widespread implications for labour relations.
- **Policy Direction:** The Tribunal may also provide guidance on broader industrial relations policies.

❖ **Procedure**

1. **Referral by Government:** The government may refer significant disputes to the National Industrial Tribunal.
2. **Comprehensive Hearings:** The Tribunal conducts thorough hearings, often involving expert witnesses and extensive documentation.
3. **Issuance of Binding Awards:** The decisions made by the National Industrial Tribunal are binding and enforceable across jurisdictions.

13.4.1.6 Appellate Tribunal

❖ **Establishment**

While the Industrial Disputes Act, 1947, does not specifically provide for an appellate tribunal, aggrieved parties can seek remedies through higher judicial forums such as the High Courts. The decisions made by Labor Courts and Industrial Tribunals can be

challenged in these courts based on grounds of jurisdiction, procedural irregularities, or violations of natural justice.

❖ **Functions**

- **Review of Lower Court Decisions:** The appellate authority reviews decisions made by Labor Courts and Industrial Tribunals to ensure justice and adherence to legal principles.
- **Guidance on Legal Interpretation:** Higher courts often interpret labour laws, providing clarity and guidance for future disputes.

❖ **Procedure**

1. **Filing Appeals:** Aggrieved parties file appeals in the appropriate High Court against decisions made by Labor Courts or Industrial Tribunals.
2. **Hearing Process:** The appellate court conducts hearings, reviewing evidence and legal arguments.
3. **Final Judgment:** The appellate court issues a judgment that may uphold, modify, or overturn the lower court's decision.

13.4.2 General Procedures for Dispute Resolution

13.4.2.1 Initiation of Disputes

❖ **Disputes can arise from various sources, including:**

- Non-compliance with labour laws.
- Disagreements over wage payments, working conditions, and dismissals.
- Conflicts between management and trade unions.

13.4.2.2 Steps in the Dispute Resolution Process

1. **Filing of Disputes:** Aggrieved parties file disputes with the relevant authority (Conciliation Officer, Labor Court, or Tribunal).
2. **Notice to Other Party:** The authority issues notices to the other party, informing them of the dispute.
3. **Inquiry and Hearings:** Authorities conduct inquiries, gather evidence, and hold hearings to understand the dispute.
4. **Recommendation or Award:** Based on the findings, the authority issues recommendations or awards that must be adhered to by both parties.

13.4.2.3 Time Frames

While the Industrial Disputes Act does not specify exact time frames for resolution, it encourages timely proceedings to prevent prolonged disputes that may disrupt industrial harmony.

13.4.3. Challenges in Dispute Resolution

Despite the structured framework provided by the Industrial Disputes Act, several challenges persist in the resolution of industrial disputes:

13.4.3.1 Delays in Proceedings

Prolonged proceedings can lead to frustrations for both employers and employees, causing disruptions in productivity and employee morale.

13.4.3.2 Lack of Awareness

Many workers and employers are unaware of their rights and the mechanisms available for dispute resolution, leading to unaddressed grievances.

13.4.3.3 Inefficiencies in Authorities

The effectiveness of the authorities depends on their capacity, expertise, and impartiality. Any inefficiencies can impede the resolution process.

13.4.3.4 Complexity of Cases

Complex disputes may require extensive legal and technical expertise, which can pose challenges for authorities that lack the necessary resources.

13.5 Court of Inquiry:

13.5.1 Overview

❖ Establishment

The Court of Inquiry is established under Section 6 of the Industrial Disputes Act, 1947. The primary purpose of this body is to investigate specific industrial disputes and make recommendations for their resolution. The government may refer matters to the Court of Inquiry when it believes that a dispute requires thorough examination and public accountability.

❖ Composition

The Court of Inquiry consists of a Chairman and two other members. The Chairman is typically a person with experience in labour matters, and the other members are usually representatives of employers and employees. This tripartite structure ensures that the interests of all parties are represented in the inquiry process.

13.5.2 Functions of the Court of Inquiry

The Court of Inquiry has several key functions that contribute to the resolution of industrial disputes:

13.5.2.1 Investigation of Disputes

The primary function of the Court of Inquiry is to investigate the industrial dispute referred to it. This involves:

- **Gathering Evidence:** The Court collects evidence from both parties, including testimonies, documents, and other relevant information.
- **Understanding Context:** The Court seeks to understand the context and background of the dispute, including historical grievances and existing relationships.

13.5.2.2 Recommendations for Settlement

After conducting a thorough investigation, the Court of Inquiry is tasked with making recommendations for resolving the dispute. These recommendations may include:

- **Proposed Solutions:** The Court may suggest specific actions that could be taken by either party to settle the dispute amicably.

- **Policy Recommendations:** In cases involving broader issues, the Court may recommend policy changes that could help prevent similar disputes in the future.

13.5.2.3 Reporting Findings

The Court of Inquiry is required to prepare a report detailing its findings and recommendations. This report is submitted to the appropriate government authority and is made available to the parties involved. The transparency of this process helps build trust and accountability.

13.5.3 Procedure of the Court of Inquiry

The procedure followed by the Court of Inquiry is designed to ensure fairness, transparency, and thoroughness in the investigation process.

13.5.3.1 Initiation of Inquiry

The process begins when the government refers an industrial dispute to the Court of Inquiry. This can occur in various contexts, such as:

- **Public Interest:** The government may intervene in disputes affecting public interest or significant sectors.
- **Request by Parties:** Employers or employees may also request an inquiry if they believe it would help resolve a dispute.

13.5.3.2 Conducting the Inquiry

❖ **Once established, the Court of Inquiry follows these steps:**

1. **Notice to Parties:** The Court issues notices to the parties involved in the dispute, informing them of the inquiry and its procedures.
2. **Gathering Evidence:** The Court conducts hearings where both parties can present their evidence and arguments. This may include:
 - Oral testimonies from witnesses.
 - Submission of documents and records relevant to the dispute.
3. **Interviews and Site Visits:** The Court may also conduct site visits to understand the workplace context better and interview employees, management, and other stakeholders.

13.5.3.3 Deliberations and Report

After gathering evidence, the Court deliberates on the findings and formulates recommendations. The steps include:

1. **Discussion Among Members:** The Chairman and members discuss the evidence and assess the merits of the case.
2. **Drafting the Report:** The Court prepares a detailed report that includes:
 - A summary of the evidence presented.
 - Findings related to the dispute.
 - Recommendations for resolving the dispute.

3. **Submission of the Report:** The final report is submitted to the appropriate government authority and shared with the disputing parties.

13.5.3.4 Implementation of Recommendations

While the recommendations made by the Court of Inquiry are not legally binding, they carry significant weight. The parties may choose to implement the recommendations voluntarily. Additionally, the government may take steps to facilitate the implementation, especially if the recommendations align with public interest.

13.5.4 Significance of the Court of Inquiry

The Court of Inquiry serves several important purposes in the context of industrial dispute resolution:

13.5.4.1 Promotion of Industrial Harmony

By investigating disputes and providing recommendations, the Court of Inquiry plays a crucial role in promoting industrial harmony. Its impartial approach helps mitigate tensions between employers and employees, fostering a cooperative environment.

13.5.4.2 Transparency and Accountability

The public nature of the inquiry process enhances transparency and accountability. The requirement for the Court to report its findings ensures that the dispute resolution process is conducted openly, helping to build trust among stakeholders.

13.5.4.3 Encouragement of Dialogue

The Court of Inquiry encourages dialogue between disputing parties. By facilitating discussions and negotiations, it helps parties move towards resolution rather than escalation.

13.5.4.4 Precedent for Future Disputes

The findings and recommendations of the Court of Inquiry can serve as a precedent for similar disputes in the future. This can help create a more predictable and stable industrial relations environment.

13.5.5. Challenges Faced by the Court of Inquiry

Despite its significance, the Court of Inquiry faces several challenges:

13.5.5.1 Limited Authority

The recommendations made by the Court of Inquiry are not legally binding, which may lead to non-compliance by one or both parties. This limits the effectiveness of the Court's interventions.

13.5.5.2 Resource Constraints

The effectiveness of the Court can be hampered by a lack of resources, including insufficient staff and funding. This may impact the thoroughness of investigations and the timely delivery of reports.

13.5.5.3 Awareness and Accessibility

Many workers and employers are unaware of the Court of Inquiry's role and functions. This lack of awareness can result in underutilization of this mechanism for dispute resolution.

13.5.5.4 Political Influences

The involvement of government authorities may lead to political influences affecting the inquiry process. This can compromise the impartiality and integrity of the Court's findings

13.6 Labor Court Under the Industrial Disputes Act, 1947

The Industrial Disputes Act, 1947, is a key piece of legislation in India designed to promote industrial peace and resolve disputes between employers and employees. One of the critical components of this framework is the establishment of Labor Courts, which serve as specialized adjudicatory bodies for resolving industrial disputes. This overview explores the structure, functions, jurisdiction, procedures, and significance of Labor Courts under the Industrial Disputes Act.

13.6.1. Introduction to Labor Courts

❖ Purpose of Labor Courts

Labor Courts were created to provide a more focused and efficient mechanism for resolving industrial disputes, ensuring that grievances related to labour issues are addressed expeditiously and fairly. They serve to protect the rights of workers while also considering the interests of employers.

❖ Establishment

Labor Courts are established under Section 7 of the Industrial Disputes Act, 1947. The appropriate government, whether central or state, has the authority to constitute these courts based on the specific needs of the region and the industrial landscape.

13.6.2. Composition of Labor Courts

Labor Courts typically consist of a single judge, who is appointed by the government. The judge is required to possess qualifications and experience in labour matters, which ensures that the Court is led by someone knowledgeable about industrial relations and labour law.

❖ Appointment of Judges

The judges of Labor Courts are generally chosen from among:

- Individuals with judicial experience, such as retired judges.
- Professionals with substantial experience in labour relations and industrial disputes.

13.6.3. Jurisdiction of Labor Courts

Labor Courts have jurisdiction over a variety of industrial disputes and labour issues, primarily focused on the rights and obligations of workers and employers. Their jurisdiction includes:

13.6.3.1 Types of Disputes

Labor Courts are empowered to adjudicate on several types of disputes, including:

- **Disputes Related to Dismissals:** Cases concerning wrongful termination of employment or violation of dismissal procedures.

