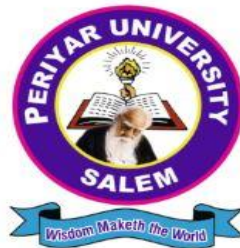


PERIYAR UNIVERSITY

**(NAAC 'A++' Grade with CGPA 3.61 (Cycle - 3)
State University - NIRF Rank 59 - NIRF Innovation Band of 11-50)
SALEM - 636 011**

**CENTRE FOR DISTANCE AND ONLINE EDUCATION
(CDOE)**

**BACHELOR OF BUSINESS ADMINISTRATION
SEMESTER - IV**



**CORE COURSE: BUSINESS REGULATORY
FRAME WORK**

(Candidates admitted from 2024 onwards)

PERIYAR UNIVERSITY

CENTRE FOR DISTANCE AND ONLINE EDUCATION (CDOE)

B.B.A 2024 admission onwards

CORE – VIII

Business Regulatory Frame Work

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Hello Learner....The Contract Act refers to legislation that governs contracts between parties, including their formation, enforceability, and breach. Laws regarding contracts vary by country, but generally, they outline the essential elements of a valid contract, such as offer, acceptance, consideration, capacity, and legality of purpose.

1.1.1 Meaning of Law

Law means a **'set of rules'**. Broadly speaking, it may be defined as the rules of conduct recognized and enforced by the state to control and regulate the conduct of people, to protect their property and contractual rights with a view to securing justice, peaceful living and social security.

Since the value system of society keeps on changing, the law also keeps changing according to the changing requirements of the society.

Meaning of Business Law

Business law may be defined as that branch of law which consists of laws relating to trade, industry and commerce. It is one of the important branches of Civil Law. It is also called as –Commercial Law. It includes laws relating to various contracts, partnership, companies, negotiable instruments, insurance, carriage of goods, arbitration etc.

1.1.2 DEFINITION OF BUSINESS LAW :

According to Salmond –Law is the body of principles recognized and applied by the state in the administration of justice.

According to Black Stone, –Law is a rule of civil conduct, prescribed by the supreme power of a state, commanding what is right and prohibiting what is wrong.

According to Holland, –Law is rule for external human action enforced by

the sovereign political authority.

(A) English mercantile law

Indian mercantile law is largely based on English mercantile law. In order to, trace the origin of the legal principles governing commercial transactions In India, it becomes necessary to know the sources of English mercantile law.

1. The English common law

This law is also known as judge made law. It is based upon customs and practices handed down from generation to generation. It is the oldest unwritten law. The English courts developed these over centuries.

Principle of equity

English law of equity is another guideline for Indian courts. It is that branch of English law which is based on principles of equity. Justice and good conscience. It is also an unwritten law and developed separately from the common law.

2. Law merchant:

It is also one of the important sources of English mercantile law. A law merchant consists of legal principles based on customs and usage. They developed first as a separate system of law and subsequently become part of the common law.

(B) Precedents (past judicial decisions of courts)

Judicial decisions are also called as case law. They referred to as precedents and are binding on all courts having jurisdiction lower to that the court, which gave the judgment. The courts in deciding cases involving similar points of law also follow them.

(C) Statute law

A bill passed by the parliament and signed by the President becomes a –statute or an act. Most of the Indian laws are embodied in the various acts passed by the central as well as state legislation.

For example

- ✓ The Indian contract act 1872
- ✓ The sale of goods act 1930
- ✓ The companies act 1956
- ✓ The Indian partnership act 1932

(D). Local customs and usage

Customs and usage plays an important role in regulating business transactions. A well recognized customs or usage can even over ride the statute law. Most of the business customs and usages have been already codified and given legal sanctions in India. Some of them have been rectified by the decision of the competent courts of law.

1.1.3 MEANING OF LAW OF CONTRACT.

According to Sec 2(h) of the Indian Contract Act, 1872 — An agreement enforceable by law is a contract. In other words, an agreement which can be enforced in a court of law is known as a contract. On analyzing this definition, the contract must have the following two elements

- An agreement, and
- Enforceability of an agreement.

In the equation form, Contract is

Contract = an agreement + Enforceability of an agreement.

Agreement

According to Sec 2(e) of the Indian Contract Act 1872, -Every Promise and every set of promise forming the consideration for each other is an agreement.



According to Sec 2(b) of the Indian Contract Act 1872,
 –A proposal when accepted becomes a promise.

In other words, an agreement consists of an offer by one party and its acceptance by the other. In the form of an equation.

$\text{Agreement} = \text{Offer (or Proposal)} + \text{Acceptance of offer (or Proposal)}$
--

Enforceability of Agreement

An agreement is said to be enforceable by law if it creates some legal obligation.

In other words, the parties to an agreement must be bound to perform their promises and in case of default by either of them, must intend to sue.

Example: In case of social or domestic agreements, the parties do not intend to create legal relations.

Example: In Balfour Vs Balfour (1919)

A promise by the husband to pay his wife £ 30 every month was held unenforceable as the parties never intended it to be attended by legal obligations.

1.1.4 DIFFERENCE BETWEEN AN AGREEMENT AND A CONTRACT

An Agreement	A Contract
---------------------	-------------------

i) Offer and its acceptance constitute an agreement.	Agreement and its enforceability constitute a contract.
ii) An agreement may or may not create a legal obligation.	A Contract necessarily creates a legal obligation.
iii) Every agreement need not necessarily be a contract.	All Contracts are necessarily agreements.
iv) Agreement is not concluded or a binding contract.	Contract is concluded and binding on the Concerned parties.

1.1.5 FORMATION OF CONTRACT

OFFER (OR) PROPOSAL [SEC. 2(a)]

When one person 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, he is said to make a proposal.

The person making the proposal or offer is called proposer, offeror or promisor.

The person to whom the offer or proposal is made is called the offeree or offeree. When the offeree accepts the offer, he is called promisee or acceptor. An offer is synonymous with proposal.

An offer has two parties

- ❖ A promisee by the offeror to do or to abstain from doing anything and
- ❖ A request by the offer to the offeree to do or to abstain from doing something in

return.

Essentials of valid offer:

- 1) The offer must be disclose an intention to create legal relations.
- 2) The terms of an offer must be clear.
- 3) Offer may be general or specific.
- 4) Offer may be express or implied.
- 5) An offer may be positive or negative.
- 6) Every offer must be communicated.

1. The offer must be disclose an intention to create legal relations:

The offeror must have the intention of creating legal relations. A social invitation even if it is accepted doesno result in legal relations because it is not intended so.

Example: A accepts an invitation to dinner at B's place on a certain date. But on the appointed date A fails to turn up. A cannot be sued for breach of contract because the contract was without any intention of alegal obligation.

2. The terms of an offer must be clear:

The laws require the parties to make their own contract. It will not make a contract for them out of termswhich are indefinite or illusory.

3. Offer may be general or specific:

General offer is made to the world at large while a specific offer is made to some specific individual or individuals. It follows that an offer need not be made to an ascertained person but it must be accepted by adefinite person.

4. An offer may be express or implied:

When an offer is expressed by words, spoken or written, it is termed as an

expressed offer. Implied offer means an offer made by conduct.

5. An offer may be positive or negative [sec.2(a)]

-When one person signifies his willingness to do or abstain from doing something. Thus an offer may be to do something or not to do something. An offer to do something is a positive offer. And an offer not to do something is negative offer.

6. Offer must be communicated:

For an offer to be complete, it must be communicated to the person to whom it is intended.

For example: A writes a letter to B offering to sell his house for Rs 2,00,000. But never posts the letter. It is not an offer and B can never accept it. Acceptance of an offer in the ignorance of the offer, is not at all an acceptance. Hence does not confer any right on the acceptor.

1.1.6 ACCEPTANCE [SEC. 2 (b)]

-When one person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.

Essentials and legal rules for a valid acceptance [sec. 3]

1. It must be absolute and unqualified:

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:

The acceptance must be in the form specified or in some perceptible form if not specified. A mere intention of acceptance will not suffice. The offeror cannot frame an offer in such a way as to tantamount. The silence or inaction of the offeree as an acceptance. The mode of acceptance may be specified but not the mode of rejection of

offer.

3. It must be made within 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 reasonable time.

4. It must be by the offeree:

An offer can be accepted only by the person or persons to whom it is made. A valid contract arises only if acceptance is communicated by a person who has the authority to accept if it is communicated by any unauthorized person. It will not create any legal relationship.

5. The acceptance must be in response to offer:

There can be no acceptance without offer. Acceptance cannot precede offer.

6. Acceptance may be express or implied:

An acceptance, which is expressed by words, written or spoken is called express acceptance. The acceptance, which is expressed by conduct is called an implied acceptance.



A contract is essentially a legally binding agreement between two or more parties [US Law | Cornell University Law School Wex definition of contract]. It lays out specific rights and obligations that each party involved needs to follow. Think of it as a handshake deal on steroids!

Here's a breakdown of the key ideas behind contracts:

- **Agreement:** There must be a meeting of the minds, where both parties clearly understand and accept the terms of the contract.
- **Legally enforceable:** This is what separates a contract from a regular agreement. If the contract is breached (broken), the law provides ways for the harmed party to seek compensation or enforce the terms of the agreement.
- **Obligations:** The contract specifies what each party needs to do (or not do). This

could involve exchanging goods, services, or money.

For a contract to be valid, there are usually certain elements that need to be present. These can vary depending on specific situations, but some common ones include:

- **Offer and Acceptance:** One party makes an offer (like "I'll mow your lawn for \$40"), and the other party clearly accepts it (like saying "Sounds good").
- **Consideration:** There needs to be a valuable exchange between the parties. This could be money for a service, a product for payment, or something else of value.



1. A contract is made where:

- X agrees with Y to discover a treasure by magic.
- X bids at a public auction
- A takes a sea
- A sit in a public Omni bus.

2. A Void Contract

- Is void from the very beginning?
- Enforceable at the option of both the parties.
- Enforceable at the option of one party
- Not enforceable in the court of law

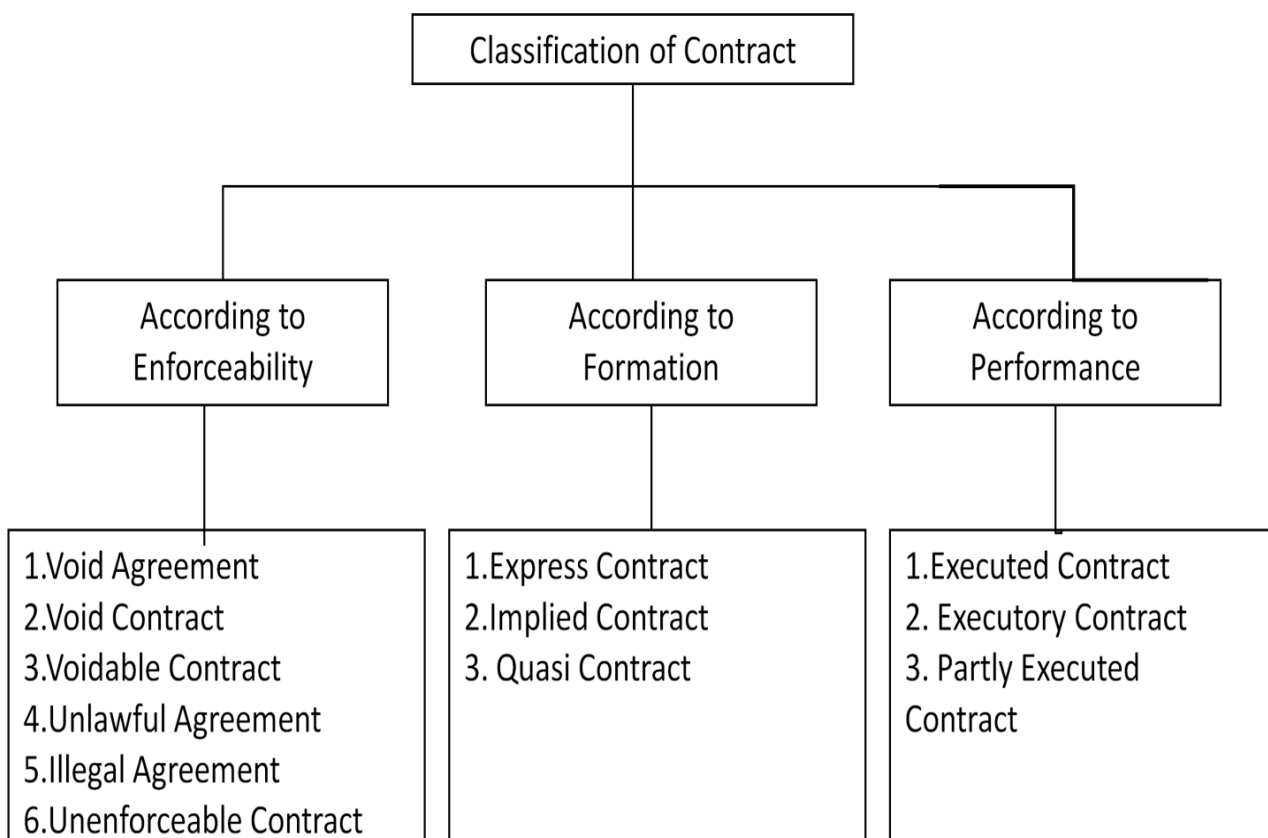
3. In case of void agreements, collateral transactions are

- Also void
- Unenforceable

- Not affected
- Illegal

1.2.1 TYPES (OR) KINDS OF CONTRACT.

The following are the different kinds of contract.



1. CONTRACTS ON THE BASIS OF FORMATION

On the basis of creation, the contracts may be classified as under.

a) **Express Contract:**

Express Contract is one which is made by words spoken or written.

Example: X says to Y –will you buy my car for Rs.1, 00,000?|| Y says to X –I am ready

to buy your car for Rs.1,00,000. It is an express contract made orally.

b) Implied Contract:

An Implied contract is one which is made otherwise than by words spoken or written. It is inferred from the conduct of a person or the circumstances of the particular case.

Example: A transport company runs buses on different routes to carry passenger and X boards a bus. This is an implied offer by the transport 10 and acceptance by X.

II) CONTRACTS ON THE BASIS OF PERFORMANCE.

On the basis of execution, the contracts may be classified as under.

a) Executed Contract:

It is a contract where both the parties to the contract have fulfilled their respective obligations under the contract.