- **Grievances Regarding Wages:** Disputes involving wage payments, bonuses, and other financial entitlements.
- **Issues Relating to Working Conditions:** Complaints about working hours, safety standards, and other conditions of labour.
- **Disputes Arising from Collective Bargaining Agreements:** Matters that relate to negotiations between employers and employee unions.

13.6.3.2 Powers of Labor Courts

Labor Courts possess several powers that enable them to effectively resolve disputes:

- **To Summon Witnesses:** They can call witnesses to testify in cases and present evidence.
- **To Examine Evidence:** Labor Courts have the authority to examine documents and records relevant to the disputes.
- **To Issue Interim Orders:** In urgent cases, they can issue interim orders to protect the rights of the parties involved pending final decisions.

13.6.4. Procedures in Labor Courts

The procedures followed by Labor Courts are designed to ensure fairness, efficiency, and accessibility for all parties involved in a dispute.

13.6.4.1 Filing of Complaints

- **Initiation:** Disputes are initiated by filing a complaint or application with the Labor Court. This can be done by either employees (or their unions) or employers.
- **Format and Content:** The complaint must specify the nature of the dispute, the parties involved, and the relief sought.

13.6.4.2 Notice to Opposite Party

Once a complaint is filed, the Labor Court issues a notice to the opposite party, informing them of the proceedings and the specifics of the complaint. This notice ensures that both parties have an opportunity to present their case.

13.6.4.3 Hearing Process

1. **Preliminary Hearing:** The Court may conduct a preliminary hearing to ascertain the merits of the case and determine the next steps.
2. **Evidence Submission:** Both parties are allowed to present their evidence, which may include:
 - Oral testimonies from witnesses.
 - Documentation supporting their claims (e.g., contracts, payroll records).
3. **Cross-Examination:** The parties have the right to cross-examine each other's witnesses, ensuring that the evidence presented is thoroughly scrutinized.

13.6.4.4 Judgment

After examining the evidence and hearing arguments from both sides, the Labor Court delivers its judgment. The judgment typically includes:

- **Findings on the Issues:** The Court's conclusions regarding the merits of the dispute.
- **Orders or Directions:** Any orders or directives necessary to resolve the dispute, such as **reinstatement of employees, payment of dues, or changes in workplace practices.**

13.6.4.5 Appeal Process

While the decisions of Labor Courts are binding, aggrieved parties have the right to appeal to higher judicial forums, such as the Industrial Tribunal or the High Court, depending on the nature of the dispute and the jurisdiction.

13.6.5. Significance of Labor Courts

13.6.5.1 Specialized Adjudication

Labor Courts are specialized bodies that focus specifically on labour and industrial disputes, allowing for informed and effective adjudication. Their expertise in labour matters help ensure just outcomes.

13.6.5.2 Accessibility and Speed

The establishment of Labor Courts aims to provide quick and accessible dispute resolution for workers and employers. Their procedures are designed to be less formal than regular courts, facilitating faster resolutions.

13.6.5.3 Protection of Workers' Rights

Labor Courts play a crucial role in safeguarding the rights of workers. By addressing grievances related to dismissals, wages, and working conditions, they help ensure compliance with labour laws and enhance workplace conditions.

13.6.5.4 Promotion of Industrial Peace

By resolving disputes effectively, Labor Courts contribute to maintaining industrial peace and harmony. Their decisions can help prevent strikes and other forms of industrial unrest.

13.6.6. Challenges Faced by Labor Courts

Despite their significance, Labor Courts face several challenges that can impact their effectiveness:

13.6.6.1 Case Backlogs

Many Labor Courts experience significant case backlogs, leading to delays in hearings and judgments. This can frustrate both employers and employees seeking timely resolutions.

13.6.6.2 Limited Resources

Resource constraints, including insufficient staffing and funding, can hinder the efficiency and effectiveness of Labor Courts.

13.6.6.3 Lack of Awareness

Many workers and employers are not fully aware of their rights or the processes involved in Labor Courts, which can result in underutilization of this important mechanism.

13.6.6.4 Enforcement of Orders

While Labor Courts issue binding orders, enforcement can sometimes be challenging, especially if employers resist compliance with court directives.

13.7 Industrial Tribunal and National Tribunal

13.7.1. Industrial Tribunals

13.7.1.1 Establishment of Industrial Tribunals

Industrial Tribunals are established under Section 7A of the Industrial Disputes Act. The appropriate government—central or state—has the authority to set up these tribunals based on the industrial landscape and the nature of disputes that arise.

13.7.1.2 Composition

Industrial Tribunals typically consist of a presiding officer, who is appointed by the government. The presiding officer is generally a person with judicial experience or expertise in labour relations.

- **Qualifications:** The presiding officer should possess a degree in law and have experience in handling industrial disputes.
- **Composition Flexibility:** While the Tribunal generally consists of a single presiding officer, it can also include additional members if deemed necessary by the government.

13.7.1.3 Jurisdiction of Industrial Tribunals

Industrial Tribunals have a broad jurisdiction to adjudicate various types of industrial disputes, primarily focusing on issues that are complex or significant in nature. Their jurisdiction includes:

- **Disputes related to the termination of employment:** Cases concerning wrongful dismissal or non-compliance with termination procedures.
- **Wage-related disputes:** Matters related to wage payments, bonuses, and other financial entitlements.
- **Disputes arising from collective bargaining agreements:** Issues regarding the enforcement or interpretation of agreements between employers and employees or trade unions.
- **Grievances regarding working conditions:** Complaints about safety standards, working hours, and other labour conditions.

13.7.1.4 Powers of Industrial Tribunals

Industrial Tribunals have several powers that enable them to effectively resolve disputes:

- **Summoning Witnesses:** They can summon witnesses to testify in cases and present evidence.
- **Examining Evidence:** The Tribunals have the authority to examine documents and records relevant to the disputes.
- **Issuing Interim Orders:** They can issue interim orders to protect the rights of the parties involved pending the final decision.

13.7.1.5 Procedure in Industrial Tribunals

The procedure followed by Industrial Tribunals is designed to ensure fairness, efficiency, and accessibility for all parties involved in a dispute.

13.7.1.5.1 Filing of Complaints

- **Initiation:** Disputes are initiated by filing a complaint or application with the Industrial Tribunal. This can be done by either employees (or their unions) or employers.
- **Format and Content:** The complaint must specify the nature of the dispute, the parties involved, and the relief sought.

13.7.1.5.2 Notice to Opposite Party

Once a complaint is filed, the Tribunal issues a notice to the opposite party, informing them of the proceedings and the specifics of the complaint. This notice ensures that both parties have an opportunity to present their case.

13.7.1.5.3 Hearing Process

1. **Preliminary Hearing:** The Tribunal may conduct a preliminary hearing to ascertain the merits of the case and determine the next steps.
2. **Evidence Submission:** Both parties are allowed to present their evidence, which may include:
 - Oral testimonies from witnesses.
 - Documentation supporting their claims (e.g., contracts, payroll records).
3. **Cross-Examination:** The parties have the right to cross-examine each other's witnesses, ensuring that the evidence presented is thoroughly scrutinized.

13.7.1.5.4 Judgment

After examining the evidence and hearing arguments from both sides, the Industrial Tribunal delivers its judgment. The judgment typically includes:

- **Findings on the Issues:** The Tribunal's conclusions regarding the merits of the dispute.
- **Orders or Directions:** Any orders or directives necessary to resolve the dispute, such as reinstatement of employees, payment of dues, or changes in workplace practices.

13.7.1.5.5 Appeal Process

While the decisions of Industrial Tribunals are binding, aggrieved parties have the right to appeal to higher judicial forums, such as the High Court, depending on the nature of the dispute and the jurisdiction.

13.7.1.6 Significance of Industrial Tribunals

13.7.1.6.1 Specialized Adjudication

Industrial Tribunals provide specialized adjudication focused on labour issues, allowing for informed and effective dispute resolution.

13.7.1.6.2 Accessibility and Speed

The establishment of Industrial Tribunals aims to provide quick and accessible dispute resolution for workers and employers. Their procedures are designed to be less formal than regular courts, facilitating faster resolutions.

13.7.1.6.3 Protection of Workers' Rights

Industrial Tribunals play a crucial role in safeguarding the rights of workers. By addressing grievances related to dismissals, wages, and working conditions, they help ensure compliance with labour laws.

13.7.1.6.4 Promotion of Industrial Peace

By resolving disputes effectively, Industrial Tribunals contribute to maintaining industrial peace and harmony. Their decisions can help prevent strikes and other forms of industrial unrest.

13.7.2. National Tribunals

13.7.2.1 Establishment of National Tribunals

National Tribunals are established under Section 7B of the Industrial Disputes Act. These tribunals are intended to address industrial disputes of national importance or those involving significant sectors of the economy.

13.7.2.2 Composition

National Tribunals are composed of a presiding officer and two other members, representing employers and employees. This tripartite structure ensures balanced representation and helps in addressing disputes comprehensively.

- **Qualifications:** Similar to Industrial Tribunals, the presiding officer should have expertise in labour relations and relevant legal experience.

13.7.2.3 Jurisdiction of National Tribunals

❖ National Tribunals have jurisdiction over:

- **Disputes Affecting Multiple States:** Cases that involve industrial disputes impacting multiple states or regions.
- **Matters of National Importance:** Issues that require uniform solutions across different regions or sectors, such as disputes in industries of strategic significance.

13.7.2.4 Powers of National Tribunals

National Tribunals possess powers similar to those of Industrial Tribunals, enabling them to conduct hearings, summon witnesses, and issue orders as necessary.

13.7.2.5 Procedure in National Tribunals

The procedures followed by National Tribunals mirror those of Industrial Tribunals but are typically more formal due to the significance of the disputes they handle.

13.7.2.5.1 Filing of Disputes

Disputes can be referred to the National Tribunal by the appropriate government, particularly in cases of widespread implications.

13.7.2.5.2 Hearing Process

National Tribunals follow a structured hearing process, ensuring all parties have the opportunity to present their cases thoroughly.

13.7.2.6 Significance of National Tribunals

13.7.2.6.1 Addressing National Issues

National Tribunals play a critical role in resolving disputes that have implications beyond individual states, ensuring a cohesive approach to industrial relations across the country.

13.7.2.6.2 Promoting Uniformity

By providing uniform solutions to disputes affecting multiple regions, National Tribunals help standardize practices and policies in industries of national importance.

13.8 Provisions with respect to Strikes and Lockouts, Layoff and retrenchment, Special provisions relating to layoff, retrenchment and closure

13.8.1 Section 22 of IDA : Section 22: Prohibition of Strikes and Lock-Outs

The Industrial Disputes Act, 1947

STRIKES AND LOCK OUTS

- (1) No person employed in a public utility service shall go on strike in breach of contract
- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking;
 - (b) within fourteen days of giving such notice;
 - (c) before the expiry of the date of strike specified in any such notice as aforesaid;
 - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (2) No employer carrying on any public utility service shall lock-out any of his workmen
- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out;
 - (b) within fourteen days of giving such notice;

- (c) before the expiry the date of lock-out specified in any such notice as aforesaid;
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

13.8.1.1 Simplified Act

Simplified Explanation of Section 22 of The Industrial Disputes Act, 1947

For Employees in Public Utility Services:

- (1) If you work in a public utility service, you cannot just suddenly go on strike if you have a contract. You must:
 - (a) Tell your employer that you plan to strike at least six weeks before you actually do it;
 - (b) Not strike within two weeks after you've told your employer about it;
 - (c) Wait until the date you've said you would strike in your notice;
 - (d) Not strike while any talks to resolve the dispute (conciliation) are going on, and not within a week after they finish.
- (2) If you're an employer in a public utility service, you can't just lock out your workers. You must:
 - (a) Give your workers a six-week heads-up before the lock-out;
 - (b) Not lock them out within two weeks after you've notified them;
 - (c) Wait until the date you've mentioned in your notice to lock them out;
 - (d) Not lock them out while any conciliation is in process, and not within a week after it's done.
- (3) You don't need to give notice for a strike or lock-out if one is already happening. But you must tell the government the same day it starts.
- (4) There are specific rules about how many people must give notice of a strike and to whom they must give it.

- (5) There are also specific rules about how to give notice of a lock-out.
- (6) If an employer gets strike notices or gives lock-out notices, they must tell the government how many notices they got or gave within five days.

13.8.1.2 Explanation using Example

Imagine a scenario where the employees of a water supply company, which is considered a public utility service, are dissatisfied with their working conditions and pay. They decide to go on strike to demand better terms. According to Section 22 of The Industrial Disputes Act, 1947:

1. The employees must first give a notice to the employer six weeks before the intended date of the strike.
2. They cannot go on strike within fourteen days of giving such notice.
3. They must not start the strike before the date specified in the notice.
4. If there are any ongoing conciliation proceedings, they cannot strike until those proceedings have concluded and an additional seven days have passed.

If these conditions are not met, the strike would be considered illegal. Similarly, the employer cannot lock out the employees without following the corresponding conditions for giving notice and respecting the timing of conciliation proceedings.

13.8.2 Industrial Disputes Act (1947): Lay-off, Retrenchment, and Closure

This is an Act which came into force in the year 1947. The objective of the act was to promote industrial peace by facilitating the investigation and settlement of industrial disputes through negotiation. It is labour legislation to protect the workmen against victimization by employers and to ensure social justice to both employers and employees. The unique object of the Act is to promote collective bargaining and to maintain a peaceful atmosphere in industries by avoiding illegal strikes and lockouts. It also has provisions for regulation of retrenchment and lay-off.

Now, having said that, let us specifically examine what lay-off, retrenchment, and closure are. At the outset, we shall define each one of these case scenarios in detail.

13.8.2.1 Lay-Off

To start off, let us look at how the act defines the concept of Lay-off. The term 'lay-off' has been defined as the failure, refusal or inability of an employer on account of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Essentially, a lay-off is a condition where the employers are constrained to deny work to their workforce owing to conditions that bring forth a temporary inability to keep their business going. The said case scenario can happen only in a continuing establishment.

Essentials: The conditions where Lay-off could be brought into play are:

- There has to be a failure, refusal or inability of an employer

- This failure, refusal or inability should be an offshoot of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason
- The names of the laid-off workers should necessarily feature on the muster rolls of the establishment
- The said workers should not have been retrenched

Special Provisions: The employer cannot, without prior permission from the appropriate government, lay-off an employee featuring on the muster rolls of the establishment. A copy of the said application has to be given to the concerned workmen as well. If the lay-off happened where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment, being a mine, owing to reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement of such lay-off, apply in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off. The said application will be considered and a reasonable opportunity to be heard shall be given to the employer as well as the workmen. After considering the same, the appropriate government may or may not grant the employer to close down. Even here, if the government does not respond within sixty days from application, the permission will be deemed to have been granted. There are provisions for review of the said decision by the authority *suo-moto* or in response to an application.

Compensation for Laid-Off period: A workman who is laid-off is entitled to compensation equivalent to 50 percent of the total basic wages and dearness allowance for the period of lay-off. The said compensation can be availed only if the employee has done a continuous service of at least one year; this will be detailed in an upcoming section of this article. Along with this, the muster rolls of the establishment should bear the worker's name to avail of the compensation. A *badli* or casual worker cannot avail of such compensation. Refusal to accept alternative employment, absence from the establishment, strike or deliberate slowing down of production could be grounds that would entail disentitlement to such compensation.

If such Lay-off exceeds 45 days, the employer can either keep paying such lay-off compensation or retrench the workers. Nonetheless, retrenchment should necessarily be applied abiding by the procedure set out by the statute; this will be described in detail in the upcoming section which deals with retrenchment.

13.8.2.2 Retrenchment

The Act defines "Retrenchment" as the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but doesn't include-

- (a) Voluntary retirement of the workman; or
- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

Termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

- (c) Termination of the service of a workman on the ground of continued ill-health;

Here, the key ingredient is the termination of a workman from service, by the employer. This does not mean the employer can retrench a worker as a punishment by way of disciplinary action. Further, this scenario strictly does not include the above-mentioned conditions contemplated under the subsection.

Special Provisions: It is pertinent to note that a worker who has served for at least a year of continuous service cannot be retrenched unless served a notice three months in advance and prior permission from the appropriate government. The said application has to be submitted by the employer along with the reasons for such retrenchment. The said application will be taken into consideration and scrutinized through an inquiry. They shall provide an opportunity to be heard for both sides and may decide on the outcome of the application for reasons recorded in writing. If there's no reply from the appropriate government for a period of sixty days from the date of application, the permission shall be deemed to have been granted. Further, it is to be noted that the said decision could be reviewed by the said appropriate government *suo-moto* or on application from any of the sides.

13.8.2.3 Closure

The Act defines "Closure" as the permanent closing down of a place of employment or part thereof. Here, the employer is constrained to close the establishment permanently. Nonetheless, the due procedure has to be complied with when it comes to rolling out a plan of closure; the said procedure, as set out by the Act, has been detailed below. These procedures, nonetheless, do not apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

Special Provisions: The employer intending to do a closure of his establishment has to necessarily apply at least ninety days in advance to the appropriate government. A copy of the said application has to be given to the representatives of the workmen as well. The said application will be considered and a reasonable opportunity to be heard shall be given to the employer as well as the workmen. After considering the same, the appropriate government may or may not grant the employer to close down. Even here, if the government does not respond within sixty days from application, the permission will be deemed to have been granted. A similar provision for review of the decision exists even here.

Continuous Service

One year of continuous service entails an entitlement for compensation under the Industrial Disputes Act. A workman is said to be in continuous service if he is for that period in uninterrupted service. Interruption owing to sickness authorised leave, an accident, a strike which is not illegal, a lock and a cessation of work which is not due to the fault of the workman will not be taken into consideration for calculating the period of continuous service.

A workman could be deemed to have had one year of continuous service even if the worker hasn't had a year of continuous service if the worker was in employment for twelve calendar months preceding the date with reference to which calculation is to be made, and in the course of these twelve months, he actually worked for not less than one hundred and ninety days in the case of employment in a mine and two hundred and forty days in any other case.

The said continuous service shall also include the days laid off, days on earned leave and days taken off owing to temporary disablement owing to accident arising out of

or in the course of employment. Maternity leave taken, not exceeding twelve weeks shall also be counted in continuous service in case of female workers.

Bottom Line

Although employers may be forced to deprive their employees, invoking the case scenarios as explained above, the Industrial Dispute Act has been successful in setting out standards of mutual respect and requirement for solid reasons as preconditions to bringing these into play. These provisions aim at protecting the worker's rights while respecting the employer's point of view as well

13.9 Offences and penalties, unfair labour practices

13.9.1 Section 31 of IDA : Section 31: Penalty for Other Offences

The Industrial Disputes Act, 1947

• CHAPTER VI: PENALTIES

- (1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
- (2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

13.9.1.1 STATE AMENDMENT

31A Compounding of offences

- (1) Any offence punishable under sections 25Q, 25R, 25U, 26, 27, 28, 29, 30A and sub - sections (1) and (2) of section 31 may, either before or after the institution of the prosecution, on an application by the alleged offender, be compounded by such officer or authority as the appropriate Government may, by notification in the Official Gazette, specify in this behalf for such amount as specified in the Table below:

Table

S. N.	Section	Compounding amount
1	25Q	25 days wages last drawn by each workman.
2	25R	60 days wages last drawn by each workman.
3	25U	<p>(i) By each workman Rs. 150/- per day but not exceeding Rs. 3000/- in aggregate;</p> <p>(ii) By employer Rs. 300/- per day but not exceeding the amount in aggregate as shown below:</p> <p>Number of workmen employed in the industry</p> <p>Amount not exceeding</p> <p>1 to 50 Rs. 5000/-</p>

		51 to 100 Rs. 8000/- 101 to 500 Rs. 12000/- More than 500 Rs. 16000/-
4	26	(i) In case of illegal strike, Rs. 150/- per day by each workman but not exceeding Rs. 3000/- in aggregate; (ii) In case of illegal lock - out, Rs. 300/- per day by an employer but not exceeding the amount in aggregate as shown below: Number of workmen employed in the industry Amount not exceeding 1 to 50 Rs. 5000/- 51 to 100 Rs. 8000/- 101 to 500 Rs. 12000/- More than 500 Rs. 16000/-
5	27 and 28	As per section 26 above for illegal strike and lockout.
6	29	Rs. 200/- per day in respect of each of the workman.
7	30A	25 days wages last drawn by each workman.
8	31(1)	Number of workmen employed in the industry For first occasion For second occasion For third occasion 1 to 50 Rs. 5000/- Rs. 10,000/- Rs. 15,000/- 51 to 100 Rs. 8000/- Rs. 16,000/- Rs. 24,000/- 101 to 500 Rs. 12000/- Rs. 24,000/- Rs. 36,000/- More than 500 Rs. 16000/- Rs. 32,000/- Rs. 48,000/-
9	31(2)	For each workman, for the first offence Rs. 1000/- for the second offence Rs. 3000/- and for the third offence Rs. 3000/- (ii) For employer: Number of workmen employed in the industry For first occasion For second occasion For third occasion 1 to 50 Rs. 1500 Rs. 3000 Rs. 6000 51 to 100 Rs. 3000 Rs. 6000 Rs. 10000 101 to 500 Rs. 4000 Rs. 8000 Rs. 15000 More than 500 Rs. 5000 Rs. 10000 Rs. 20000

Provided that the appropriate Government may, by notification in the Official Gazette, amend the said specified compounding amount:

Provided further that the offences of the same nature committed by the same offender for more than three occasions shall not be compoundable:

Provided also that such offences shall be compoundable only after the alleged offender has acted to the satisfaction of such officer or authority that such offence is not continued any further:

Provided also that when an offence is compounded on an application by the employer, then the compounding amount received from him, shall be paid to the concerned workman or equally amongst the workman and if any workmen are not identifiable, then the remaining amount shall be deposited in such manner as may be notified by the appropriate Government.