Example: X offers to sell his car to Y for Rs. 1,00,000. Y accepts X's offer. X delivers the car to Y and Y Pays Rs.1,00,000 to X. It is an executed contract.

b) Executory Contract:

It is a contract where both the parties to the contract have still to performed their respective obligations

Example: X offers to sell his car to Y for Rs. 1,00,000. Y accepts X's offer. If the car has not yet been delivered by X and the price has not yet been paid by Y. It is an executory contract.

c) Partly Executed and partly Executory Contract:

It is a contract where one of the parties to the contract has fulfilled his obligation and the other party has still to perform his obligation.

Example: X offers to sell his car to Y for Rs. 1,00,000 on credit of one month. Y accepts X's offer. X delivers the car to Y. Here, the contract is executed as to X and

executory as to Y.

III) CONTRACTS ON THE BASIS OF ENFORCEABILITY.

On the basis of enforceability, the contracts may be classified as under.

a) Valid Contract:

A contract which satisfies all the conditions prescribed by law is a valid contract.

Example: X offer to marry Y. Y accepted X's offer. This is a valid contract.

b) Void Contract:

The term **'Void Contract'** is a contradiction in terms. A void contract is a contract which was valid when entered into but which subsequently became void due to impossibility of performance, change of law or some other reason.

Example: X offers to marry Y. Y accepts X's offer. Later on Y dies. This contract was valid at the time of its formation but became void on the death of Y.

c) Void Agreement:

According to Sec 2(g), -An agreement not enforceable by law is said to be void. Void agreement means that they are unenforceable right from the time they are made.

Example: An agreement with a minor or a person of unsound mind is void because a minor or a person of unsound mind is incompetent to contract.

d) Voidable Contract:

According to Sec 2(i) of the Indian Contract Act, 1872, an agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others, is a voidable contract.

For Example, A contract is treated as voidable at the option of the party whose consent has been obtained by coercion or undue influence or fraud or misrepresentation.

Example: X threatens to kill Y if he does not sell his house for Rs.1,00,000 to X. Y sells his house to X and receives payment. Here, Y's consent has been obtained by coercion and hence this contract is voidable at the option of Y, the aggrieved party.

e) Illegal Agreement:

An illegal agreement is one the object of which is unlawful. Such an agreement cannot be enforced by law. Thus, illegal agreements are always void.

Example: X agrees to pay Y Rs.1,00,000 if Y kills Z. Y kills Z and claim Rs.1,00,000. Y cannot recover from X because the agreement between X and Y is illegal as its object is unlawful.

f) Unenforceable Contract:

It is a contract which is actually valid but can be enforced because of some technical defect (Such as not in writing, under stamped). Such contracts can be enforced if the technical defect involved is removed.

Example: An oral agreement is unenforceable because the law requires that an agreement must be in writing. If the oral agreement is rectified to writing, it will become enforceable.

1.2.2 ESSENTIALS OF VALID CONTRACT:

The following are the essential elements of a valid contract.

1. Offers and Acceptance
2. Legal Relationship
3. Lawful Consideration
4. Capacity of Parties
5. Free Consent
6. Lawful Objects

7. Writing and Registration

8. Certainty

9. Possibility of Performance

10. Not Expressly Declared Void

An agreement becomes enforceable by law when it fulfils essential conditions. These conditions may be called the essentials of a valid contract, which are as follows:

1. Offers and Acceptance

For an agreement there must be a lawful offer by one and lawful acceptance of that offer from the other party. The term lawful means that the offer and acceptance must satisfy the requirements of Contract Act. The offer must be made with the intention of creating legal relations otherwise, there will be no agreement.

Example:

A says to B that he will sell his cycle to him for Rs.2000. This is an offer. If B accepts this offer, there is an acceptance.

2. Legal Relationship

The parties to an agreement must create legal relationship. It arises when parties know that if one fails to perform a contract. Agreements of a social or domestic nature do not create legal relations and as such cannot give rise to a contract. It is presumed in commercial agreements that parties intend to create legal relations.

Example:

1. A father promises to pay his son Rs.500 every month as pocket money. Later, he refuses to pay. The son cannot recover as it is a social agreement and does not create legal relations.

2. A offers to sell his watch to B for Rs.200 and B agrees to buy it at the same price, there is a contract as it creates legal-relationship between them.

3. A husband promised to pay his wife a household allowance of 30 pounds every month. Later, the parties separated and the husband failed to pay. The wife used for allowance. Held that the wife was not entitled for the allowance as the agreement was social and did not create any legal obligations.

3. Lawful Consideration

The third essential of a valid contract is the presence of consideration. Consideration is –something in return. It may be some benefit to the party. Consideration has been defined as the price paid by one party for the promise of the other. An agreement is enforceable only when both the parties get something and give something. The something given or obtained is the price of the promise and is called consideration.

Example:

1. A agrees to sell his house to B for Rs.10 Lac is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay Rs.10 Lac. These are lawful considerations.

2. A promise to obtain for B employment in the public service, and B promise to pay 10,000 rupees to A. the agreement is void, as the consideration for it is unlawful.

4. Capacity of Parties:

An agreement is enforceable only if it is entered into by parties who possess contractual capacity. It means that the parties to an agreement must be competent to contract. According to Section 11, in order to be competent to contract the parties must be of the age of majority and of sound mind and must not be disqualified from contracting by any law to which they are subject.

A contract by a person of unsound mind is void ab-initiate (from the beginning). If one of the parties to the agreement suffers from minority, madness, drunkenness etc., the agreement is not enforceable at law, except in some cases.

Example:

1. M, a person of unsound mind, enters into an agreement with S to sell his house for Rs.2 lac. It is not a valid contract because M is not competent to contract.

2. A, aged 20 promises to sell his car to B for Rs.3 Lac. It is a valid contract because A is competent to contract.

5. Free Consent:

It is another essential of a valid contract. Consent means that the parties must have agreed upon the same thing in the same sense. For a valid contract it is necessary that the consent of parties to the contract must be free.

Example:

1. A compels B to enter into a contract on the point of pistol. It is not a valid contract as the consent of B is not free.

6. Lawful Objects:

It is also necessary that agreement should be made for a lawful object. The object for which the agreement has been entered into must not be fraudulent, illegal, immoral, or opposed to public policy or must not imply injury to the person or property of another. Every agreement of which the object or consideration is unlawful is illegal and therefore void.

Example:

A promise to pay B Rs.5,000 if B beats C. The agreement is illegal as its object is unlawful.

7. Writing and Registration:

According to Contract Act, a contract may be oral or in writing. Although in practice, it is always in the interest of the parties that the contract should be made in writing so that it may be convenient to prove in the court. However, a verbal contract if proved in the court will not be considered invalid merely on the ground that it is not in writing. It is essential for the validity of a contract that it must be in writing signed and attested by witness and registered if so required by the law.

Example:

1. A promises to sell his book to Y for Rs.200, it is a valid contract because the law

does not require it to be in writing.

2. A promises to sell his house to B, it is not a valid contract because the law requires that the contract of immovable property must be in writing.

8. Certainty:

According to Section 29 of the Contract Act, –Agreements the meaning of which are not certain or capable of being made certain are void. In order to give rise to a valid contract the terms of the agreement, must not be vague or uncertain. For a valid contract, the terms and conditions of an agreement must be clear and certain.

Example:

1. A promised to sell 20 books to B. It is not clear which books A has promised to sell. The agreement is void because the terms are not clear.

2. A agrees to sell B a hundred tons of oil. It is not clear what is the kind of oil. The agreement is void because of its uncertainty.

3. O agreed to purchase a van from S on hire-purchase terms. The price was to be paid over two years. Held there was no contract as the terms were not certain about rate of interest and mode of payment.

9. Possibility of Performance:

The valid contract must be capable of performance section 56 lays down that. –An agreement to do an act impossible in itself is void. If the act is legally or physically impossible to perform, the agreement cannot be enforced at law.

Example:

1. A agrees with B to discover treasure by magic, the agreement is not enforceable.

2. A agrees with B to put life into B's dead brother. The agreement is void as it is impossible of performance.

10. Not Expressly Declared Void:

An agreement must not be one of those, which have been expressly declared to be void by the Act. Section 24-30 explains certain types of agreement, which have been expressly declared to be void. An agreement in restraint of trade and an agreement by way of wager have been expressly declared void.

Example:

A promise to close his business against the promise of B to pay him Rs.2 lac is a void agreement because it is restraint of trade.

[Discharge of contract – remedies for breach of contract – agreement not declared void – agreement expressly declared void – wagering agreements]

The term "special contract act" might be specific to a particular jurisdiction. There isn't a universally recognized special contract act.



However, there's a concept in contract law called "special contracts" which refers to specific types of agreements that have their own set of rules, beyond the general principles of contract law. These special rules are often outlined in separate legislation or legal doctrines.

Here are some examples of special contracts:

- **Sale of Goods:** This is typically governed by a specific Sale of Goods Act, which details the rights and obligations of buyers and sellers in commercial transactions.
- **Partnership:** Formation and operation of partnerships are often addressed in a separate Partnership Act.
- **Insurance Contracts:** Insurance policies are considered special contracts with specific rules regarding disclosure, risk, and claims.
- **Leases:** Landlord-tenant relationships and lease agreements may have specific regulations depending on the jurisdiction.



Self-Assessment

4. Undue influence can be exercised only between the parties who are

- Related to each other
- Not related to each other

- Friendly to each other
- All of them

5. Which of the following persons can perform the contract?

- Promisor alone
- Legal representative of promisor
- Agent of the promisor
- All of them

6. Which of the following is not a legal requirement of a valid consideration?

- It must move at the desire of the promisor
- It must be lawful
- It must be real and not illusory
- It must be adequate

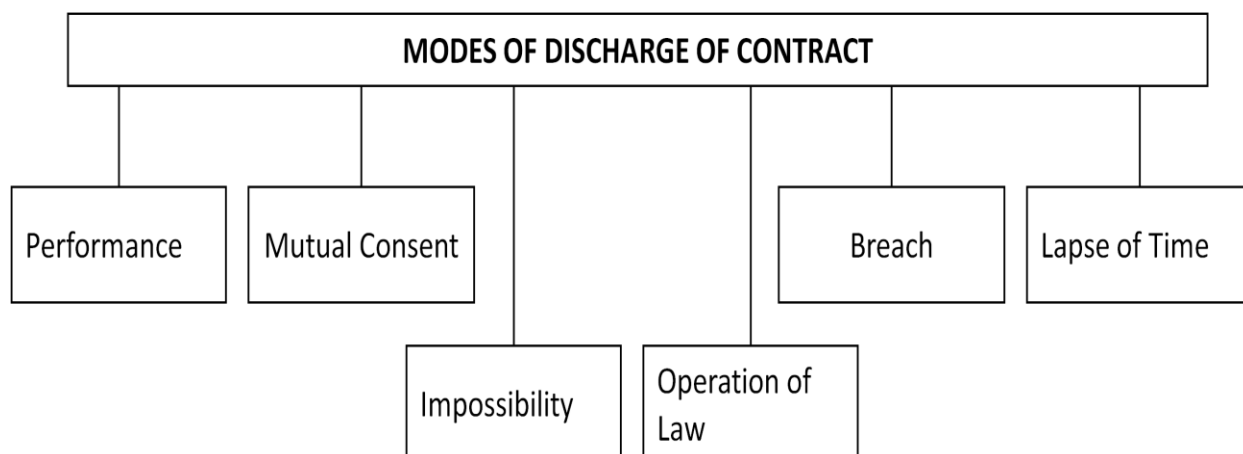
7. Which of the following persons are not competent to contract?

- Minor
- Person disqualified by law
- Person of unsound mind
- All of the above

1.3.1 MEANING OF DISCHARGE OF CONTRACT

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated. Thus the discharged of a contract means that the parties are no more liable under the contract.

VARIOUS METHODS OF DISCHARGE



1. By performance

When the parties to a contract perform their respective promises, the contract is said to have been performed. This is the normal and natural mode of discharging a contract . when performance is proper and complete on either side the parties

become free from any further liability. If only one party perform what he promised he alone gets a valid discharge and he acquires a right of action against the other for non performance. There are two types of performance. They are

Actual performance

The contract is said to have been performed if both the parties the contract have performed their respective promises. It should be according to the terms of the agreement. Mostly contracts are discharged in this mode only.

b.) Offer to perform or tender

Tender is an offer to perform the obligation under the contract. When one party offers to perform, it is part of the promise and the other party refuses to accept the performance, the first party is discharged from; it is obligation provided the offer or tender to perform the contract was valid.

2. Discharge by mutual agreement

If both the parties to the contract, expressly or implicitly agree to terminate the contract, the contract is said to have been discharged by mutual consent.

2. MUTUAL DISCHARGE OF A CONTRACT MAY TAKE PLACE IN ANY OF THE FOLLOWING WAYS.

c.) Novation

Novation means substitution of a new contract in place of the old one. It creates a new contract in exchange of the old contract. It discharges the old that is the original contract. New contract may be either between the same parties or between different parties. The consideration being mutually the discharge of the old contract.

b.) Alteration

Alteration of a contract means change in one or more of the terms of a contract. Alteration is valid if it is done with the consent of all the parties to the contract. In such a case the old contract is discharged.

c.) Remission :

Every promisee may dispense with or remit wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit

d.) Rescission

Rescission means cancellation of all or some of the terms of a contract. For example by mutual consent of the parties.

e.) Waiver

Waiver means abandoning the rights. When a party to the contract abandons or waives his rights, the contract is discharged.

f.) Merger

Merger denotes coinciding and meeting of an inferior and superior right in one and the same person. In such a case inferior right available to a party under an agreement will vanish automatically.

2. DISCHARGE BY IMPOSSIBILITY

If the performance of a contract is impossible, the contract is discharged. This is because the parties cannot perform their respective obligations. The impossibility of performance may be two types.

- Impossibility at the time of agreement
- Impossibility arising subsequent to the formation of contract

3. DISCHARGE BY LAPSE OF TIME

A contract is discharged by lapse of time. The Limitation Act 1940 lays down that in a case of breach of a contract legal action should be taken within a specified period.

Lapse of time terminates a contract. The period of limitation for simple contract is three

years if the three years expire and creditors fails to file a suit to recover his amount, the debtor is discharged from his liability.