- (2) Where an offence has been compounded under sub - section (1), no further proceedings shall be taken against the offender in respect of such offence and the offender, if in custody, shall be released or discharged. *Vide* Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Second Order, 2020, Notification No. S. O. 3465(E), dated (5 - 10 - 2020) and *Vide* Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, Notification No. S. O. 3774(E), dated (23 - 10 - 2020)

13.9.2 Unfair Labour Practices

THE FIFTH SCHEDULE : Unfair Labour Practices

13.9.2.1 On the part of employers and trade unions of employers

- (1) To interfere with, restrain from, or coerce, workmen in the exercise of their right to organize, form, join or assist a trade union or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, that is to say. -
- (a) threatening workmen with discharge or dismissal, if they join a trade union;
 - (b) threatening a lock-out or closure, if a trade union is organized;
 - (c) granting wage increase to workmen at crucial periods of trade union organization, with a view to undermining the efforts of the trade union at organization.
- (2) To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say,
- (a) an employer taking an active interest in organizing a trade union of his workmen; and
 - (b) an employer showing partiality or granting Favor to one of several trade unions attempting to organize his workmen or to its members, where such a trade union is not a recognized trade union.
- (3) To establish employer sponsored trade unions of workmen.
- (4) To encourage or discourage membership in any trade union by discriminating against any workman, that is to say,
- (a) discharging or punishing a workman, because he urged other workmen to join or organize a trade union;
 - (b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);
 - (c) changing seniority rating or workmen because of trade union activities;

- (d) refusing to promote workmen of higher posts on account of their trade union activities;
 - (e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;
 - (f) discharging office-bearers or active members of the trade union on account of their trade union activities.
- (5) To discharge or dismiss workmen-
- (a) by way of victimization;
 - (b) not in good faith, but in the colourable exercise of the employer's rights;
 - (c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;
 - (d) for patently false reasons;
 - (e) on untrue or trumped up allegations of absence without leave;
 - (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
 - (g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.
- (6) To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.
- (7) To transfer a workman mala fide from one place to another, under the guise of following management policy.
- (8) To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.
- (9) To show favouritism or partiality to one set of workers regardless of merit.
- (10) To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.
- (11) To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
- (12) To recruit workman during a strike which is not an illegal strike.
- (13) Failure to implement award, settlement or agreement.
- (14) To indulge in acts of force or violence.
- (15) To refuse to bargain collectively, in good faith with the recognized trade unions.
- (16) Proposing or continuing a lock-out deemed to be illegal under this Act.

13.9.2.2 On the part of workmen and trade unions of workmen

- (1) To advise or actively support or instigate any strike deemed to be illegal under this Act.

- (2) To coerce workmen in the exercise of their right to self-organization or to join a trade union or refrain from, joining any trade union, that is to say-
 - (a) for a trade union or its members to picketing in such a manner that non-striking workmen are physically debarred from entering the work places;
 - (b) to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
- (3) For a recognized union to refuse to bargain collectively in good faith with the employer.
- (4) To indulge in coercive activities against certification of a bargaining representative.
- (5) To stage, encourage or instigate such forms of coercive actions as wilful, "go-slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
- (6) To stage demonstrations at the residence of the employers or the managerial staff members.
- (7) To incite or indulge in wilful damage to employer's property connected with the industry.
- (8) To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.]

❖ **Answer the following questions in detail:**

1. 1.Explain Introduction, Methods of Disputes resolution and Authorities Established Under the Act
2. Explain Court of Inquiry.

❖ **Write Short Notes on: -**

1. Tribunal industry as well as national.
2. Offences and penalties, unfair labour practices.

- 14.1 Introduction**
- 14.2 Definition and meaning**
- 14.3 Enforcement**
- 14.4 Methods of the Minimum Wages Act, 1948**
- 14.5 Fixation of Minimum Wages: Methodology**
- 14.6 Revision of the Minimum Wages Act, 1948**
- 14.7 Computation and Conditions Under the Minimum Wages Act, 1948**
- 14.8 Hours of Work, Holidays, Fines, and Deductions Under the Minimum Wages Act, 1948**

14.1 Introduction

The minimum wages act, 1948, is the minimum amount that an organisation has to pay a particular employee (skilled or unskilled) for a specific job at a particular time that any contract agreement or collective agreement cannot reduce. The Minimum Wage Act was first implemented in 1948 and took effect on 15 March. The Act also created the Tripartite Committee of Fair Wage. This committee was formed to set the minimum wage guidelines in India. It defined the minimum wage and the criteria for its calculation. It set the foundation for the wage fixation process in India. The salary levels are determined based on the number of employees.

14.1.1 Purpose of Minimum Wage Act, 1948

The importance of the Minimum wage act 1948 is to prevent employee exploitation and ensure a decent living for a worker. The Act provides that the government will fix the minimum wage rate and revise it every five years. It appoints advisory committees to consider the proposals. The government must follow the guidelines and implement them as soon as possible. In many cases, this means announcing the changes to the law before the public.

- The Act was introduced in 1948, and it was amended in 2000
- The changes included a change in the floor level for minimum wages
- Currently, the minimum wage floor in India is 115, but the law also gives exceptions for certain employees
- The lowest floors are in Andhra Pradesh, Kerala, and Gujarat
- In addition to this, the new law provides for higher minimum wages for workers with disabilities

The act requires the government to consult with the committee and the representatives of the people affected by the minimum wage.

- The committee determines the minimum rate of the act
- The government must publish it in the official newspapers and enforce it within three months

- The government must inform the affected parties of the proposed minimum wage by publishing the decision in a national daily
- In case of non-payment of wages, the authority must pay ten times the difference

14.1.2 The Objective of the Minimum Wages Act

The Minimum wage Act 1948 accommodates fixing wage rates (time, piece, ensured time, additional time) for any industry.

- 1) While fixing hours for an ordinary working day according to the demonstration, ought to ensure the accompanying:
 - The number of hours to be fixed for an ordinary working day should have at least one stretch/break
 - One three-day weekend from a whole week ought to be given to the representative for rest
 - Installation for the day chosen to be given for rest ought to be paid at a rate at the very least the additional time rate
- 2) If a representative is engaged with work that classifies his service in at least two booked vocations, the worker's pay will incorporate a particular compensation pace of all work for the number of hours devoted at each undertaking.
- 3) The business must keep records of all workers' work, wages, and receipts.
- 4) Appropriate legislatures will characterise and dole out the errand of review and choose examiners for the equivalent.

14.2 Definition and Meaning

Minimum Wages Act, in simpler words, is the act to provide for fixing minimum rates of salaries in specific jobs/professions.

The Minimum Wages Act is a vital act that every working individual must be aware of. HR managers, in particular, should be well-versed in this act

14.2.1 Understanding the Minimum Wages Act 1948

The Central Legislature passed the Minimum Wage Act in 1948. It regulated the minimum wage to be paid for certain kinds of labour.

The Act is intent on providing equal treatment to workers in scheduled occupations by setting a baseline salary for them.

Put another way, the Act aims to stipulate minimum pay by law so that workers are not exploited.

After the Act was passed, blue-collar workers felt that they were receiving fair treatment. This law was based on the standards recommended by the Fair Wage Committee.

14.3 Enforcement of Minimum Wages

The provisions of the Minimum Wages Act, 1948, are being enforced by the Central Government and the State Governments in their respective jurisdiction. In the Central sphere the enforcement is done through the Inspecting Officers of the Chief Labour Commissioner (Central) commonly designated as Central Industrial Relations Machinery (CIRM) and the compliance in the State sphere is ensured through the State Enforcement Machinery. The designated inspecting officers conduct regular inspections and in the event of detection of any case of non-payment or underpayment of wages/minimum wages, they direct the employers to make payment of the shortfall of wages. In case of non-compliance, penal provisions prescribed under section 22 of the Minimum Wages Act, 1948, are taken recourse to. The details in regard to enforcement of the minimum wages in the Scheduled employments in the Central Sphere are annexed.

Landholding is the basic eligibility criteria to avail the benefit of the PM-KISAN Scheme. The Scheme aims to provide a payment of Rs. 6000/- per year to be transferred in three equal instalments of Rs. 2000/- each, every four months directly into the bank accounts of eligible landholding farmer families.

Mahatma Gandhi NREGS is a demand driven wage employment programme which provides for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work. There is no gender-based discrimination under Mahatma Gandhi NREGS. The Government has been making all efforts for improving the women participation under the Mahatma Gandhi NREGS and for which a separate schedule of rate has been mandated for them with flexible working hours.

As stipulated in the Schedule-II to the National Rural Employment Guarantee Act, 2005, the workers are, inter- alia, provided medical treatment in case of injury caused by accident arising out of and in the course of employment and ex gratia payment on death or permanent disability in the course of employment. Further, the facilities of safe drinking water, shade for children and periods of rest, first-aid box with adequate material for emergency treatment for minor injuries and other health hazards connected with the work being performed are provided at the work site.