4. BY OPERATION OF LAW

d.) Death

Death of promisor results in termination of the contract in case involving personal skill or ability. In other cases, the rights and liabilities of the deceased person pass on the legal representative.

b.) Insolvency

A contract is discharged by the insolvency of one of the parties to it when an insolvency court passed an

–order of discharge^{ll} exonerating the insolvent from liabilities on debts incurred prior to his adjudication.

c.) Merger

Merger takes place when an inferior right accruing to a party, under a contract merges into a superior right accruing to the same party either under the same or the other contract.

5. By breach of contract

The breach of contract means the failure of a party to perform his obligations. The party who fails to perform his obligations is said to have committed a breach of contract. Breach of contract discharge the aggrieved party from performing his obligations. It may arise in any one of the following forms.

e.) Anticipatory breach of contract

Anticipatory breach of contract occur when a party repudiates it before the time fixed for performance has arrived or when a party by his own act disable himself from performing the contract. It is the premature destruction of the contract.

b.) Actual breach of contract

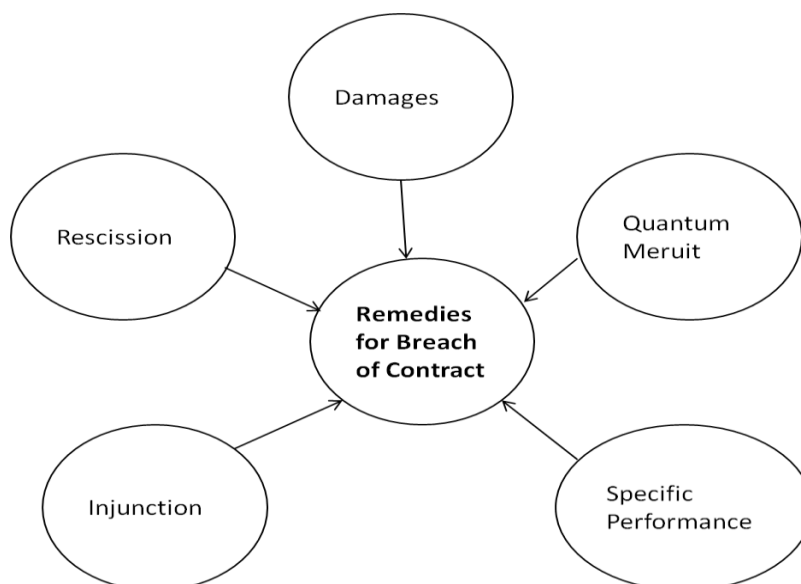
- ❖ Actual breach of contract at the time when the performance is due

This type of breach of contract occurs when a person does not perform his part of the contract at the stipulated time. Here the person who failed to perform his part will be liable for its breach.

- ❖ Breach during the performance of the contract.

Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under the contract.

1.3.2 REMEDIES FOR BREACH OF CONTRACT



Parties to a contract are expected to perform their respective promises. But one of the parties to a contract may break the contract by refusing to perform his promise. This is what is called breach of contract.

Remedies for breach of contract

1. Rescission of the contract

Where one of the parties to a contract commits breach, the other party may treat the contract as rescinded. On the rescission of the contract the aggrieved party is discharged from all the obligation under the contract.

2. Damages for the loss suffered

The term damages means monetary compensation payable by the defaulting party to the aggrieved party in the event of the breach of a contract for the loss suffered by him.

Types of damages

There are four types of damages which can be claimed by the aggrieved party.

➤ Ordinary damages or general damages.

Damages that arise in the ordinary course of events from the breach of contract are called ordinary damages.

➤ Special damages

Special damages are those damages that are payable for the loss arising on account of some special or unusual circumstances. That is they are not due to the natural and probable consequences of the breach of the contract.

They constitute the indirect loss suffered by the aggrieved party on account of breach of contract. They can be recovered only when the special circumstance. Responsible for the special loss were made known to the other party at the time of contract.

➤ Exemplary or vindictive damages

These damages are awarded against the party who has committed a breach of the contract with the object of punishing the erring as defaulting party and to compensate the aggrieved party. Generally these damages are awarded in case of action on lost or breach of promise.

For example breach of contract to marry, dishonor of customer's cheque by the bank without any proper reason.

➤ Nominal damages.

Nominal damages are awarded to the aggrieved party when there is only technical

violation of the legal rights. Here no substantial loss is caused. These damages are very small in amount. There are awarded simply to recognize the right of the party to claim damages for the breach of the contract.

3. Suit for the specific performance

Sometimes, the damages are not an adequate remedy for breach of the contract. In such cases the court may at the suit of the party not in breach, direct the party in breach to carry out his promises as per the terms of the contract. This is known as specific performance.

VOID AGREEMENTS

Definition:

Literally: Void means having no legal value and agreement means Arrangement, promise or contract made with somebody. So void agreement means an agreement that has no legal value.

Traditionally: –An agreement not enforceable by law is said to be void. [Sec 2(g)]

Example of void agreement: An agreement made by a minor, agreement without consideration, certain agreements against public policy etc.

EXPRESSLY DECLARED VOID AGREEMENT

There are certain agreements, which are expressly declared to be void. They are as follows:

- (1) Agreement by a minor or a person of unsound mind.[Sec(11)]
- (2) Agreement of which the consideration or object is unlawful[Sec(23)]
- (3) Agreement made under a bilateral mistake of fact material to the agreement[Sec(20)]
- (4) Agreement of which the consideration or object is unlawful in part and the illegal Part cannot be separated from the legal part [Sec(24)]

- (5) Agreement made. without consideration.[Sec(25)]
- (6) Agreement in restraint of marriage [Sec(26)]
- (7) Agreement in restrain of trade [Sec(27)]
- (8) Agreement in restrain of legal proceedings[Sec(28)]
- (9) Agreements the meaning of which is uncertain [Sec(29)]
- (10) Agreements by way of wager [Sec(30)]
- (11) Agreements contingent on impossible events [Sec(36)]
- (12) Agreements to do impossible acts [Sec(56)]

Some discussions on void agreement are as follows:

(1) Agreement by a Minor Or a Person of Unsound Mind-

A person who has not completed his or her 18 years of age signifies as minor. Law acts as the guardian of minors and protects their rights, because their mental facilities are not mature- they do not possess the capacity of judge what is good and what is bad for them.

A person who does not possess a sound mind or whose mental powers are not arranged or whose mental condition is not under his or her own control. Any agreement by person of unsound mind is absolutely void because he has no capacity to judge, what is good and what is bad for him.

Illustration

- (a) A, 15 years old boy, made an agreement with B to give him Rs.1000. This is a void agreement.
- (b) A mentally disordered man made an agreement with X to marry her, but this is not a valid agreement.

(2) Agreement Made Without Consideration-

An agreement made without consideration is void, unless

- 1) it is expressed in writing and registered under the law for the time being enforce for the registrationof(documents), and is made on account of natural love and affection between parties standing in a near relation to each other; or unless.
- 2) It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promissory was legally compelling to do, or unless.

Illustrations

- a) A promises for no consideration, to give to B Rs. 1000; this is a void agreement.
- b) A, for natural, love and affection, promises to give his son, B Rs. 1000. A puts his promise to B intowriting and registers it. This is a contract.
- c) A finds be B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.
- d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(3) Agreements in Restraint of Marriage-

Every individual enjoys the freedom to marry and so according to section 26 of the contract act –every agreement is restraint of the marriage of any person, other than a minor, is void. ll The restraint may be general or partial but the agreement is void, and therefore, an agreement agreeing not to marry at all, or a certain person or, a class of persons, or for a fixed period, is void.

Illustrations

An agreement whereby one of the parties agrees to close his business in consideration of the promise bythe other party to pay a certain some of money , is void, being an agreement is restraint of trade, and theamount is not recoverable, if the other party fails to pay the promised some of money.

But agreements merely restraining freedom of action necessary for the carrying on of

business are not void, for the law does not intend to take away the right of a trade to regulate his business according to his own discretion and choice.

Illustration

An agreement to sell all produce to a certain party, with stipulation that the purchaser was bound to accept the whole quantity, was held valid because it aimed to promote business and was not restrained.

But where in a similar agreement the purchaser was free to reject the goods (i.e. was not bound to accept the whole quantity tendered) it was held that the agreement was void as being in restraint of trade.

(5) Agreement in restraint of legal proceedings-

Every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent. Section 28 declares the following two kinds of agreements void:

- (a) An agreement by which a party is restrained absolutely from taking usual legal proceedings, in respect of any rights arising from a contract.
- (b) An agreement which limits the time within which one may enforce his contract rights, without to the time allowed by the limitation act.

Illustration

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.)

Exception 1: This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so

referred.

Exception 2: Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

(6) Uncertain Agreements-

–Agreements, the meaning of which is not certain, or capable of being made certain, are void (Sec-29). Through Sec-29 the law aims to ensure that the parties to a contract should be aware of the precise nature and scope of their mutual rights and obligation under the contract. Thus, if the word used by the parties are or indefinite, the law cannot enforce the agreement.

Illustration

(a) 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.

(b) A who is dealer in coconut oil only, agrees to sell to B –a hundred tons of oil. The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.

Further, an agreement –to enter into an agreement in future is void for uncertainty unless all the terms of the proposed agreement are agreed expressly or implicitly. Thus, an agreement to engage a servant some time next year, at a salary to be mutually agreed upon is a void agreement.

(7) Wagering Agreement-

Literally the word wager 'means a bet' something stated to be lost or won on the result of a doubtful issue, and, therefore, wagering agreements are nothing but ordinary betting agreements. Thus 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 or C and D entered into agreement that on tossing up a coin, if it fall head upwards C will pay D Rs.50 and if falls tail upwards D will pay C Rs.50, there is a wagering agreement.

In *Tracker vs. Hardy Cotton, L.J.*, described a 'wager' as follows: –The essence of gaming and wagering is that one party is to win and the other to lose upon a future event which at the time of the contract is of an uncertain nature- that is to say, if the event turns out the other way he will win.

(8) Agreement Contingent on Impossible Events-

–Contingent agreements to do or not to do anything if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made. ||

(Sec. 36)

Illustration

(a) A agrees to pay B Rs.1000 (as a loan) if two straight lines should enclose a space. The agreement is void.

(b) 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. || (Sec, 56 Part-1)

Illustration

(a) A agrees with B to discover treasure by magic. The agreement is void. [Section 56].

A agrees with B to run with a speed of 100 Kilometers per hour. The agreement is void.

Distinction between a void contract and voidable contract.

Void contract	Voidable contract
----------------------	--------------------------

1. A void contract was valid when it was made. Due to subsequent happenings, it has become void, (ie) unenforceable	A voidable contract is valid until it is avoided or rescinded by the affected party. Such a party, however has to avoid it within a reasonable time.
2. A void contract cannot be enforced by either party	A voidable contract is valid until it is avoided by the affected party.
3. The question of a third party acquiring rights does not arise	There is scope for a third party to acquire rights over what has been obtained under a voidable contract.
4. There is no question of payment of damages (compensation) to anyone under a void contract	The affected party can claim damages.

Distinction between an unlawful agreement and an illegal agreement.

Unlawful agreement	Illegal agreement
1. Unlawful acts (eg. Restricting a person's to choose his job or life partner) are simply not approved by law. They do not result in the commission of a crime	Illegal acts (eg. bribing) result in the commission of a crime.

2. What is 8unlawful need not be illegal	What is illegal is always unlawful
3.As no crime is committed, the party to the agreement is not awarded punishment	As an illegal act results in the commission of a crime, punishment is awarded.

WAGERING AGREEMENT :

Agreements entered into between parties under the condition that money is payable by the first party to the second party on the happening of a future uncertain event, and the second party to the first party when the event does not happen, are called **Wagering Agreements** or **Wager**. There should be mutual chance of profit and loss in a wagering agreement.



Historical Background of Contract:

The concept of contracts has a long and winding history, dating back to the earliest civilizations:

- **Ancient Civilizations:** Even in Mesopotamia and Egypt, there's evidence of agreements being written down on clay tablets or papyrus. These early contracts often involved things like debt repayment, sales of goods, and labor agreements.
- **Greek and Roman Law:** These civilizations had a major impact on the development of contract law. Greek philosophers like Aristotle explored concepts of fairness and justice in agreements, while Roman law established a more formal structure for contracts, including enforceable promises.
- **Middle Ages:** During this period, contract law continued to evolve, with the influence of the Catholic Church and the rise of merchant guilds. Canon law

(church law) addressed issues like fairness and usury (charging interest on loans), while merchant guilds developed customs around trade agreements.

- **Common Law:** The common law system, which originated in England, played a pivotal role in shaping modern contract law. Judges' decisions in contract disputes over time became legal precedents, establishing principles like freedom of contract and consideration (the promise to exchange something of value).
- **Industrial Revolution:** The rise of industry and global trade in the 18th and 19th centuries led to a further development of contract law. Courts grappled with issues like unfair bargaining power and standardized contracts.



7. Which of the following persons are not competent to contract?

- Minor
- Person disqualified by law
- Person of unsound mind
- All of the above

8. Consent is free under section 14 if not caused by

- Coercion & undue influence
- Fraud and misrepresentation
- Mistake subject to the provisions of sections 20, 21 and 22
- All the above

9. Which is correct?

- Proposal + acceptance = promise
- Promise + consideration = agreement
- Agreement + enforceability = contract
- All the above.

10. The Bailment of goods as security for payment of a debt or performance of a promise is called:

- Pledge
- Bailment
- Contingent contract
- Agreement

1.4.1 Unit Summary

- ✚ The Indian Contract Act, 1872 is a cornerstone of Indian contract law.
- ✚ The Act defines a contract as an agreement that creates legal obligations (Section 2(h)).
- ✚ It outlines the elements needed for a valid contract, including offer, acceptance, capacity of parties, consideration, and lawful object (Section 10).
- ✚ The Act details what constitutes a valid offer and acceptance (Sections 2-9). It covers aspects like revocation of offers and communication of acceptance..
- ✚ The Act outlines the duties of each party in fulfilling their contractual promises (Sections 37-61).
- ✚ The Act details ways a contract can be legally discharged, such as performance,

<p>mutual agreement, or breach of contract (Sections 37-67).</p> <p>✚ The Act defines what constitutes a breach and the consequences for the breaching party (Sections 37-73).</p>	
<h3>1.4.2 Glossary</h3>	
<p>Contract:</p>	<p>A contract is an agreement that specifies certain legally enforceable rights and obligations pertaining to two or more parties. .</p>
<p>Void:</p>	<p>A void contract is legally unenforceable, starting from the time it was created.</p> <p>Void contracts arise for many reasons, including unlawful consideration.</p>
<p>Voidable:</p>	<p>A voidable contract is a formal agreement between two parties that may be rendered unenforceable for any number of legal reasons</p>
<p>Merger:</p>	<p>A merger is an agreement that unites two existing companies into one new company. There are several types of mergers and reasons companies complete mergers.</p>
<p>Special Contract:</p>	<p>The Act also covers specific types of contracts, including:</p> <ul style="list-style-type: none"> • Sale of Goods • Indemnity & Guarantee • Bailment & Pledge • Agency

Self – Assessment Questions

1. What is contract?
2. Difference between Agreement and Contract.
3. What are the formulation of the Contract?
4. What are the types of Contract?
5. What is mean by Void contract? And Explain the Essential of Void Contract.
6. What is mean by Discharge contract? And explain its Various method of Discharge contract .
7. Difference between Void and Voidable Contract.
8. Difference between Unlawful agreement and Illegal agreement.