Annexure

14.3.1 Details of Inspections, Prosecutions and Convictions done under the Minimum Wages Act, 1948

Particulars	No. of Inspections Conducted	No. of Irregularities detected	No. Irregularities Rectified	No. of Prosecutions Launched	No. of Convictions
1	2	3	4	5	6
2019-20	7690	59950	23397	1609	412

2020-21	2114	13949	7566	501	174
2021-22	5022	35983	8726	492	167

14.3.2 Claim cases under Minimum Wages Act, 1948

Year	CLAIMS FILED UNDER MINIMUM WAGES ACT, 1948			
	FILED	DECIDED	AWARDED	No. of WORKERS BENEFITED
1	2	3	4	5
2019-20	3470	754	Rs. 217981002/-	5297
2020-21	3763	1334	Rs. 270202177/-	7631
2021-22	5297	2102	Rs. 177722490/-	7487

14.4 Methods of the Minimum Wages Act, 1948

14.4.1 Key Features of the Minimum Wages Act

1. Scope and Coverage

The Minimum Wages Act covers a wide range of sectors, including both organized and unorganized industries. It applies to:

- **Scheduled Employment:** The act defines specific sectors classified as scheduled employment, which are eligible for minimum wage regulations. These include agriculture, manufacturing, construction, mining, and services.
- **Diverse Categories of Workers:** The act encompasses various categories of workers, including unskilled, semi-skilled, and skilled labourers.

2. Wage Fixation Mechanism

The act outlines a structured process for setting minimum wages:

- **Central and State Government Authority:** Both central and state governments are empowered to fix minimum wages. The state governments have the authority to set wages for scheduled employment within their jurisdiction.
- **Advisory Committees:** To facilitate wage fixation, advisory committees are formed, comprising representatives from employers, employees, and government officials. These committees assess the economic conditions and recommend appropriate wage rates.
- **Public Consultation:** The wage fixation process includes public consultations to gather feedback from various stakeholders, ensuring a comprehensive approach.

3. Classification of Workers

The act classifies workers based on their skills and nature of work:

- **Unskilled Workers:** Individuals performing basic tasks that require minimal skills.
- **Semi-Skilled Workers:** Workers with some training or experience who perform tasks requiring more than basic skills.
- **Skilled Workers:** Those with specialized training who perform complex tasks requiring expertise.

4. Periodic Review of Wages

Minimum wages are subject to regular reviews:

- **Scheduled Reviews:** The act mandates periodic reviews (typically every five years) to adjust wage rates based on economic conditions and the cost of living.
- **Economic Indicators:** Wage adjustments consider various economic indicators, including inflation rates and the Consumer Price Index (CPI).

5. Notification and Compliance

Once minimum wages are determined, the government must notify the rates to ensure awareness among employers and workers:

- **Official Notification:** Wage rates are published in official gazettes, and employers are required to inform their workers about the minimum wages applicable to their industry.
- **Compliance Mechanisms:** The act provides for the appointment of labour inspectors to monitor compliance and enforce wage regulations.

14.4.2 Methods of Implementation

The successful implementation of the Minimum Wages Act involves various methods and mechanisms designed to ensure compliance and protect workers' rights.

1. State-Level Wage Committees

Each state government establishes wage committees to recommend and set minimum wage rates for different sectors:

- **Composition of Committees:** These committees typically include representatives from labour unions, employers, and government officials, ensuring a balanced approach to wage setting.
- **Data Collection:** Committees gather data on living costs, inflation, and industry standards to make informed recommendations.

2. Regular Wage Reviews

Minimum wages are not static; they require regular reviews to remain relevant:

- **Five-Year Review Cycle:** The act stipulates that minimum wage rates should be reviewed every five years, with adjustments based on economic conditions.

- **Use of Economic Data:** Committees analyse data from various sources, including labour surveys and economic reports, to evaluate the need for wage adjustments.

3. Public Awareness Initiatives

To ensure that workers are aware of their rights under the Minimum Wages Act, the government conducts public awareness campaigns:

- **Worker Education Programs:** These programs aim to educate workers about their rights, the importance of minimum wages, and how to claim them.
- **Employer Guidance:** Employers are provided with information about their responsibilities under the act and the consequences of non-compliance.

4. Monitoring and Compliance Mechanisms

Ensuring compliance with the Minimum Wages Act involves various monitoring strategies:

- **Labor Inspectors:** The appointment of labour inspector is crucial for monitoring compliance. Inspectors conduct surprise visits to workplaces to check if employers are adhering to minimum wage regulations.
- **Surveys and Audits:** Periodic surveys and audits are conducted to assess compliance levels across different sectors. These assessments help identify industries or regions with high non-compliance rates.

5. Grievance Redressal Mechanisms

The act provides mechanisms for workers to lodge complaints against employers who fail to pay minimum wages:

- **Complaint Procedures:** Workers can file complaints with labour departments or appropriate authorities, prompting investigations into non-compliance cases.
- **Legal Recourse:** If employers are found guilty of violating wage regulations, they may face penalties, including fines and legal action.

6. Role of Trade Unions

Trade unions play a vital role in the implementation of the Minimum Wages Act:

- **Advocacy for Workers' Rights:** Trade unions advocate for fair wages and working conditions, often engaging in collective bargaining to negotiate better pay on behalf of their members.
- **Support and Guidance:** Unions provide support to workers in understanding their rights and navigating the process of claiming minimum wages.

14.4.3. Challenges in Implementation

Despite the significance of the Minimum Wages Act, several challenges hinder its effective implementation:

1. Widespread Non-Compliance

A significant number of employers, particularly in the unorganized sector, fail to comply with minimum wage regulations:

- **Evasion of Compliance:** Many employers either lack awareness of the law or deliberately evade compliance due to financial constraints, leading to widespread underpayment.
- **Limited Enforcement:** The limited number of labour inspectors and resources allocated for monitoring contribute to the challenges in enforcing the act effectively.

2. Variation in State Regulations

The act allows individual states to set their own minimum wages, leading to disparities:

- **Regional Discrepancies:** Different wage rates across states can create confusion among workers and employers, leading to unequal treatment and competition among industries.
- **Impact on Migrant Workers:** Migrant workers often face challenges in understanding the wage rates applicable in different states, leading to potential exploitation.

3. Informal Sector Challenges

A large proportion of the workforce in India is employed in the informal sector, where enforcing minimum wage regulations is particularly challenging:

- **Lack of Documentation:** Informal employment often lacks proper documentation, making it difficult to track compliance with minimum wage laws.
- **Vulnerability of Workers:** Workers in the informal sector are often unaware of their rights, making them more susceptible to exploitation and underpayment.

4. Inflation and Economic Changes

Rapid inflation and changing economic conditions can render the set minimum wages inadequate:

- **Inadequate Adjustments:** Delays in periodic wage reviews may lead to minimum wages that do not align with rising living costs, affecting workers' purchasing power.
- **Economic Disparities:** Economic changes may affect different regions and sectors unequally, necessitating more frequent adjustments to minimum wage rates.

5. Awareness and Education Deficits

A lack of awareness about the Minimum Wages Act among both workers and employers poses a significant barrier:

- **Limited Knowledge of Rights:** Many workers, particularly in rural areas, are unaware of their rights under the act and how to claim minimum wages.
- **Employer Ignorance:** Employers may not fully understand their obligations under the law, leading to inadvertent non-compliance.

14.4.4 Recent Developments and Reforms

In recent years, there have been significant reforms and developments related to the Minimum Wages Act, aimed at enhancing its effectiveness:

1. Integration with Labor Codes

The Government of India has undertaken a significant reform of labour laws, including the Minimum Wages Act, through the introduction of four new labour codes. This restructuring aims to simplify and modernize labour regulations:

- **Consolidation of Laws:** The new codes consolidate various labour laws, including wage-related provisions, to create a more coherent legal framework.
- **Streamlined Processes:** The reforms seek to streamline the wage fixation process, making it more transparent and accessible for both employers and workers.

2. Digitalization and Technological Integration

Advancements in technology are being harnessed to enhance compliance and monitoring:

- **Digital Wage Payment Systems:** The government is exploring digital payment systems for wage disbursement, promoting transparency and accountability.
- **Mobile Applications:** Mobile apps and platforms are being developed to provide workers with information about their rights and facilitate wage claims.

3. Focus on Inclusivity and Vulnerable Groups

Recent reforms emphasize inclusive growth, particularly for marginalized and vulnerable groups:

- **Special Provisions for Women and Minorities:** The government is working on policies that address wage disparities affecting women, minorities, and other marginalized groups, ensuring they receive fair compensation.
- **Skill Development Programs:** Initiatives aimed at skill development and vocational training are being implemented to empower workers and enhance their employability.

4. Enhanced Monitoring and Reporting Mechanisms

To improve compliance, the government is investing in better monitoring and reporting mechanisms:

- **Data Collection and Analysis:** Enhanced data collection methods are being developed to monitor compliance levels more effectively.
- **Strengthened Labor Inspectorate:** The government is working to strengthen the labour inspectorate, increasing the number of inspectors and resources dedicated to enforcing wage regulations.

14.5 Fixation of Minimum Wages: Methodology

The fixation of minimum wages is a systematic process involving multiple stages. Here, we outline the methodology used for fixing minimum wages under the Minimum Wages Act.

1. Advisory Committees

To determine minimum wages, the government forms advisory committees that include representatives from:

- **Labor Unions:** Advocates for workers' rights and interests.
- **Employers:** Business representatives who provide insights into industry standards and economic conditions.
- **Government Officials:** Experts who assess the legal, economic, and social implications of wage settings.

These committees play a crucial role in making informed recommendations based on comprehensive data and stakeholder inputs.

2. Data Collection and Analysis

The wage fixation process involves extensive data collection and analysis:

- **Cost of Living Data:** Information on living costs is gathered, including the prices of essential goods and services, housing, healthcare, and education. This data helps establish a baseline for what constitutes a living wage.
- **Economic Indicators:** Economic conditions such as inflation rates, employment rates, and productivity levels are analysed to understand the broader economic landscape.
- **Wage Surveys:** Surveys may be conducted to gather information on existing wage rates in different sectors, allowing for a comparative analysis.