Activities / Exercises / Case Studies



Activities

1. In this case, Mr. Balfour was a civil servant in Ceylon (now Sri Lanka), and Mrs. Balfour remained in England due to medical reasons. Before Mrs. Balfour left for England, Mr. Balfour promised to pay her £30 per month as maintenance. However, when their relationship soured, Mr. Balfour stopped making these payments.

Answers for check your progress


1. D) A sit in a public Omni bus.
- 2.D) Not enforceable in the court of law
3. A) Also void

	<p>4. A) Related to each other</p> <p>5. A) Promisor alone</p> <p>6. A) It must move at the desire of the promisor</p> <p>7. D) All of the above</p> <p>8. D) All the above</p> <p>9. D) All the above.</p> <p>10. A) Pledge</p>
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Suggested Readings

1. <https://www.slideshare.net/slideshow/special-contracts-as-per-contract-actpptx/266695550>
2. <https://blog.ipleaders.in/all-you-need-to-know-about-special-contracts/#:~:text=The%20Indian%20Contract%20Act%2C%201872,%2C%20bailment%2C%20>
3. <https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf>
4. <https://corporatefinanceinstitute.com/resources/accounting/void-contract/#:~:text=A%20void%20contract%20is%20a,and%20becomes%20unenforceable%20in%20court.>
5. <https://www.investopedia.com/terms/v/void-contract.asp>

Open-Source E-Content Links

1.	Historical of contract	https://youtu.be/RzOJT3euah8?si=4oPN1F5exesb9LyE	
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2	Discharge of contract	https://youtu.be/SWrC2Bo2kZs?si=YWO1QWaQGfG1XT8v	
3	Contract of agency	https://youtu.be/BBYr8wIFq0g?si=eQekQkF5VHib9fxv	
4	Breach of contract	https://youtu.be/LuSBV0CSx1E?si=Bb9oCrExBG7iizgf	
5	Special contract act	https://youtu.be/BiEZ_V6N2mY?si=2cULEyIkZtcJ8iSy	

References

1. <https://www.slideshare.net/slideshow/special-contracts-as-per-contract-actpptx/266695550>
2. <https://blog.ipleaders.in/all-you-need-to-know-about-special-contracts/#:~:text=The%20Indian%20Contract%20Act%2C%201872,%2C%20bailment%2C%20>
3. <https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf>
4. <https://corporatefinanceinstitute.com/resources/accounting/void->

contract/#:~:text=A%20void%20contract%20is%20a,and%20becomes%20unenfor
ceable%20in%20court.

5. <https://www.investopedia.com/terms/v/void-contract.asp>

Self-Learning Material Development – STAGE 1

UNIT - II SALES OF GOODS ACT

Sales of goods Act – Contract of Agency

Unit Module Structuring

STAGE – 2 – Modules Sections and Sub-sections structuring

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2.1.3	Introduction of Goods	7
2.1.4	Let's sum up	10
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2.1.1 Introduction:		

The sale of Goods Act, 1930 was passed in 1930 for the exclusive contract dealing with the sale of only movable goods. It extends to the whole of India **except the state of Jammu and Kashmir**.



selling.

This Act does **not deal with the sale of immovable property**. Sale of Goods Act is the most important one because it affects the exchange function (i.e) buying and

CONTRACT OF SALE:

According to sec 4(1) of the sale of Goods Act, a contract of sale is –a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

In other words, a contract to transfer property in the goods is known as a contract of sale. The ownership is transferred from the seller to the buyer. The person who sells or agrees to sell goods is called the –seller and the person who buys or agrees to buy the goods is called the –buyer.

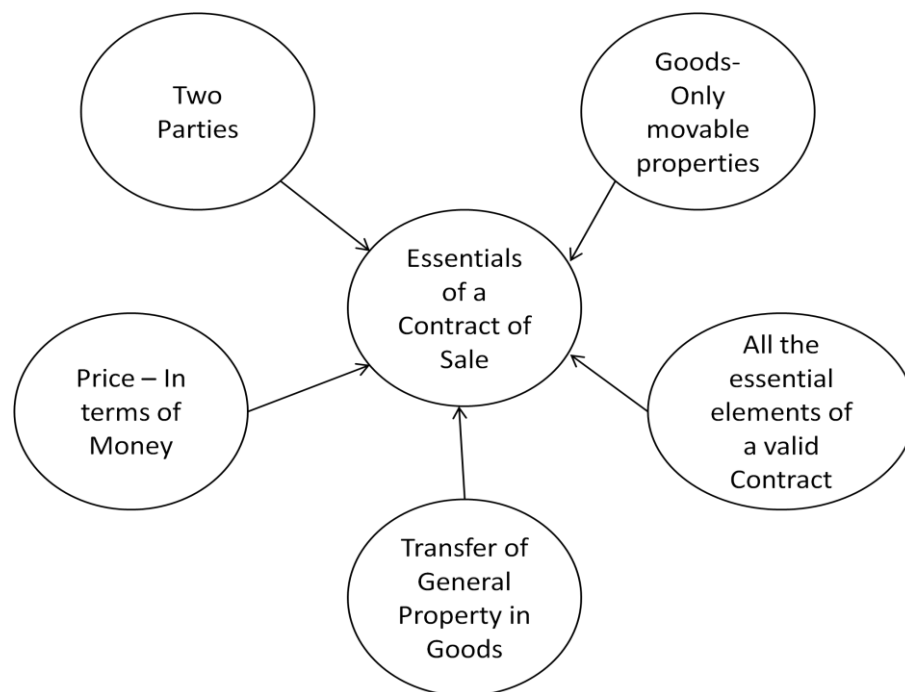
The contract of sale may be made:

- i) In writing
- ii) by Words
- iii) partly in writing and partly by words
- iv) implied from the conduct of parties
- v)

ESSENTIALS OF A VALID CONTRACT OF SALE:

- i) **Essential elements of a valid contract:**

All the requirements of a valid contract such as free consent, valid consideration, competency of the parties, lawful object must be fulfilled.



ii) Two parties:

Another essential elements of a contract of sale is that there must be two parties to the contract of sale viz, seller and buyer.

iii) Goods:

There must be some goods as a subject-matter. Goods must be one which is defined in the sale of Goods Act. Here the goods means every kind of movable property and it includes i) stock and shares ii) Growing crops and iii) The things attached to or forming a part of the land.

iv) Transfer of ownership:

In every contract of sale, the ownership of the goods must be transferred by the seller to the buyer or there must be an agreement to transfer the ownership by the seller to the buyer.

v) Price:

Another essential element of a contract of sale is that there must be some price for the goods. That means the goods must be sold for some price. According to sec 2(10) of the sale of Goods Act, The term price means –The money consideration for a sale of goods.

2.1.2 DIFFERENCE BETWEEN THE SALE AND AGREEMENT TO SELL**Sale:**

Sec 4(3) of the sale of Goods Act, 1930 describes –sale as, –where under a contract of sale, the property (ownership) in the goods is transferred from the seller to the buyer, it is called a sale.

Agreement to sell:

Sec 4(3) of the sale of Goods Act, 1930 describes –agreement to sell as, –where the transfer of the property in the goods is to take place at a future time or subject to some condition there after to be fulfilled the contract is called an agreement to sell.

Sale	Agreement to sell
-------------	--------------------------

<ol style="list-style-type: none"> 1. It is an executed contract. 2. The property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of goods sold. 3. If the goods are destroyed, the loss falls on the buyers even though they were in the possession of the seller. 4. It creates a right in rem (ie) against the whole world. 5. Performance of sale is absolute and without any condition. 6. The property is with the buyer and as such the seller cannot resell the goods. 7. If the buyer becomes insolvent before he pays price for the goods, the seller in the absence of a lien, Must deliver the goods to the official Receiver or assignee. He can claim only retable divided for the price due. 8. A sale can only be in case of existing and specific goods. 	<ol style="list-style-type: none"> 1. An agreement to sell as an executory contract. 2. The transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled. 3. If the goods are destroyed the loss falls on the seller even though they were in the possession of the buyer. 4. It creates a right in personam (ie) against a specified person only. 5. Performance is conditional and is made in future. 6. The property in the goods remains with the seller and he can dispose of the goods as he likes, although he may thereby commit a breach of his contract. 7. If the buyer becomes insolvent before he pays price for the goods, the seller may refuse to deliver the goods unless the price is paid by him. 8. An agreement to sell is mostly in case of future and contingent goods.
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2.1.3 GOODS:



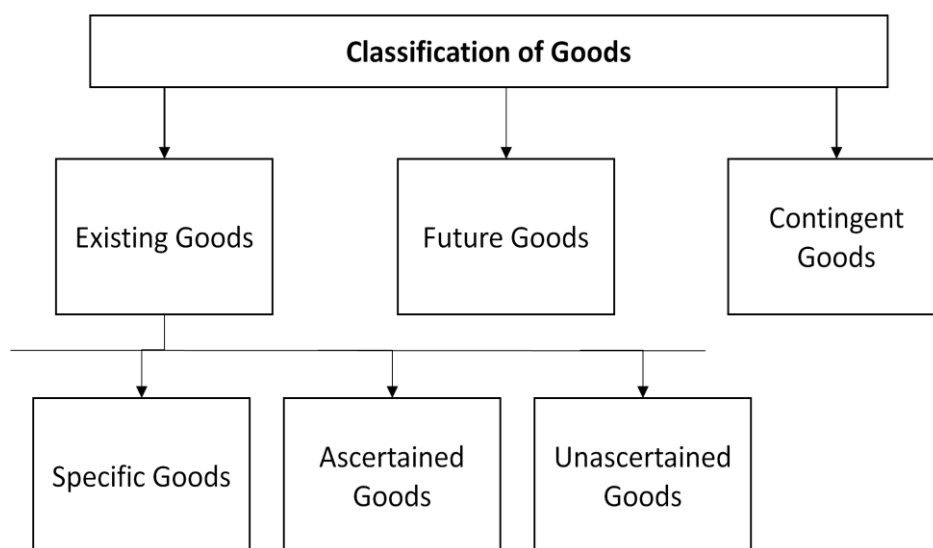
Goods form the subject-matter of contract of sale.

According to sec 2(7) of the sale of Goods Act, –Goods means every kind of movable property other than actionable claims and Money; and includes stocks and shares, growing crops, things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Classification of goods:

As per the sale of Goods Act, the goods may be classified into three types namely,

1. Existing goods
2. Future goods, and
Contingent goods



1. Existing Goods:

Existing goods are those goods that are legally owned and possessed by the seller the time of sale. In other words, these are goods which are in actual existence at the

time of contract of sale. The seller is either the owner of such goods or he has the possession of such goods. The existing goods may be classified into three types as follows:

i) Specific goods:

Specific goods are those goods that identified and agreed upon to buy or sell For eg: If A who owns a no. of. Horses, promises to sell one of them, the contract is for unspecified goods. But if the horse that is besold has been singled out, the contract for specific goods.

ii) Ascertained goods:

The goods that are identified only after the formation of the contract of sale, are called as ascertained goods.

For eg: If a merchant agrees to supply one bag of sugar from his go down to a buyer, it is a sale of unascertained goods because it is not known which bag will be delivered. As soon as a particular bag is separated out and marked or identified for delivery it becomes specific goods.

iii) Unascertained goods:

Unascertained goods are also called general goods. The goods which are not specifically identified at the time of contract of sale, are known as unascertained goods. These goods are usually described in the form of contract.

For eg: A had 5 cows. He agreed to sell two cows to B. In this case, the contract is for the sale of unascertained goods as the cows have not been identified at the time of contract of sale.

2. Future goods:

Future goods are goods that will be manufactured or acquired by the seller after making the contract of sale. So these goods are not in existence at the time of contract of sale. When a person purports to make a present sale of the future goods, the contract operates as an agreement to sell, and not sale because in such cases the ownership of the goods cannot be transferred before the goods come into existence.

3. Contingent Goods:

Contingent goods are the goods which are also not in existence at the time of contract of sale. These are also a type of future goods. Here the acquisition of the goods by the seller depends upon a contingency which may or may not happen.

For eg: A agrees to sell to B, certain goods provided he is able to purchase the same from C who is its present owner.



The Sale of Goods Act, most commonly referring to the **Indian Sale of Goods Act, 1930**, is a law governing the sale of goods in India. It establishes the legal framework for commercial transactions involving the transfer of ownership of goods between a seller and a buyer.

Here's a summary of the Act's key points:

- **Formation of a Sales Contract:** The Act defines a contract of sale as an agreement where a seller transfers or agrees to transfer ownership of goods to a buyer for a price. [[India sale of goods act ON India Code indiacode.nic.in](#)]
- **Duties of Seller:** The seller is obligated to deliver the goods as per the contract, ensure they are in the agreed condition, and have the right to sell them. [[ipleaders the sale of goods act 1930 ON blog.ipleaders.in](#)]
- **Rights of Buyer:** The buyer has the right to receive goods in the contracted condition, ownership of the goods upon transfer, and quiet enjoyment of the goods without interference.



1. Where the price is not determined by the parties to the contract of sale of goods, what price shall be paid by the buyer:

- a. The buyer shall pay the seller a reasonable price.
- b. The buyer shall determine the price at his discretion.
- c. The seller shall determine the price at his discretion.
- d. The seller shall charge the price according to the market forces.