3. Assessment of Living Standards

The advisory committees assess the minimum wage in the context of the living standards of workers:

- **Living Wage Concept:** The minimum wage should be sufficient for a worker to maintain a basic standard of living. This includes provisions for food, shelter, clothing, education, and healthcare for the worker and their family.
- **Family Size Consideration:** The number of dependents a worker has is also considered, as this affects the income required for a decent standard of living.

4. Public Consultation

To ensure transparency and inclusivity, public consultations are often held:

- **Stakeholder Engagement:** Meetings are organized with various stakeholders, including labour unions, employer associations, and civil society organizations. This provides an opportunity for different voices to be heard and for feedback to be incorporated into the wage fixation process.
- **Awareness Campaigns:** Efforts are made to raise awareness among workers about their rights and the importance of minimum wage regulations, encouraging them to participate in the consultation process.

5. Recommendation and Notification

After thorough analysis and consultation, the advisory committee submits its recommendations to the government:

- **Government Decision:** The government reviews the recommendations and may modify them before officially announcing the minimum wage rates.
- **Official Notification:** Once finalized, the minimum wage rates are published in official gazettes, making them accessible to all stakeholders, including employers and workers.

14.5.1 Criteria for Fixation of Minimum Wages

The fixation of minimum wages is guided by several criteria aimed at ensuring that the wages set are fair and reflective of the economic reality. These criteria include:

1. Basic Needs Approach

The minimum wage should be based on the basic needs of workers and their families. This includes:

- **Food Security:** Ensuring that workers can afford a nutritious diet.
- **Housing:** Providing for decent accommodation.
- **Healthcare:** Ensuring access to basic medical care and health services.
- **Education:** Allowing for the education of children, contributing to upward mobility.

2. Cost of Living Index

The Consumer Price Index (CPI) and other cost-of-living indices play a crucial role in determining the minimum wage:

- **Inflation Adjustments:** Wage rates should be adjusted in line with inflation to maintain workers' purchasing power.
- **Regional Variations:** Consideration is given to regional differences in living costs, ensuring that minimum wages reflect local economic conditions.

3. Economic Conditions

Economic indicators such as GDP growth, unemployment rates, and industry-specific factors influence wage fixation:

- **Industry Viability:** The financial health of industries is considered to ensure that minimum wages do not jeopardize employment levels or lead to business closures.
- **Regional Economic Differences:** Variations in economic development between regions are acknowledged, allowing for flexibility in wage rates.

4. Social Justice and Equity

The minimum wage must also reflect the principles of social justice and equity:

- **Equity among Workers:** The wage structure should aim to reduce disparities between different worker categories and sectors.
- **Promotion of Inclusivity:** Special attention is given to marginalized groups, ensuring that vulnerable populations receive fair wages.

14.5.2 Challenges in the Fixation of Minimum Wages

While the Minimum Wages Act provides a robust framework for wage fixation, several challenges complicate its implementation:

1. Non-Compliance by Employers

Despite legal requirements, many employers, particularly in the unorganized sector, fail to comply with minimum wage regulations:

- **Lack of Awareness:** Some employers may not fully understand their obligations under the act, leading to inadvertent non-compliance.
- **Deliberate Evasion:** Others may intentionally underpay workers to reduce operational costs, exploiting the lack of oversight in informal employment.

2. Regional Disparities

The variability in wage rates across states and regions can lead to inequalities:

- **Inconsistent Implementation:** Differences in how states implement and update minimum wage regulations can create disparities that disadvantage workers in certain areas.
- **Migrant Worker Issues:** Migrant workers often face confusion regarding applicable wage rates in different states, making them vulnerable to exploitation.

3. Data Limitations

Accurate data collection is critical for effective wage fixation, but challenges exist:

- **Inadequate Data Sources:** In many cases, the data available on living costs and wages is outdated or incomplete, hindering informed decision-making.
- **Lack of Surveys in Informal Sector:** The informal nature of a significant portion of the workforce makes it difficult to gather accurate data on wages and living conditions.

4. Political and Economic Influences

Political considerations can impact the wage fixation process:

- **Policy Changes:** Shifts in government priorities or political pressures can lead to delays or changes in wage reviews.
- **Economic Fluctuations:** Economic downturns may lead to resistance from employers against wage increases, impacting the negotiation process.

5. Inflation and Cost of Living Adjustments

Rapid inflation and changing economic conditions can outpace periodic wage reviews:

- **Delayed Adjustments:** If wage reviews do not occur frequently enough, minimum wages may become inadequate due to rising living costs.
- **Adjustment Challenges:** Balancing the need for wage increases with the economic viability of businesses can be complex.

14.6 Revision of the Minimum Wages Act, 1948

The Minimum Wages Act, 1948, is a crucial piece of legislation in India designed to ensure that workers receive fair compensation for their labour. Over the years, the need for revisions and updates to this act has arisen due to various economic, social, and political factors. This comprehensive examination focuses on the revision of the Minimum Wages Act, addressing the rationale for changes, the processes involved, the challenges encountered, and the implications of such revisions on the workforce and economy.

14.6.1 Rationale for Revision

The need for revising the Minimum Wages Act stems from several factors:

1. Changing Economic Conditions

India's economy has undergone significant transformations since the enactment of the Minimum Wages Act in 1948. Factors such as inflation, changes in the cost of living, and evolving labour market dynamics necessitate regular reviews and updates to wage rates.

- **Inflation Rates:** The rising inflation rates have eroded the purchasing power of wages. What may have been a fair wage several decades ago may no longer suffice for workers to meet their basic needs.
- **Cost of Living:** The cost of essential goods and services, including food, housing, healthcare, and education, has dramatically increased, necessitating adjustments in minimum wages to reflect current economic realities.

2. Increased Workforce Diversity

The Indian workforce has become increasingly diverse, with a significant rise in the number of informal workers, women in the labour force, and various other marginalized groups.

- **Informal Sector Expansion:** A large portion of the workforce now operates in the informal sector, where minimum wage laws are often poorly enforced. Revising the act to encompass more sectors and workers is essential for protecting these vulnerable populations.
- **Gender and Diversity Considerations:** The increased participation of women and marginalized groups in the labour market has highlighted the need for equitable wage structures that address **systemic disparities**.

3. Globalization and Economic Policies

Globalization has transformed labour markets and introduced competitive pressures.

- **Competition and Wage Standards:** As industries compete in a global marketplace, domestic wage standards must be revised to ensure that Indian workers are not undervalued compared to their counterparts in other countries.
- **Policy Alignment:** Aligning wage standards with international labour norms is necessary to enhance India's competitiveness and improve labour relations.

4. Technological Advancements

Advancements in technology have changed the nature of work across sectors, impacting wage structures.

- **Skill Demands:** As industries evolve, the demand for skilled labour increases, necessitating a reassessment of wage rates to attract and retain talent.
- **Job Displacement:** Automation and technological changes can lead to job displacement, making it crucial to ensure that displaced workers are adequately supported through minimum wage adjustments.

14.6.2 Processes Involved in Revising Minimum Wages

The revision of minimum wages under the Minimum Wages Act involves a structured process, encompassing several steps designed to ensure fairness, transparency, and inclusivity.

1. Formation of Advisory Committees

Advisory committees play a pivotal role in the wage revision process.

- **Composition of Committees:** These committees typically include representatives from labour unions, employers, and government officials. This diverse composition ensures that various perspectives are considered in the wage-setting process.
- **Mandate and Function:** The committees are tasked with reviewing existing wage rates, analysing economic data, and making recommendations for adjustments based on comprehensive assessments.

2. Data Collection and Analysis

Accurate data is essential for informed decision-making.

- **Economic Surveys:** Government agencies conduct surveys to collect data on living costs, inflation rates, and existing wage levels across different sectors.
- **Stakeholder Input:** Input from labour unions, employers, and other stakeholders is solicited to provide a holistic view of the economic landscape and worker needs.

3. Public Consultation and Feedback

Public consultation is a critical aspect of the revision process.

- **Engagement with Stakeholders:** Public hearings and consultations are organized to gather feedback from workers, employers, and civil society organizations. This engagement ensures that the revised wage rates reflect the realities faced by various groups.
- **Transparency in Process:** By involving stakeholders, the government enhances transparency and builds trust in the wage-setting process.

4. Recommendation and Approval

After thorough analysis and consultations, the advisory committee formulates recommendations for wage adjustments.

- **Government Review:** The recommendations are submitted to the government for review and consideration. The government may choose to modify the recommendations before finalizing the new wage rates.
- **Official Notification:** Once the wage rates are finalized, they are officially notified through gazette publications and other channels to ensure that all stakeholders are informed.

5. Implementation and Monitoring

The revised minimum wage rates must be effectively implemented and monitored.

- **Compliance Mechanisms:** Labor inspectors are assigned to ensure that employers comply with the new wage rates. Regular inspections and audits help identify non-compliance cases.
- **Grievance Redressal:** Mechanisms for workers to lodge complaints against employers who fail to adhere to the revised minimum wage laws are established. This helps protect workers' rights and ensures accountability.

14.6.3 Challenges in Revising Minimum Wages

Despite the structured processes for revising minimum wages, several challenges persist.

1. Political Influences

The revision of minimum wages can be influenced by political considerations, which may lead to delays or compromises that do not adequately address worker needs.

- **Electoral Considerations:** Political parties may hesitate to increase minimum wages close to elections due to concerns about potential backlash from employers or industry stakeholders.
- **Lobbying by Employers:** Employers' associations may lobby against significant wage increases, arguing that they could negatively impact business viability and employment levels.

2. Resistance from Employers

Employers may resist wage revisions for various reasons.

- **Cost Concerns:** Many employers, particularly small businesses, express concerns about the financial burden of increased wages, arguing that it could lead to layoffs or reduced hiring.
- **Competitive Pressures:** Employers fear that higher wages may lead to increased production costs, making them less competitive in both domestic and international markets.

3. Implementation Gaps

Even after wages are revised, implementation may face challenges.

- **Lack of Awareness:** Many workers, especially in the informal sector, may not be aware of their rights regarding minimum wages, leading to underpayment or exploitation.

- **Insufficient Monitoring:** A lack of resources and manpower for labour inspections can hinder effective enforcement of minimum wage laws.

4. Data Limitations

Accurate data collection is essential for effective wage revision, but challenges remain.

- **Inconsistent Data Sources:** Disparities in data quality and availability across regions can lead to imprecise assessments of living costs and wage needs.
- **Informal Sector Challenges:** The informal nature of much of the labour market makes it difficult to gather accurate data on wages and living conditions, impacting the revision process.

5. Economic Instability

Economic fluctuations, such as recessions or downturns, can complicate the wage revision process.

- **Inflationary Pressures:** High inflation rates can necessitate urgent wage adjustments, but economic instability may make it difficult for governments to implement increases.
- **Unemployment Concerns:** During economic downturns, concerns about rising unemployment may deter governments from making substantial wage increases.

14.6.4 Recent Revisions and Developments

In recent years, the Indian government has recognized the need for comprehensive reforms to the Minimum Wages Act, leading to several significant revisions.

1. Integration with New Labor Codes

In 2020, the Indian government introduced four new labour codes, which include provisions for minimum wages.

- **Consolidation of Laws:** The new codes aim to simplify and consolidate various labour laws, including the Minimum Wages Act, making it easier for workers and employers to understand their rights and responsibilities.
- **Expanded Coverage:** The revised codes expand the definition of scheduled employment to include more sectors and categories of workers, including gig workers and platform-based workers.

2. National Floor Level Minimum Wage

The introduction of a national floor level minimum wage aims to create a baseline wage across the country.

- **Uniformity Across States:** This initiative seeks to provide a uniform minimum wage that can be adjusted based on regional economic conditions, helping to bridge disparities between states.
- **Benchmark for States:** States are encouraged to set their minimum wages above this floor level, ensuring that workers in every region receive adequate compensation.

3. Focus on Informal Sector Workers

Recognizing the significant number of workers in the informal sector, recent revisions emphasize the need for protections for these vulnerable populations.

- **Wage Security Initiatives:** The government is exploring ways to extend minimum wage protections to informal workers, ensuring they receive fair wages and benefits.
- **Awareness Campaigns:** Initiatives to educate informal workers about their rights and entitlements under the Minimum Wages Act are being implemented to empower them.

4. Digitalization and Technology Integration

To enhance compliance and monitoring, the government is leveraging technology.

- **Digital Payment Systems:** The promotion of digital payment systems for wage disbursement aims to increase transparency and reduce instances of underpayment.
- **Mobile Applications:** The development of mobile applications allows workers to access information about their rights and the applicable minimum wage in their sector.

5. Focus on Gender Equality

Recent revisions highlight the importance of addressing gender disparities in wages.

- **Equity Provisions:** Policies aimed at ensuring equal pay for equal work, particularly for women and marginalized groups, are being emphasized.
- **Women's Empowerment Initiatives:** The government is working to implement programs that support women's participation in the workforce, enhancing their economic independence.

14.6.5 Implications of Minimum Wage Revisions

The revision of minimum wages has far-reaching implications for the workforce and the broader economy.

1. Improved Living Standards

One of the most significant impacts of revising minimum wages is the potential improvement in living standards for workers and their families.

- **Enhanced Purchasing Power:** Adequate minimum wages enable workers to afford basic necessities, leading to better health and well-being.
- **Reduction in Poverty:** Higher wages can contribute to poverty alleviation, reducing reliance on social welfare programs.

2. Economic Growth

Increasing minimum wages can stimulate economic growth by boosting consumer spending.

- **Increased Demand:** When workers have more disposable income, they are likely to spend more, stimulating demand for goods and services.

- **Job Creation:** A thriving consumer market can encourage businesses to expand and create new job opportunities.

3. Reduction in Income Inequality

Revising minimum wages can help address income inequality within the workforce.

- **Equitable Wage Structures:** By ensuring that minimum wages are set at a level that reflects living costs and social justice principles, disparities in income among different worker categories can be reduced.
- **Support for Vulnerable Populations:** Targeted wage policies can uplift marginalized groups, contributing to greater social equity.

4. Enhanced Labor Relations

A well-implemented minimum wage policy can lead to improved labour relations.

- **Reduced Conflicts:** Fair wage structures can decrease disputes between workers and employers, fostering a more harmonious working environment.
- **Increased Trust:** Transparency in the wage-setting process can build trust between the government, employers, and workers, enhancing cooperation.

5. Encouragement of Skill Development

Revisions to minimum wage policies can encourage skill development among workers.

- **Investment in Training:** Employers may invest more in training and skill development to attract and retain skilled labour, contributing to workforce enhancement.
- **Recognition of Skills:** By establishing wage structures that reflect skill levels, workers are motivated to pursue further education and training

14.7 Computation and Conditions Under the Minimum Wages Act, 1948

The Minimum Wages Act, 1948, is a critical piece of legislation in India aimed at ensuring fair compensation for workers in various sectors. This act mandates the fixation of minimum wages, which must be adhered to by employers. To understand how these wages are computed and the conditions surrounding their application, it is essential to delve into the methodologies of wage calculation, the specific conditions under which these wages apply, and the implications for both workers and employers.

14.7.1 Computation of Minimum Wages

The computation of minimum wages involves several steps and considerations, ensuring that wages reflect the economic realities faced by workers.

1. Data Collection and Analysis

Accurate data collection is fundamental to the computation of minimum wages. This process typically involves the following steps:

a. Living Wage Calculation

A living wage is defined as the minimum income necessary for a worker to meet their basic needs, including food, shelter, clothing, healthcare, and education. The calculation of a living wage considers:

- **Basic Needs Approach:** This approach identifies the costs of essential goods and services. Surveys are conducted to assess the average cost of food, housing, and other necessities.
- **Family Size Consideration:** The living wage must account for the size of the worker's family, as more dependents increase the financial burden on the worker.

b. Consumer Price Index (CPI)

The Consumer Price Index is a crucial economic indicator used to measure the average change over time in the prices paid by consumers for goods and services.

- **Inflation Adjustments:** Changes in the CPI provide insights into inflation rates, which must be factored into minimum wage calculations to maintain workers' purchasing power.
- **Regional Variations:** The CPI can vary significantly between urban and rural areas, necessitating localized assessments of living costs.

c. Wage Surveys

Wage surveys collect information on existing wage levels across different sectors and regions.

- **Comparative Analysis:** Data from these surveys allow for comparisons between current wage rates and the proposed minimum wages, ensuring that the new rates are competitive and equitable.
- **Sector-Specific Considerations:** Different sectors may have varying wage standards; thus, wage surveys must be tailored to capture the nuances of each industry.

2. Classification of Workers

The Minimum Wages Act classifies workers into different categories based on their skill levels and the nature of their work.

a. Skill Levels

- **Unskilled Workers:** Laborers performing tasks that require minimal training or skills. Their minimum wage is typically set lower compared to skilled workers.
- **Semi-Skilled Workers:** Workers with some level of training or experience. Their wage rates reflect the additional skills they bring to their roles.
- **Skilled Workers:** These workers possess specialized skills or training. The minimum wages for skilled workers are higher to account for their expertise.

b. Nature of Work

- **Scheduled Employment:** The act applies to various scheduled employments, including agriculture, manufacturing, construction, and services. Each sector may have specific minimum wage rates.
- **Sector-Specific Conditions:** The nature of the work can also affect wage calculations, as different sectors face unique economic conditions and labour demands.

3. Wage Fixation Committees

Wage fixation committees or advisory boards are established to recommend minimum wage rates based on comprehensive data analysis.

a. Composition of Committees

These committees typically include:

- **Representatives from Labor Unions:** Ensuring workers' interests are represented.
- **Employer Representatives:** Providing insights from the business perspective.
- **Government Officials and Economists:** Offering expertise in economic conditions and regulatory requirements.

b. Recommendations

After thorough discussions and analyses, these committees submit recommendations to the government, which may adjust the proposed minimum wages based on various factors.

4. Periodic Reviews

The Minimum Wages Act mandates periodic reviews of wage rates.

a. Review Frequency

Wage rates are generally reviewed every five years to ensure they remain aligned with economic conditions.

b. Consideration of Economic Indicators

During reviews, factors such as inflation rates, changes in the cost of living, and wage trends in comparable sectors are analysed to determine if adjustments are necessary.

14.7.2 Conditions for Minimum Wages

The Minimum Wages Act lays out specific conditions under which minimum wages apply. Understanding these conditions is crucial for both employers and workers.

1. Applicability of the Act

a. Scheduled Employment

The Minimum Wages Act applies specifically to scheduled employments, which are defined by the government. These include:

- **Agricultural Work:** Minimum wages for agricultural labourers, including farmhands and seasonal workers.
- **Industrial Work:** Wages for workers in manufacturing, mining, and other industrial sectors.
- **Service Sector:** Workers in sectors such as hospitality, healthcare, and retail.

b. Geographic Scope

Minimum wage regulations can vary significantly between states and regions.

- **State Authority:** Each state government has the authority to fix minimum wages for scheduled employments within its jurisdiction, leading to variations based on local economic conditions.
- **Central and State Government Roles:** While the central government may set minimum wages for certain sectors, state governments can adjust these rates based on regional factors.

2. Conditions of Employment

a. Full-Time vs. Part-Time Workers

Minimum wages are applicable to both full-time and part-time workers, although the computation may vary based on the number of hours worked.

- **Hourly Wage Calculation:** For part-time workers, wages are typically calculated on an hourly basis, ensuring they receive the minimum rate for each hour worked.

b. Overtime Pay

Workers who exceed the standard working hours are entitled to overtime pay, which must be calculated in accordance with the Minimum Wages Act.

- **Overtime Rates:** The act stipulates that overtime pay should be higher than the standard minimum wage, providing additional compensation for extended hours.

3. Non-Discrimination Clause

The Minimum Wages Act enforces a non-discrimination policy in wage payment.

a. Equal Pay for Equal Work

Workers performing similar tasks must receive equal pay, regardless of gender, caste, or other discriminatory factors.

- **Gender Pay Gap:** Efforts to address gender disparities in wages are critical to ensuring that women receive fair compensation.

b. Protection of Vulnerable Groups

Special provisions may be established to protect the wages of marginalized or vulnerable groups, such as women, children, and persons with disabilities.

4. Compliance and Enforcement

The act outlines mechanisms for compliance and enforcement to ensure that employers adhere to the minimum wage regulations.

a. Labor Inspectorate

Labor inspectors are responsible for monitoring compliance with the Minimum Wages Act.

- **Regular Inspections:** Inspectors conduct regular checks on businesses to ensure they are paying the mandated minimum wages.
- **Documentation and Reporting:** Employers are required to maintain records of wages paid, which must be available for inspection.

b. Complaint Mechanisms

Workers have the right to file complaints if they believe their minimum wage rights are being violated.