2. When a seller can stop the goods in transit:

- a. When the buyer of the goods informs that he will make payment after some time.
- b. The seller has no right to stop the goods in transit.
- c. When the buyer of goods becomes insolvent and goods are in transit.
- d. When the buyer informs that he is now not in need of the goods.

3. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer:

- a. At such time as the parties to the contract intend it to be transferred
- b. At such time as the buyer only intends it to be transferred.
- c. It depends upon the circumstances of the case.
- d. At such time as the seller only intends it to be transferred to the buyer.

2.2.1 CONDITIONS AND WARRANTIES:

MEANING OF CONDITION



Certain terms, obligations, and provisions are imposed by the buyer and seller while entering into a contract of sale, which needs to be satisfied, which are commonly known as Conditions. The conditions are indispensable to the objective of the contract.

There are two types of conditions, in a contract of sale which are:

- **Expressed Condition:** The conditions which are clearly defined and agreed upon by the parties while entering into the contract.
- **Implied Condition:** The conditions which are not expressly provided, but as per law, some conditions are supposed to be present at the time making the contract. However, these conditions can be waived off through express agreement. Some examples of implied conditions are:
 - The condition relating to the title of goods.
 - Condition concerning the quality and fitness of the goods.
 - Condition as to wholesomeness.
 - Sale by sample
 - Sale by description.

DEFINITION OF CONDITION :

According to Sec 12 (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. In other words, it is a stipulation which is there is any breach of condition, the aggrieved party can treat the contract is repudiated.

MEANING OF WARRANTY



A warranty is a guarantee given by the seller to the buyer about the quality, fitness and performance of the product. It is an assurance provided by the manufacturer to the customer that the said facts about the goods are true and at its best. Many times, if the warranty was given, proves false, and the product does not function as described by the seller then remedies as a return or exchange are also available to the buyer i.e. as stated in the contract.

A warranty can be for the lifetime or a limited period. It may be either expressed, i.e., which is specifically defined or implied, which is not explicitly provided but arises according to the nature of sale like:

- Warranty related to undisturbed possession of the buyer.
- The warranty that the goods are free of any charge.
- Disclosure of harmful nature of goods.
- Warranty as to quality and fitness

DEFINITION OF WARRANTY:

According to Sec 12 (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 right to reject the goods and treat the contract as repudiated.

DIFFERENCE BETWEEN CONDITION AND WARRANTY

S.no	Condition	S.no	Warranty
1	It is a stipulation that is vital to the main purpose of the Contract.	1	It is a stipulation that is only collateral to the purpose of the contract.
2	Unless the condition is fulfilled, the main Contract can be completed.	2	Even if the Warranty is not fulfilled, the main Contract cannot be completed.
3	In case of breach of a condition, the buyer can reject the performance of a contract.	3	In case of breach of a warranty, the buyer cannot reject the contract. He can claim damages only.
4	A breach of condition can be treated as a warranty.	4	A breach of warranty cannot be treated as a breach of condition

Explain the Express and Implied Conditions and Warranties in a contract of sale as provided in the Sale of Goods Act.

Conditions and Warranties may be either express or implied. When the Conditions and Warranties are definitely written in the contract they are known as express Conditions and Warranties. When the Conditions and Warranties are not written in the contract but are attached to the contract by operation of law or custom, they are called implied Conditions and Warranties.

Conditions

Conditions are of two types namely.

1. Express Conditions and
2. Implied Conditions

Express Conditions

It is a condition, which has been expressly agreed upon by both the parties at the time of the contract of sale. It may be noted that it is open to both the parties to include in their contract any number of express conditions.

Implied Conditions

When the Conditions are not written in the contract but are attached to the contract by the operation of law or custom they are called as implied condition. The following are implied in every contract of sale.

i) Condition as to title of Goods

In every contract of sale of Goods, there is an implied condition that the seller has right to sell the goods at the time the sale is affected. In case of an agreement to sell, the seller will have the right to sell the goods at the time when the property is to pass from the seller to the buyer. This condition is called a condition as to title.

The condition as to the seller's title is very essential to protect the interest of the innocent buyers. The whole object of the sale is to transfer the property from one person to another.

Eg: A purchased a second hand Car from B, a Car dealer. After a few months, the Car was taken by the Police because, it was a stolen one. A was forced to return the car to the true owner. Held, A could recover the full price from B. Here there was a breach of condition as to title because B had no right to sell the car.

ii) Condition as to Description when the goods are sold by description
the implied condition is that the goods shall correspond with the description.

iii) Condition as to Sample

In case of a contract of sale by sample, the implied conditions are:

- a) The Goods delivered shall correspond with the sample.
- b) Buyer shall have a reasonable opportunity of comparing the goods with the sample.
- c) Goods shall be free from apparent defects.

Thus the seller is not responsible for the defects that are not discoverable or clear by simply examining them. Hence, there is no implied condition as to the Merchantability of the Goods.

iv) **Condition as to Sample as well as Description**

In case of a contract of sale by sample and description, the implied condition is that the goods shall correspond with both, the sample as well as description.

v) **Condition as to Quality**

The general rule is “**Caveat Emptor**”, i.e., **-let the buyer beware**”. So, the seller need not disclose the faults in the goods he sells. The buyer must buy the goods after having satisfied himself about the Quality and fitness. According to Sec. 16 of the Sale of Goods Act, there shall be no implied condition as to Quality for particular purpose. But, there is an implied condition as to Quality only if the following requirements are fulfilled.

1. The goods are required by the buyer for a particular purpose.
2. The buyer should make -known to the seller with regard to the particular purpose.
3. The buyer should rely on the skill or judgments of the seller.

vi) **Condition as to Merchantability**

When the goods are sold by description it is implied that the goods shall correspond with the description and also that they shall be of Merchantable Quality. i.e., a Quality that is ordinarily accepted in the market.

Goods will be unmerchantable if they have defect which will make them unfit for

ordinary use or are such that a reasonable person knowing of their condition would not buy them.

vii) Condition as to wholesomeness

In the case of eatables and provisions, besides the implied condition with regard to Merchantability, there is another implied condition that the goods shall be wholesome.

WARRANTIES

Warranties may be discussed under two heads namely,

1. Express Warranties
2. Implied Warranties

1. Express Warranties

It is a warranty which has been expressly agreed upon by both the parties at the time of contract of sale. It may be noted that it is open to both the parties to include in their contract many number of express warranties.

2. Implied Warranties

It is a warranty that the law implies into the Contract of Sale. That is, it is the stipulation which has not been included in the contract of sale in express word. But the law presumes that the parties have incorporated it into their contracts. Following are the implied warranties that are contained in the Sale of Good Act.

i) Warranty as to Quiet Possession

As per this warranty, the buyer shall have and enjoy the Quiet Possession of the goods. If buyer's right of possession and enjoyment is disturbed by any one, then the buyer can recover the damages from the seller through the court of law.

ii) Warranty as to Free from Encumbrance

According to this warranty, there is an implied condition that the goods shall be

free from encumbrances in favour of any third person.

iii) Warranties implied by Customer

As the parties enter into an agreement subject to the known customs or usage of trade, implied warranties may be attached to a contract of sale by custom or usage of trade.

2.2.2 CAVEAT EMPTOR

Doctrine of Caveat Emptor



The maxim Caveat Emptor means let the **buyer beware**. In other word, the buyer must take care of his own interest while purchasing the goods. Buyer in a contract of sale of specific goods will purchase them at his own risk with regard to the Quality or fitness of the goods except in case of fraud or where a condition to that effect is laid down in the contract itself.

Exceptions to the Doctrine of Caveat Emptor

The doctrine of Caveat Emptor is subject to the following exception.

i) Implied Condition regarding Quality or Fitness

Where the buyer has made known to the seller the purpose for which he requires the goods and depends on the skill and judgement of the seller, there is an implied condition that the goods will be fit for the purpose for which the buyer requires them. This condition is not applicable in those cases where the goods have been sold under a patent mark or trade name.

ii) Sale of Goods by Description

Where the goods are purchased from a seller by description, who deals in such class of goods, there will be implied condition that the goods shall be of Merchantable Quality.

iii) Usage of Trade

An implied warranty or condition as to Quality or fitness for a particular purpose may be annexed by the custom or usage of trade.

iv) Consent by Fraud

The doctrine of Caveat emptor shall not apply to all those purchases which have been made by a buyer and a contract where his consent was obtained by the seller by fraud.

v) Misrepresentation

Where the seller has made a false representation relating to the goods and the buyer has relied upon it, the doctrine will not apply. Such a contract being voidable at the option of the innocent party the buyer has a right to rescind the contract.

2.2.3 TRANSFER OF PROPERTY

Transfer of property:

In a sale, the property in the goods passes from the seller to the buyer immediately so that the seller is no more the owner of the goods sold. In an agreement to sell, the transfer of property in the goods is to take place at a future time or subject to certain conditions to be fulfilled. In this sense, a sale is an executory contract.

Document of title to Goods:

A document of title to goods is a proof of the ownership of the goods. It authorizes its holder to receive goods mentioned therein or to further transfer such right to another person by proper endorsement and delivery.

a) Bill of lading

A Bill of lading is a receipt given by the ship owner acknowledging the receipt of goods for carriage.

b) Dock Warrant

A Dock Warrant is a document which is issued by a dock owner. It authorizes the

person holding it to receive the possession of the goods.

c) Warehouse Keeper's Certificate

Warehouse keeper's certificate is a document which issued by the warehouse keeper. It is a certificate by the warehouse keeper that the goods specified in the document are in the warehouse or wharf.

d) Railway Receipt

A Railway Receipt is a document which issued by the railway as the acknowledgement of the receipt of goods. It provides that on surrender of the receipt at the destination of the goods by the consignee the goods mentioned therein will be delivered to him.

e) Delivery order

A Delivery order is an order which as given by the owner of goods directing a person who holds the goods on his behalf to deliver them to a persons named therein.

TRANSFER OF PROPERTY

Rules regarding Transfer of Property

The following are the basic rules regarding the transfer of property.

1. Goods to be Ascertained

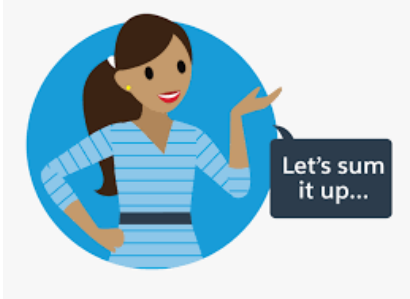
According to Sec. 18, -where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertainedll.

2. Parties Intention

According to Sec. 19(1), -where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferredll.

3. When no Intention is Expressed

According to Sec. 19(3), –unless a different intention appears, the rules contained in Sec. 20 to 24 of the sale of Goods Act, are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.



Conditions and warranties are both legal terms used in contracts, but they have distinct meanings and consequences:

Conditions

- Fundamental aspects of the contract.
- If a condition is breached, the aggrieved party can:
 - Terminate the contract
 - Seek damages

Warranty

- A secondary promise about a product or service.
- If a warranty is breached, the aggrieved party can only seek damages, not terminate the contract.

Here's an analogy to understand the difference:

Imagine buying a house. A **condition** would be that the house actually exists. If it turns out the house doesn't exist, you can walk away from the contract. A **warranty** might be that the house has a working furnace. If the furnace is broken, you can't break the contract, but you can ask the seller to fix it.



4. Which of the following cannot be said to be included in the term “goods” defined under section 2(7) of the Sale of Goods Act, 1930 :

- A. Stock
- B. Shares
- C. Growing crops
- D. Actionable claims

5. Goods may be:

- A. Future
- B. Contingent
- C. Existing
- D. All of the above

6. The Act relating to the sale of goods is called:

- A. The Sale of Goods Act, 1930
- B. The Selling of Goods Act, 1930
- C. The Sale of Goods Act, 1830
- D. The Goods Selling Act, 1930

7. When a seller can sue the buyer:

- A. He may ask for the damages for non-cooperation of the goods.
- B. Suit for damages for repudiation of the contract.
- C. He may sue for the price and interest.
- D. All of the above.

2.3.1 PERFORMANCE OF CONTRACT OF SALE

INTRODUCTION:

Performance of a contract of sale means as regards the seller, delivery of the goods to the buyer, and as regards the buyer, acceptance of the delivery of the goods and payment for them, in accordance with the terms of the contract (Sec.31) Delivery of Goods – Meaning

Delivery means –voluntary transfer of possession of goods from one person to another [Sec.2(2)].

Kinds of Delivery of Goods

Following are the various kinds of delivery of goods.

i) Actual Delivery

In this case, the goods are handed over by the seller to the buyer or his duly authorized agent.

ii) Symbolic Delivery

Where the goods are bulky and incapable of actual delivery, the delivery is made by delivering some symbol that carried with if the real possession or control over the goods. For eg. Delivery of the key of the warehouse where the goods are stored or the bill of lading etc.

iii) Constructive Delivery or Delivery by Atonement

Where a third person (eg. Bailee) who is in possession of the goods of the seller at the time of the sale acknowledges to the buyer that he holds the goods on his behalf, there takes place a delivery by attornment or constructive delivery [Sec.36(3)].

2.3.2 RULES TO DELIVERY OF GOODS

i) Mode of Delivery (Sec.33)

Delivery of goods may be actual, constructive or symbolic.

ii) Delivery and Payment – Concurrent conditions

Delivery of the goods and the payments of the price must be according to the terms of the contract.

The seller should be willing to give possession of the goods and the buyer must be willing to pay.

iii) Effect of Part Delivery

A delivery of part of the 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.

Eg.: S Sales 5 bales of certain goods to B. B received one bale, paid for it and refused to accept the other four. Held, this amounted to part delivery.

iv) Expenses of Delivery

Unless otherwise agreed, the expenses of and incidental to make delivery shall be borne by the seller.

v) 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 (Sec.75).

Place to Delivery

It should be specified in the contract. Further, the goods must be delivered at that place during business hours on a working day.

vi) Time of Delivery

If no time is specified in the contract, the seller must deliver within a reasonable time [Sec.36(2)].

vii) Goods in possession of a third party

Where the goods are in possession of a third person, there can be no delivery to the buyer unless the third person acknowledges that he holds them on behalf of the buyer [Sec.36(3)].

viii) Delivery of Wrong Quantity

- If the seller sends to the buyer a larger or a smaller Quantity of goods than he ordered, the buyer may:-
- Reject the goods as a whole or
- Accept the whole or
- Accept the Quantity ordered and reject the rest.

ix) Installment Deliveries

Unless otherwise agreed, the goods are not to be delivered by installments.

WHAT ARE THE RIGHTS AND DUTIES OF THE BUYER?

Rights of the Buyer

1. To have Delivery as per Contract

The buyer has the right to have delivery of the goods, as per the contract. He also has the right to reject them if they are not as per the contract (Sec.37).

2. To Repudiate the Contract

The buyer has to repudiate the contract if the goods have been delivered by installment unless otherwise agreed upon.

3. To Notice of Insurance

Where the goods are sent by the seller by a Sea route to the buyer, unless otherwise agreed, the buyer has a right to be informed by the seller so that he may insure the goods.

4. To Examine the goods

The buyer has a right to examine the goods before its acceptance.

5. Right to sue for Breach of Contract

1. The buyer has a right to sue the seller for damages for non delivery of the goods.
2. The buyer has a right to sue the seller for specific performance of the Contract.
3. Sue the seller for damages for breach of warranty.
4. Claim of interest on the amount of price paid from the date on which the payment was made in case of breach of contract by the seller, when the buyer sues for the refund of the prices.
5. The seller repudiates the contract before the date of delivery.

Duties to the Buyer

1. To Accept Delivery of Goods and make Payment (Sec.31)

It is the duty of the buyer to accept the goods and pay for them as per the terms of the contract of

sale.

2. To Demand for Delivery (Sec. 35)

Unless otherwise agreed, the seller of goods is not bound to deliver the goods until the buyer demands for delivery.

3. To Demand for Delivery at a Reasonable hour [Sec. 36(4)]

It is the duty of the buyer to demand for delivery of goods at a reasonable hour.

4. To Accept Installment Delivery and pay for it [Sec.38(2)]

The another duty of the buyer is to accept the installment delivery and pay for it.

5. To take Risk of deterioration (Sec.40)

If the seller accepts to deliver the goods at a place other than that where

they are sold, the buyer will have to take the risk of deterioration of the goods unless otherwise agreed upon by the parties.

6. To inform the seller if he rejects the Goods (Sec.43)

Apart from any express contract, it is the duty of the buyer to inform the seller if he rejects the goods.

7. To Compensate the Seller

Where the buyer neglects or refuses to take delivery of the goods when tendered, unless otherwise contracted, he is liable to compensate the seller of the goods.

2.3.3 UNPAID SELLER

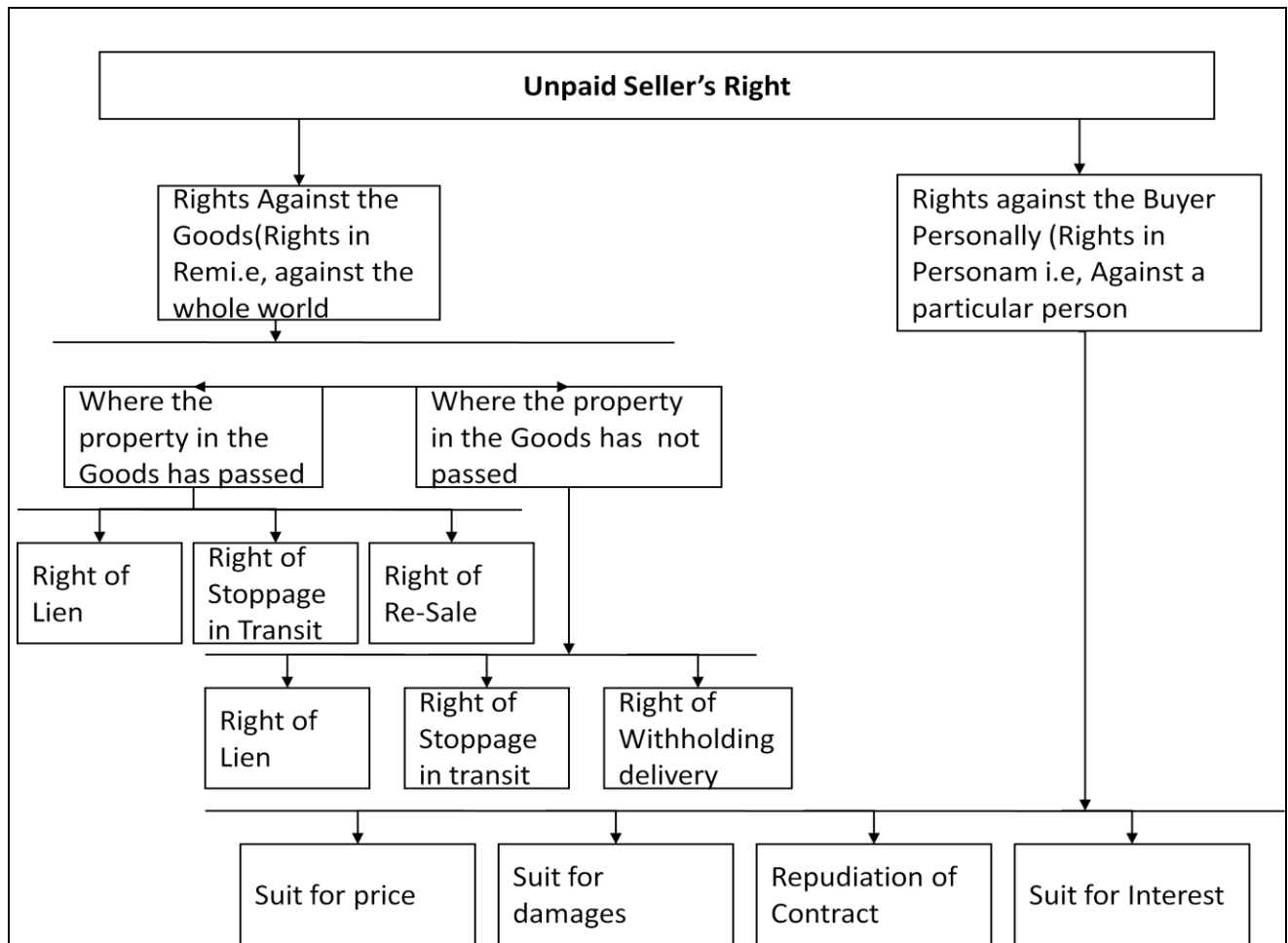
MEANING:

A seller is an unpaid seller (i) if the full or part of the price has not been paid to him (ii) if the conditional payment is made by bill of exchange or other negotiable instruments and such instrument is dishonored.

Eg.: A sold a T.V. set to B Rs.5,000 and received only Rs.2,500. B failed to pay the balance. Here, A is an unpaid seller.

RIGHTS OF AN UNPAID SELLER

The rights of an unpaid seller are as follows:-



I. Rights of an unpaid seller against the Goods

Where after the sale of the goods, the seller still has the possession of the goods sold an unpaid seller has certain rights against the Goods. They can be discussed under the following two heads.

1. Where the ownership of the goods is transferred.
2. Where the ownership of the goods is not transferred.

1. Where the ownership of the goods is transferred

Where the ownership of the goods is transferred to the buyer, the unpaid seller has

the following rights against the goods.

- i) Right of Lien
- ii) Right of Stoppage in Transit
- iii) Right of Resale.

i) Right of Lien

It is available to the unpaid seller when

- The goods have been sold without any stipulation as to credit.
- The goods have been sold on credit, but the term of the credit has expired.
- The buyer becomes insolvent (Sec.47).

ii) Right of Stoppage in Transit

When the buyer of goods becomes an insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit.

iii) Right of Resale

The unpaid seller can resell the goods-

- Where the goods are of a perishable in nature
- Where he has exercised his right of lien or stoppage in transit and given notice to the buyer has not within a reasonable period of time paid price and
- Where the seller expressly reserves a right of resale in case the buyer

should make default(Sec54).

2. Where the ownership of the Goods is not transferred to the buyer [Sec.46(2)]

If the property in the goods has not passed to the buyer, the unpaid seller cannot exercise the right of lien but gets a right of withholding the delivery of goods, similar to and co-extensive with lien.

II. Right Against the Buyer personally

The unpaid seller also has certain rights against the buyer. These rights may be discussed under the following heads.

- i) Suit for Price
- ii) Suit for Damages
- iii) Suit for Interest
- iv) Suit for Repudiation of Contract.

i) Suit for Price

When 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 (Sec.55).

ii) Suit for damages

Where the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the damages for non-acceptance (Sec.56).

iii) Suit for Interest

The seller can recover interest on price from the date on which the payment became due, if there is a special agreement to the effect.

iv) Suit for Repudiation of Contract

Where the buyer in a contract of sale repudiates the contract before the date of delivery, the seller may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach (Sec.60)

REMEDIES FOR BREACH OF CONTRACT OF SALE

The Sale of Goods Act gives the following remedies to a seller and a buyer from breach of a contract of sale.

Seller's Remedies

1. Suit for price.
2. Suit for damages for non-acceptance of the goods.
3. Suit for interest.
4. Suit for damages for repudiation of contract by the buyer before the due date

Buyer's Remedies

1. Suit for damages for non-delivery of the goods.
2. Suit for specific performance.
3. Suit for breach of warranty.
4. Suit for damages for repudiation of contract by the seller before due date.
5. Suit for interest.

AUCTION SALE

MEANING:

An auction is a method of selling property by bids usually to the highest bidder by public competition. The auctioneer, who sells goods by auction, is an agent of the seller only. However, he may sell his own property as principal and need not disclose the fact

that he is so selling. The auctioneer holds the goods as bailee. Under this methods of sale, a contract is formed between the auctioneer and the buyer, and incurs certain liabilities though not all the liabilities of a seller.

In the case of sale by auction the following rules shall apply.

Rules for auction sales

i) Goods put up for sale in lots

Here, each lot is prima facie, deemed to be the subject of a separate contract of sale [Sec.64(1)].

ii) Completion of Sales

The sale is completed when the auctioneer announces its completion by the fall of the hammer or in some other customary manner like –one, two or three II.

iii) Right of seller to bid

A right of bid may be reserved expressly by or on behalf of the seller.

iv) Sale not notified subject to a right to bid

It is not lawful.

- a. For the seller to bid himself or to employ any person to bid at such sale or
- b. For the auctioneer knowingly to take any bid from the seller or any such person.

v) Reserve Price

It is a price below which the auctioneer will not sell. Every bid is accepted conditionally on the reserve price being reached. Otherwise goods will be sold to the highest bidder.

vi) Use of Pretended bidding

In this case, the sale is voidable at the option of the buyer [Sec.64(6)].

RIGHTS OF THE PRINCIPAL

1. Right to Recover Damages:

If a loss is caused to the principal on account of the following, he is entitled to recover such a loss or damage from the agent.

1. The negligence of the agent, or
2. The disregard of the principal's instructions while conducting the agency business, or
3. The lack of skill, care and diligence on the part of the agent.

2. Right to recover secret profits made by the agent:

If the agent has made any secret profit, the principal can obtain an account of such profits and recover them and resist a claim for remuneration.

I. TERMINATION OF AGENCY BY ACT OF THE PARTIES:

An agency can be terminated by the act of the parties in any one of the following ways.

1. Mutual agreement:

The agency may be terminated at any time and at any stage by the mutual agreement between the principal and his agent.

2. Revocation of the Agent's Authority by the principal:

The principal may revoke the authority of his agent before it has been exercised by the agent. So as to bind the principal.

Ex. A appointed B, as his agent to purchase certain goods. Any time before he purchases the goods, A may revoke B's authority.

3. Revocation by the Agent:

Agent, after giving a reasonable notice, to the principal, may renounce the business of agency. If the contract of agency is entered into for a fixed period, agent

should pay compensation to the principal for the earlier renunciation of the business of agency.



A contract of agency is a legal agreement that establishes a relationship between two parties:

- **Principal:** The person who authorizes another to act on their behalf.
- **Agent:** The person who is authorized to act on behalf of the principal.

The agent essentially acts in the shoes of the principal for specific purposes or transactions. This is very common in business settings, where companies might use agents to:

- Sell products (sales agents)
- Find new clients (brokers)
- Manage properties (property managers)

There's also a third party involved in most agency relationships:

- **Third Party:** Someone the agent interacts with on behalf of the principal.

Key Elements of a Contract of Agency:

- **Authorization:** The principal grants the agent the authority to act on their behalf. This authorization can be express (written or verbal instructions) or implied (actions that suggest an agency relationship).
- **Duties of the Agent:** The agent has a duty to act in the best interests of the principal and follow their instructions. This includes loyalty, obedience, and reasonable care.
- **Duties of the Principal:** The principal has a duty to compensate the agent as agreed and reimburse them for reasonable expenses incurred while acting as an

agent.

- **Rights of Third Parties:** Contracts formed by the agent acting within their scope of authority are binding on the principal.

Types of Agency:

- **Express Agency:** Created through written or verbal communication.
- **Implied Agency:** Established through the conduct of the parties.
- **General Agency:** Grants the agent broad authority to act on the principal's behalf in a particular business or matter.
- **Special Agency:** Limits the agent's authority to specific acts or transactions.

Benefits of a Contract of Agency:

- Allows the principal to leverage the skills and expertise of the agent.
- Enables the principal to conduct business in multiple locations.
- Frees up the principal's time to focus on other matters.



8.The unpaid seller of goods, having a lien thereon, _____by reason only that he has obtained a decree for the price of the goods:

- A. Does not lose his lien
- B. Lien cannot be exercised after getting the decree.
- C. Losses his right of lien
- D. None of the above.

9.When a seller can sue the buyer:

- A. He may ask for the damages for non• cooperation of the goods.

B. Suit for damages for repudiation of the contract.

C. He may sue for the price and interest.

D. All of the above.

10.A contract of sale may be made:

A. Partly in writing and partly by word of mouth

B. It may be implied from the conduct of the parties.

C. In writing or by word of mouth

D. All of the above.

2.4.1 UNIT SUMMARY

- ✚ The Sale of Goods Act (SOGA) is a key piece of legislation governing the buying and selling of goods (not including land or services)
- ✚ Covers essentials of a valid contract like offer, acceptance, and mutual agreement
- ✚ Deliver the goods, ensure proper title, and (sometimes) comply with specific quality or description standards
- ✚ SOGA outlines when and how ownership of the goods passes from seller to buyer. This depends on factors like the type of goods, delivery terms, and whether the sale is immediate or future
- ✚ SOGA outlines the rules for delivery, payment, and remedies for breach of contract by either party.
- ✚ SOGA also covers issues like risk of loss (who bears the risk if the goods are damaged before ownership transfer), passing of title in specific situations

(e.g., sale by installments), and remedies available upon breach.