- **Grievance Redressal:** The government provides mechanisms for workers to report violations, and complaints are investigated by labour authorities.

5. Penalties for Non-Compliance

Employers who fail to comply with the Minimum Wages Act face penalties.

a. Fines and Imprisonment

Non-compliance can result in fines and, in severe cases, imprisonment for employers who wilfully violate wage regulations.

- **Deterrent Effect:** Strict penalties serve as a deterrent to employers who might otherwise exploit workers by underpaying them.

b. Restitution of Wages

Workers are entitled to recover unpaid wages if an employer is found guilty of violating the Minimum Wages Act.

14.7.3 Implications of Computation and Conditions

The computation of minimum wages and the conditions surrounding their application have significant implications for workers, employers, and the economy as a whole.

1. Economic Impact on Workers

a. Improved Living Standards

Adequate minimum wages enable workers to meet their basic needs, improving their overall quality of life.

- **Poverty Alleviation:** Higher wages contribute to poverty reduction, allowing workers to invest in education, healthcare, and other essential services.

b. Increased Consumer Spending

As workers have more disposable income, consumer spending increases, stimulating economic growth.

- **Multiplier Effect:** Increased demand for goods and services can lead to higher production levels and job creation.

2. Impact on Employers

a. Cost of Compliance

Employers must ensure compliance with minimum wage regulations, which can increase operational costs.

- **Financial Burden:** Small businesses may face challenges in meeting wage requirements, leading to potential layoffs or reduced hiring.

b. Workforce Productivity

Fair wages can enhance employee morale and productivity.

- **Retention of Talent:** Competitive wages help attract and retain skilled labour, contributing to overall business success.

3. Broader Economic Implications

a. Reduction in Income Inequality

Effective implementation of minimum wage laws can help reduce income disparities within the workforce.

- **Social Justice:** Equitable wage structures promote social justice and contribute to a more balanced economic environment.

b. Enhancement of Labor Market Stability

By ensuring fair wages, the Minimum Wages Act contributes to stability in the labour market.

- **Reduced Labor Conflicts:** Fair compensation can lead to fewer labour disputes and strikes, fostering a more harmonious working environment.

14.8 Hours of Work, Holidays, Fines, and Deductions Under the Minimum Wages Act, 1948

The Minimum Wages Act, 1948, is a cornerstone of labour legislation in India, aiming to protect workers by ensuring they receive fair wages for their labour. Integral to this act are the regulations regarding working hours, holidays, fines, and deductions. Understanding these aspects is essential for both employers and employees to ensure compliance and promote a fair working environment. This discussion delves into each of these components in detail, exploring their significance and implications.

14.8.1. Hours of Work

A. Definition and Regulation of Working Hours

The Minimum Wages Act establishes guidelines for the maximum number of hours an employee can work in a day and week, ensuring that workers are not overburdened and have time for rest and recovery.

a. Daily and Weekly Limits

- **Daily Working Hours:** The act generally stipulates that the maximum working hours for an adult worker should not exceed eight hours a day.
- **Weekly Working Hours:** The total number of hours worked in a week is typically capped at 48 hours. Any work beyond these limits is considered overtime and must be compensated accordingly.

b. Overtime Compensation

- **Definition of Overtime:** Overtime refers to any hours worked beyond the stipulated daily or weekly limits. The act mandates that overtime pay must be at a higher rate, often set at one-and-a-half times the regular wage.
- **Record Keeping:** Employers are required to maintain accurate records of the hours worked by employees to calculate overtime compensation accurately.

B. Exceptions and Special Provisions

The act allows for certain exceptions and special provisions in specific sectors or types of employment.

a. Certain Industries

- **Continuous Operations:** In industries where continuous operation is necessary (e.g., factories, hospitals), the rules regarding working hours may differ, and shifts may be implemented to ensure compliance with labour laws.
- **Seasonal Work:** In sectors like agriculture, where work patterns vary seasonally, different regulations may apply to accommodate fluctuating workloads.

b. Night Shifts

- **Night Work Provisions:** Special provisions are often made for night shifts, including safety measures and additional compensation. Employers must ensure that night shifts do not compromise worker safety or health.

14.8.2. Holidays

A. Statutory Holidays

The Minimum Wages Act recognizes the importance of rest and recuperation for workers, stipulating provisions for holidays.

a. Weekly Off

- **Mandatory Rest Days:** Workers are entitled to a minimum of one paid day off each week, which is typically Sunday, although this may vary based on regional practices or specific employment sectors.
- **Compensation for Working on Off Days:** If a worker is required to work on their designated day off, they must be compensated at a higher rate, often double the regular wage.

b. Public Holidays

- **Designated Holidays:** The act provides for a certain number of public holidays that workers are entitled to, such as national holidays (e.g., Republic Day, Independence Day) and regional holidays.
- **Paid Leave on Holidays:** Workers should receive their regular wages for these public holidays. If required to work on such holidays, employees are entitled to additional compensation.

B. Leave Entitlements

In addition to public holidays, the Minimum Wages Act recognizes the importance of leave entitlements.

a. Annual Leave

- **Accumulation of Leave:** Workers are typically entitled to a specific number of paid leave days per year, which may accumulate over time if not utilized.
- **Carrying Over Leave:** Provisions may allow workers to carry over unused leave days into the next year, ensuring they can take necessary time off without losing entitlements.

b. Sick Leave and Casual Leave

- **Sick Leave:** Employees may also be entitled to paid sick leave, enabling them to take time off for health-related issues without financial repercussions.
- **Casual Leave:** Workers often have the right to take casual leave for personal matters, which should also be compensated.

14.8.3. Fines

A. Imposition of Fines

Fines are a mechanism through which employers may penalize workers for misconduct or violations of workplace rules.

a. Legality of Fines

- **Regulatory Framework:** The Minimum Wages Act, along with other labour laws, regulates the imposition of fines, ensuring that any penalties are reasonable and justifiable.
- **Specificity in Rules:** Employers must have clear rules regarding fines that are communicated to all employees. This includes detailing the types of infractions that may result in fines and the corresponding penalty amounts.

b. Limitations on Fines

- **Cap on Fines:** The act often imposes limits on the amount that can be deducted from a worker's wages as fines, ensuring that penalties do not disproportionately affect their income.
- **Prohibition of Arbitrary Fines:** Employers cannot impose fines arbitrarily; there must be a documented process for penalizing workers that includes prior warnings and just cause.

B. Transparency and Fairness

a. Documentation and Communication

- **Record of Fines:** Employers must maintain records of any fines imposed, ensuring transparency in the disciplinary process.
- **Worker Notification:** Employees should be informed of fines and deductions from their wages, with explanations provided regarding the reasons for such penalties.

b. Grievance Redressal Mechanism

- **Challenging Fines:** Workers should have the right to contest fines they believe are unjust or improperly applied. A formal grievance redressal mechanism must be in place to address such issues.

14.8.4. Deductions

A. Permissible Deductions

The Minimum Wages Act outlines specific circumstances under which deductions from wages are permissible.

a. Statutory Deductions

- **Taxes and Contributions:** Employers are required to make certain statutory deductions from employees' wages, such as income tax, provident fund contributions, and social security payments.
- **Legal Compliance:** These deductions must comply with the relevant laws and regulations, ensuring that workers are not underpaid due to excessive or improper deductions.

b. Deductions for Absences

- **Unauthorised Absences:** Employers may deduct wages for days not worked due to unauthorized absences. However, these deductions should be reasonable and proportionate to the time lost.
- **Leave Deduction Policies:** Clear policies regarding deductions for leave taken without proper authorization must be communicated to all employees.

B. Prohibited Deductions

a. Unlawful Deductions

- **Prohibition of Arbitrary Deductions:** The act prohibits any arbitrary or unfair deductions from wages. Employers cannot withhold wages for reasons not stipulated in the act or without adequate justification.
- **Examples of Prohibited Deductions:** Deductions for tools, uniforms, or damages must not be made unless explicitly agreed upon by the employee and outlined in the employment contract.

b. Wage Protection

- **Ensuring Minimum Wage Compliance:** Employers are prohibited from deducting amounts that would reduce a worker's wages below the minimum

wage established by law. Any deductions must ensure compliance with the minimum wage requirements.

C. Documentation and Notification

a. Pay Slips

- **Transparency in Wage Payment:** Employers must provide pay slips that detail gross wages, deductions, and net pay. This ensures workers understand how their wages are calculated and what deductions have been made.

b. Record Keeping

- **Maintenance of Records:** Employers must maintain records of wages, deductions, and any fines imposed. These records should be accessible to labour inspectors and employees upon request.

14.8.5. Enforcement and Compliance

A. Role of Labor Inspectors

Labor inspectors play a crucial role in ensuring compliance with the Minimum Wages Act.

a. Monitoring Compliance

- **Regular Inspections:** Labor inspectors conduct regular inspections of workplaces to ensure compliance with wage laws, including those related to hours of work, holidays, fines, and deductions.
- **Investigation of Complaints:** They investigate complaints from workers regarding unpaid wages, unlawful deductions, or unfair fines, taking necessary action to rectify violations.

b. Recommendations for Improvement

- **Guidance for Employers:** Inspectors provide guidance to employers on compliance with wage laws and recommend improvements in practices to ensure adherence to regulations.

B. Penalties for Non-Compliance

a. Fines and Sanctions

- **Penalties for Violations:** Employers found in violation of the Minimum Wages Act may face fines, and in severe cases, imprisonment for wilful non-compliance.
- **Restitution of Wages:** Employers may be required to pay back wages to workers who have been underpaid or improperly fined.

b. Encouraging Compliance

- **Incentives for Compliance:** Governments may provide incentives or support programs for employers who maintain compliance with labour laws, fostering a culture of fair labour practices.

Answer the following questions in detail:

1. Explain Minimum wages Act with its objective and Purpose.

2. Discuss in detail the Method to implement minimum wages.

Write Short Notes on:-

1. Fixation and Revision
2. Computation and Condition

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સ્વાધ્યાય: પરમં તપ:

શિક્ષણ, સંસ્કૃતિ, સદ્ભાવ, દિવ્યબોધનું ધામ
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ભવ્ય રાષ્ટ્ર નિર્માણ

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