- ✚ The foundation of the contract. The principal grants the agent the authority to act, which can be express (written/verbal instructions) or implied (actions suggesting an agency relationship).

2.4.2 Glossary

<p>Sales of Goods Act</p>	<p>The Sale of Goods Act (SOGA) is a law that governs contracts for buying and selling goods (not including land or services). It outlines the rights and obligations of both the seller and the buyer, ensuring a fair and predictable sales process.</p>
<p>Condition</p>	<p>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. In other words, it is a stipulation which is there is any breach of condition, the aggrieved party can treat the contract is repudiated.</p>
<p>Warranty</p>	<p>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 right to reject the goods and treat the contract as repudiated</p>

<p style="text-align: center;">Unpaid Seller</p>	<p>A seller is an unpaid seller (i) if the full or part of the price has not been paid to him (ii) if the conditional payment is made by bill of exchange or other negotiable instruments and such instrument is dishonored</p>
<p>Self – Assessment Questions</p>	
<ol style="list-style-type: none"> 1. What is Sales Contract? Discuss the Nature of Sales contract. 2. Distinguish between Sale and Agreement to sell. 3. What is mean by condition? When a Condition may be treated as a Warranty? 4. Discuss in detail implied condition. 5. Discuss the doctrine of <i>Caveat Emptor</i>. What are the Expectations to the 'doctrine of caveat emptor' 6. Who is an unpaid seller? Discuss the various rights of unpaid seller. 	
<p>Activities / Exercises / Case Studies</p>	
<p>In this case, Mr. Balfour was a civil servant in Ceylon (now Sri Lanka), and Mrs. Balfour remained in England due to medical reasons. Before Mrs. Balfour left for England, Mr. Balfour promised to pay her £30 per month as maintenance. However, when their relationship soured, Mr. Balfour stopped making these payments.</p>	
<p style="text-align: center;">Answers for check</p>	<ol style="list-style-type: none"> 1. A)The buyer shall pay the seller a reasonable price

your progress	<ol style="list-style-type: none">2. C) When the buyer of goods becomes insolvent and goods are in transit.3. D) At such time as the seller only intend it to transfer to the buyer.4. D) Actionable claims5. D) All of the above6. A) The Sale of Goods Act, 19307. D) All of the above8. A) Does not lose his lien9. A) He may ask for the damages for non cooperation of the goods.10. D) All of the above.
Suggested Readings	
<ol style="list-style-type: none">1. https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/definitions-of-important-terms/2. https://www.indiacode.nic.in/handle/123456789/2390?locale=hi3. https://blog.iplayers.in/the-sale-of-goods-act-1930/4. https://ujala.uk.gov.in/files/Sale_of_Goods_Act,1930_By_Manoj_Singh_Rana.pdf5. https://www.advocatekhaj.com/library/lawareas/saleofgoods/saleofgoods.php?Title=Sale%20of%20Goods&STitle=Introduction	

Open-Source E-Content Links			
1.	Sales of goods act	https://youtu.be/GUblINDIz0M?si=f3ipK1e5ljS3dlrl	
2.	Sales and agreement to sell	https://youtu.be/O3EtREVANZc?si=7iCAZMdOLEEHI8JF	
3.	Condition and warranty	https://youtu.be/yXbwltXwOQ?si=OQNgZKcA-9JKxU7k	
4.	Unpaid seller	https://youtu.be/A0YPxSWbxdw?si=HDsQeEXj4UXy3nTo	
References			
<ol style="list-style-type: none"> 1. https://www.toppr.com/guides/business-laws/the-sale-of-goods-act-1930/definitions-of-important-terms/ 2. https://www.indiacode.nic.in/handle/123456789/2390?locale=hi 3. https://blog.iplayers.in/the-sale-of-goods-act-1930/ 4. https://ujala.uk.gov.in/files/Sale_of_Goods_Act,1930_By_Manoj_Singh_Rana.pdf 5. https://www.advocatekhoj.com/library/lawareas/saleofgoods/saleofgoo 			

[ds.php?Title=Sale%20of%20Goods&STitle=Introduction](#)

Self-Learning Material Development – STAGE 1		
Unit 3	Indian Companies Act	
Brief outline of Indian Act 1956- kinds – formulation – MOA – AOA – prospectus – Appointment of Directors – duties – meeting – Resolutions – Winding up		
Unit Module Structuring		
STAGE – 2 – Modules Sections and Sub-sections structuring		
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3.1.2	Nature of company	4
3.1.3	Types of company	6
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3.1.1 Meaning of Company



In the ordinary common parlance, a company means a group of persons associated to achieve some common objective.

Our object is to deal with a company which is formed for carrying – on some business and providing for limited liability of its members.

According to the Indian Companies Act, 1956, “A company formed and registered under this Act or an existing company”.

According to Prof. Haney. “A Company is an artificial person created by law, having separate entity, with a perpetual succession and common seal”.

Lindley defines a company as “an association of many persons who contribute money or money’s worth to a common stock and employ it in some common trade or business and who share the profit or loss arising there from. The common stock so

contributed is denoted in money and is the capital of the company. The persons who contribute it, or to whom it belongs are members. The proportion of capital to which each member is entitled is his share. Shares are always transferable although the right to transfer them is often more or less restricted.”

Nature of Company

A company is a legal entity formed by individuals to engage in and operate a business. It's an artificial person created by law that has a separate legal existence from its owners. This means the company can own assets and property, enter into contracts, and sue or be sued in its own name.

Here are some of the key characteristics of a company:

- **Separate legal entity:** A company is distinct from its members (owners). This means that the owners' personal assets are generally not liable for the company's debts.



Separate legal entity company

- **Limited liability:** The liability of shareholders (owners) is limited to the amount of their investment in the company. In other words, if the company goes bankrupt, shareholders will only lose the money they invested in the company, not their personal assets.
- **Perpetual succession:** A company's existence is not limited by the lifespan of its owners. The company can continue to exist even if the owners die, sell their

shares, or go bankrupt.

- **Transferable shares:** Ownership of a company is divided into shares. These shares can be easily bought and sold by shareholders.

3.1.2 Nature of company

The nature of a company can be understood through several key aspects:

Legal Entity: A company is distinct from the people who own it (owners or shareholders). This means the company has a separate legal existence. It can own property, enter contracts, and be sued in its own name, entirely independent of its owners.

Limited Liability: A key benefit of a company structure is limited liability for shareholders. Their personal assets are generally not at risk if the company faces debts or bankruptcy. Their financial responsibility is limited to the amount they invested in the company.

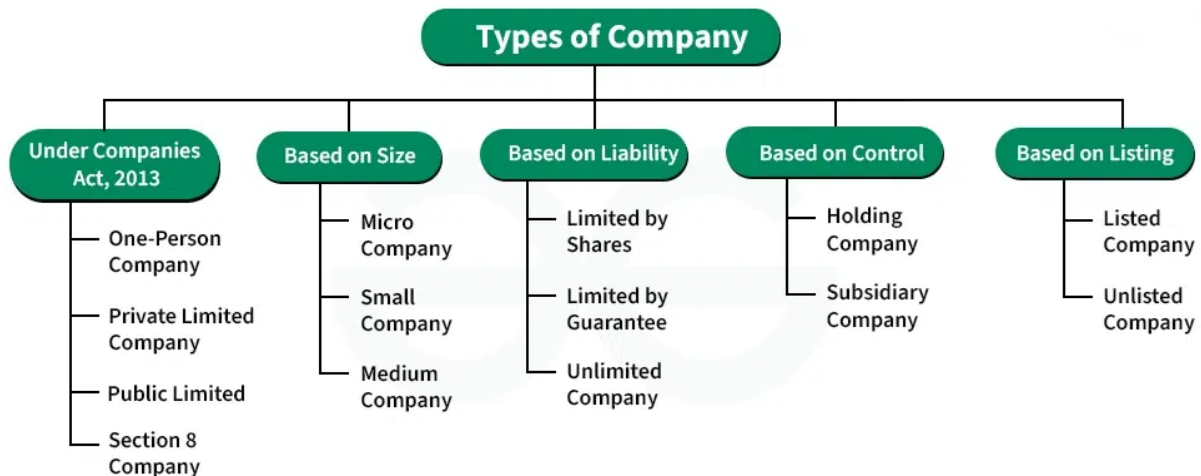
Perpetual Existence: A company's life isn't tied to its owners. The company can continue to operate even if the owners die, sell their shares, or the company faces a leadership change. This ensures stability and continuity of the business.

Transferable Ownership: Ownership of a company is divided into shares. Shareholders can easily buy and sell these shares in a marketplace, allowing for easy transfer of ownership and investment.

Management Structure: Companies have a defined management structure with a separation between ownership and control. Owners (shareholders) elect a board of directors who oversee the company's strategic direction. The board appoints managers to run the day-to-day operations.

Purpose and Regulation: Companies are formed for a specific purpose, outlined in their legal documents. They operate within a legal framework and are subject to government regulations depending on their industry and size.

3.1.3 Types of company



- A company is a legal entity that is formed by a group of individuals to engage in and operate a business organization in a commercial or industrial capacity.
- The business line of a company depends on its structure which can range from a partnership to a proprietorship, or even a corporation.
- A company is purposely organized to earn profits from running its business.

A. Types of Company Under Companies Act, 2013

Different types of companies can be registered under Companies Act, 2013 in India to conduct their business and provide a legal structure for their business. The different types of companies are as follows:

1. One-Person Company

- OPC is a type of private company that has only one member. OPC was introduced with the main aim of promoting entrepreneurship and corporatization of business.

- However, it is to be noted that an OPC is different from a sole proprietorship, as an OPC is a separate legal entity and the member of the OPC has limited liability, whereas in the case of a sole proprietorship the liability of the owner is not limited. There is no minimum paid-up capital required for constituting OPC.

- However, only a natural person who is an Indian citizen resident or otherwise stayed in India for not less than 120 days during the immediately preceding financial year shall be eligible to incorporate an OPC or to be a nominee for the sole member of an OPC. No minor can become a member or a nominee in OPC. Also, OPC cannot be converted into a company registered under section 8 of the Act.

2. Private Limited Company

- A Private Company as mentioned under Section 2(68) of the Companies Act 2013, has a minimum of 2 members and a maximum of 200 members, however, this figure shall exclude employees and ex-employees who are also the shareholders in the company.

- A Private Company cannot invite the general public to subscribe to their shares/debentures. Shares of private companies are not freely transferable and these shares can't be transferred. A private company should have Private Limited as a suffix in its name.

3. Public Limited

- A Public Company is defined in Section 2(71) of the Companies Act, 2013. To establish a Public company, a minimum of seven members is required and there is no ceiling limit on the number of maximum members. In the case of a Public company,

there are no restrictions on the buying and selling of shares.

- Any subsidiary of a public company shall be deemed to be a Public company. The shares of a Public company can be freely transferred. A Public company that has limited liability is required to add the word 'limited' at the end of the name. A Public company should have 'limited' as a suffix in its name.

- In case a company does not comply with the specified provisions of the Companies Act, it will renounce the status of a Private company. To transform a Public company into a Private company, the company is required to adopt a special resolution at the general meeting; i.e., 75% majority.

4. Section 8 Company

- Section 8 Companies, also known as companies formed with charitable objects. According to section 8 of the Companies Act, 2013, these companies are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, environment conservation etc.

- Such companies are required to apply their profits back to promote their objectives. Section 8 companies can't pay dividends to their members. Central Government has strict control over Section 8 companies and in case such a company fails to fulfill the statutory requirements of the act, the central government may revoke the license or may issue an order as may seem fit.

B. Types of Company Based on Size

1. Micro Company

- The MSME Act has classified companies based on their size to give them benefits provided by the government.
- Micro companies are those companies whose investment in plant and machinery is not more than ₹1 crore, and the annual turnover of such companies does not exceed ₹5 crores.

2. Small Company

- A Small Company is a company whose investment in plant and machinery does not exceed more than ₹10 crore, and the annual turnover does not exceed ₹50 crore. The Companies Act, 2013, also provides several benefits to small companies.
- A company with a paid-up share capital of below ₹4 crore and an annual turnover of below ₹40 crore is called as a small company under the Companies Act.

3. Medium Company

- A Medium company is a company whose investment in plant and machinery does not exceed ₹50 crore, and the annual turnover of such company does not exceed ₹250 crore.

C. Types of Company Based on Liability

1. Company Limited by Shares

- According to the provisions of Section 2(22) of the Companies Act, 2013, when the liability of the members of a company is limited by its MOA to the amount of unpaid shares (if any) held by them, in such case it is known as a Company Limited by Shares.
- In this case, the shareholder may be called upon to contribute only to the extent of the amount due on his shareholding, for meeting the debts of the company. However, the separate property of shareholders cannot be encompassed to meet the company's debt.
- As the company is a legal person in the eyes of the law, ownership of assets remains with the company only. Although, a shareholder is a co-owner of the company, but he is not a co-owner of the company's assets. The rights and duties of a shareholder as co-owner are considered by his shareholdings.

2. Company Limited by Guarantee

- It is defined under section 2(21) of the Companies Act, 2013. A Company Limited by guarantee means the member's liability is limited to the amount they guarantee to contribute towards the assets of the company.
- Here in this case, the liability of the member of a Company limited by Guarantee is limited up to an agreed sum mentioned in the memorandum. Members are required to contribute the agreed amount only in case of winding up of the company and only to the extent of the amount mentioned in the memorandum.

3. Unlimited Company

- According to the provisions of Section 2(92) of the Companies Act, 2013, Unlimited company is a company that does not have any limit on the liability of its members. In an Unlimited company, the liability of a member ceases only when he ceases to be a member of that company. The liability of each member ranges to the amount of the company's debts and liabilities, however, they will be entitled to claim contributions from other members.
- In case the company has a share capital, the Articles of Association must state the amount of share capital and each share amount. The creditors can initiate proceedings for winding up of the company for their claims and the official liquidator may call upon the members to contribute towards the liabilities and debts of the company.

D. Types of Company Based on Control

1. Holding Company

- A Holding company is a parent company, which holds sufficient voting shares in another company. The shareholding pattern is arranged in such a way that the Holding company can control the policies and affairs of its subsidiary company and oversee the management decisions.
- Control can either be through holding ownership or by management. For example,

Alphabet Inc. is the holding company of Google.

2. Subsidiary Company

- According to the provision of Section 2(87) of the Companies Act, 2013, a Subsidiary Company is a company where the Holding company can control and manage the composition of the Board of Directors or exercise control over more than half of the subsidiary's voting.
- Control can be determined in case the Holding company has the right to appoint or remove the majority of the board members.

E. Types of Company Based on Listing

1. Listed Company

- According to the definition provided in Section 2(52) of the Companies Act, 2013, a listed company is a company that has any of its securities listed on any recognised stock exchange within India or outside India. It is to be noted that such class of companies, which have listed or intend to list a prescribed class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.
- The shares of listed companies can be traded freely on the stock exchanges. Listed companies are strictly regulated by the Securities Exchange Board of India (SEBI). A company that wishes to list its shares on stock exchanges can issue a prospectus to the general public for subscribing to its securities.
- A company can also list its shares via an Initial Public Offer (IPO), whereas a company that is already listed company can make a Further Public Offer (FPO). Only public companies can be listed. For example, TATA technologies, Adani Ports, Titan, MRF, etc. are listed companies.

2. Unlisted Company

- An Unlisted company is a company that is not listed on any recognised stock exchange in India or outside India. Neither of its securities are freely traded on any stock exchange. Unlisted companies can't gather funds from the general public, they have to fulfil their capital requirements by obtaining funds from friends, family members, relatives, financial institutions, or through private placement.
- To convert into a Public company, an unlisted company must issue a prospectus if they wish to list their securities on the stock exchanges. There is no available market to buy or sell shares of unlisted companies, and for the same reason the shares of these companies aren't liquid. Public and private companies comes under this category.

3.1.4 Difference between public company and private company

S.no	Public company	Private company
1.	A company listed on recognized stock exchanges	A company no listed on stock exchanges
2.	Its share are publicly traded	Its shares are held privately
3.	Minimum members : 3 Maximum members : no limited	Minimum members : 2 Maximum members : 200
4.	Appointment director : 1	Appointment director : 2 or more
5.	It can draw up its own articles of association or adopt	They must draw up their own articles of association.

	Schedule F.	
6.	The shares of a publicly traded company are freely transferable, i.e., freely tradable in an open market called the stock exchange.	Shares of a private company are not freely transferable, as the articles of association contain restrictions.
7.	It may invite the public to subscribe for its shares or bonds.	Issuance of shares or bonds to the public is prohibited.
8.	It may issue a prospectus or may opt for a private placement.	Issuing a prospectus is prohibited.
9.	The company cannot issue shares unless it reaches the minimum subscription specified in the prospectus.	The company may allot shares without obtaining a minimum subscription.

3.1.5 Formation of Company

The word 'company' is derived from Latin word 'Com' which means 'Together' and the word 'panies' which means 'bread'. A company is thus an association of persons who took their meal together. In simple language the term company means an association of persons formed for some common purpose. When a few persons form a company for the purpose of some business of profit it is called Joint Stock Company.

The persons forming the company are called 'shareholders'. The liability of the members of the company is usually limited.

MEANING

A joint stock company is an artificial person created by law having separate legal entity with a perpetual succession and common seal.

DEFINITION

According to Section 3(1) of the Companies Act 1956, "a company means a company formed and registered under the act or an existing company" and "Existing Company means a company formed and registered under any of the previous companies act."

According to section 2(20) of the Companies Act, 2013, "The term Company means a Company incorporated under the Companies Act 2013 or any previous Company Law".

According to Lord Justice Lindley "Company is a voluntary association of many persons who contribute money or money's worth to a common stock and employs it in some trade or business and who share the profit and loss arising there from"

FEATURES

1. Voluntary association- A joint stock company is a voluntary association or organization of persons. No person can be compelled to become a member of a company, or to give up the membership

2. Registration- The Company is created only when registered under the companies Act 1956. But for the formation of a public company at least seven persons and for private company at least two persons are necessary. It is on incorporation that company becomes a body corporate and gets separate legal entity.

3. Legal Entity Artificial

- legal entity- A company is an artificial person created by law. The company can acquire and dispose of property, can enter into contract with third parties in its own name, can sue and be sued in its name. It acts through the board of directors elected by the shareholders.
- Separate legal entity- A company has a legal entity distinct from and independent of its members. It is regarded as an entity separate from its shareholders or members. Hence a share holder can sue the company and be sued by it. The property of the company is for the benefit of the company and not for its members, shareholders or individuals.

4. Common seal- The company being an artificial legal entity or person cannot act on its own. So its acts through the natural persons like directors or secretary who is authorized hence, there is a need for a common seal of the company for all the contracts entered into by the company through the directors. The common seal is like the signature of the company and the seal bears the name of the company engraved on it.

5. Perpetuity- The Company created by law has continuous existence. It never dies or has any retirement and therefore it is commonly said that 'Men may come, men may go but company goes on forever'

6. Limited liability- A company may be limited by shares or limited by guarantee.

- If a company is limited by shares then the shareholder is liable to pay only to the extent of face value of the shares held by him.
- If a company is limited by guarantee the liability of the members is limited to such an amount as the members may decide to contribute to the assets of the company in the event of winding up.

7. Separate of Ownership and Management- in a company, the shareholders are the owners but the management is entrusted to the board of directors who are separate from the body of shareholders. Further a shareholder is not an agent of the company or the other shareholders cannot bind them by his act.

8. Transferability of shares- The shares of public limited company can be easily transferable from one person to another.

9. Separate property- A company has a right to own and transfer property in its own name since it is a legal entity. The shareholder has no proprietary rights in the company but merely to their shares. Therefore the claims of the company's creditors will be against the company property and that of shareholders.

10. Specific objectives- A joint stock company is formed for specific objectives only which are expressly stated in the constitution. This objective is laid down in the Memorandum of Association. A company can undertake only those activities which are intended to achieve the special objective.

11. Large Membership- A JSC has a large number of memberships and there is no maximum limit on number of members in case of public company.

12. A company is not a citizen- A company on incorporation assumes a legal personality distinct from its members but it cannot claim to be citizen of a country under the constitution of India.

STEPS IN FORMATION OF JOINT STOCK COMPANY:

In the formation of a public limited company having share capital, mainly four stages are involved viz.,

1. Promotion
2. Incorporation
3. Capita Subscription
4. Commencement of business

In the case of formation of a private company, only the first two stages is involved.

1. PROMOTION OF A COMPANY:

The person who undertakes responsibility to bring the company into existence is called promoters.

The steps which are taken to persuade a number of persons to come together for the achievement of a common objective through the company form of organization are called promotion.

According to Guthmann and Doughall, “A Promoter is a person who assembles the men, money and the materials into a going concern.”

The person who undertakes responsibility to bring the company into existence are called promoters. The steps which are taken to persuade a number of persons to come together for the achievement of a common objective through the company form of organization are called promotion. According to Guthmann and Doughall, “A Promoter is a person who assembles the men, money and the materials into a going concern.”

Steps in Company Promotion:

Discovery of an idea: The promoter starts out with an idea to start some business either in a new field which has not been commercially exploited or in some existing lines of manufacture or business. He makes a preliminary investigation to find out whether it is worthwhile to make a detailed investigation.

Detailed Investigation: The promoter needs to make a detailed investigation of his idea with the assistance of many experts. It will help him to know whether the estimated income is adequate to cover the estimated costs and compensate the owner for the risks and services.

Assembling: After a detailed investigation, if the promoter is satisfied with the practicability and profitability of the proposed concern, he starts assembling. Assembling means getting the support and consent of some other persons to act as directors or founders, arranging for patents, a suitable site for the company, machinery and equipment and making contracts for filling the positions.

Financing the proposition: After assembling the proposition, the promoter prepares a prospectus to present to public and to underwriters to persuade them to finance the proposition.

Functions of promoters:

Promotion of the company: The most important function of the promoters is the promotion of the company. They undertake various processes of promotion.

Incorporation of the company: Promoters also undertake the function of getting the company registered. They prepare necessary documents such as M.O.A, A.O.A, etc and submit them to the registrar and the company incorporated

Raising Capital: In the case of public limited company having Share capital promoters raise the required capital and obtain business commencement certificate.

Nursing the company: Promoters are also associated with the company and nurse the company (They work for the growth of the company).

Types of promoters:

Professional promoters: They are experts who specialize in company promotion. They float the company and hand it over to the shareholders or their respective. Promotion is their main profession or occupation.

Occasional promoters: They promoters take interest in floating some companies. They are not engaged in promotion work on a regular basis. They take up the promotion of some company and once it is over they go to their original profession. For instance, engineers, lawyers etc. May float some companies.

Entrepreneur promoters: They are both promoters and entrepreneurs. They conceive idea of a new business unit, does the ground work to establish it and subsequently become a part of the management.

Financier Promoters: Some financial institutions, like investment banks or

industrial banks, may take up the promotion of a company with a view to find opportunities for investment.

Position of a promoter:

The company not being in existence, a promoter is neither an agent of, nor a trustee for, the company. But he occupies a fiduciary position (i.e. position of trust of confidence) in the relation to the company he promotes.

The fiduciary relation requires full disclosure of the relevant facts, including any profile made.

A promoter does many extraordinary things from the initial planning till the commencement of business of a company. It, therefore, becomes important to know what exactly the relationship between the promoter and the company is and what the legal status of the promoter is. This is an important questions; but the crux of the question is- on whose initiative does the promoter act? Who gives the orders or the directions? In other words-what is the position or status of the promoter? To clarify the status of the promoter, it is important to consider the following:

- Is the promoter an agent of the company?
- Does the promoter act as a trustee of the company?
- Is the promoter the owner, or one of the owners of the company?
- Or is he an official or an employee of the company?

A promoter starts working for the company even before the company is an entity or is in existence. There being no entity or existence of the company, there can be no contract between the promoter and the company.

3.1.6 INCORPORATION:

The second stage is the formation of the company is incorporation stage where in, the company must be registered with the registrar of the companies.

a) Approval of name

It has to be ensured that the name selected for the company does not match with the name of any other company. For this, the promoter has to fill in a “name availability form” and submit it to the registrar of companies along with necessary fees.

b) Filing of documents

For registration an application has to be filed with the registrar of the companies along with the following documents:

- Memorandum of association properly stamped and signed by the signatories
- Articles of association properly stamped and signed by the signatories.
- Notice of the address of the registered office of the company.
- Copy of the letter received from the department of company law and administration of the Government, giving intimation about the availability of the proposed names of the company.
 - Statutory declaration stating that all the requirements of the companies act have been complied with
 - Statement of nominal capital of the company
 - Details of persons(name, addresses, occupation etc.) who have accepted to act as the first directors of the company
 - The written consent of the directors to act so
 - An undertaking by the directors to take up and pay for the qualification shares
 - Particulars of managing directors, manager, secretary, etc., if any

c) Payment of filing and registration fees

Along with application and the necessary documents promoter must also pay required stamp duty, filing fees, registration fees. The registrar will scrutinise the documents and if satisfied will enter the name of the company in the register and will issue the company its birth certificate called the ‘Certificate of Incorporation.’

3. CAPITAL SUBSCRIPTION OR RAISING OF SHARE CAPITAL

A private company can commence the business immediately after incorporation but a public company having a share capital can commence business only after obtaining another certificate called “Certificate of Commencement of Business” from the registrar of companies.

In this stage the company has to make arrangements for obtaining the necessary capital for the company.

a) Issue of prospectus:

In order to raise the requires capital a prospectus has to be issued inviting the public to subscribe for the shares. After receiving the applications from the public the company proceeds with the allotment if the minimum subscription has been reached.

b) Minimum Subscription:

It is the minimum amount of capital that should be subscribed for by the public before the company can proceed with allotment of shares. This amount should be stated in the prospectus. It has to be 90% of the issued share capital.

c) Allotment of shares:

it means distribution of the shares among the applicants or subscribers. A company can proceed with the allotment of shares only after receiving the minimum subscription from the public. After the distribution is done by the director’s letter of allotment should be sent to those applicants who have been allotted the shares and letter of regret should be sent to those applicants who have not been allotted any shares and their application money should be returned.

Commencement of Business:

To obtain certificate of commencement of business the promoter should

apply to the registrar together with prescribed fees. This will be granted only if the following conditions are fulfilled:

A prospectus or a statement in lieu of prospectus has to be filed with the registrar of companies.

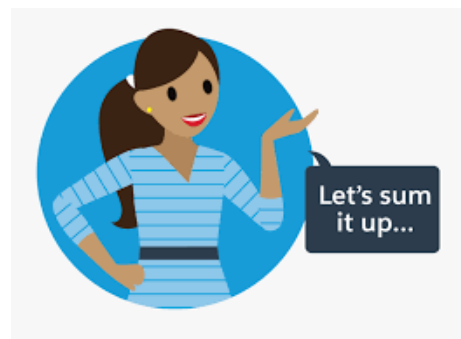
A statement in lieu of prospectus has to be prepared by those companies which do not find it necessary to issue a prospectus.

Company has received the minimum subscription amount.

Directors have paid the application and allotment money payable on the shares held by them

Declarations by the directors or secretary of the company that the requirements of companies act have been complied with

If the registrar is satisfied he will issue the business commencement certificate. From the date of receipt of this certificate the company is legally authorized to commence the business.



Forming a company is the process of legally establishing a business entity. It separates the business from its owners and gives it certain legal rights and responsibilities. Here's a breakdown of the general process:

1. Promotion Stage:

- **Idea and Planning:** This involves developing your business idea, researching the market, and creating a business plan.
- **Founders and Funding:** Identify the people involved (founders) and secure funding to get started.

2. Registration Stage:

- **Choose a Business Structure:** Decide on the type of company (sole proprietorship, partnership, limited liability company (LLC) etc.) based on factors like liability and ownership.
- **Name Availability:** Check for name availability and register your business name.

3. Incorporation Stage:

- **Draft and File Documents:** Prepare and file legal documents like the memorandum of association (MOA) and articles of association (AOA) which outline the company's purpose and internal governance.
- **Pay Registration Fees:** Pay any government registration fees.

4. Commencement of Business Stage:

- **Obtain Licenses and Permits:** Depending on your industry and location, you may need to acquire licenses and permits to operate.
- **Open a Business Bank Account:** Set up a separate bank account for your company's finances.

Additional Considerations:

- **Comply with Regulations:** Familiarize yourself with ongoing regulations and reporting requirements for your business structure.
- **Tax Implications:** Understand the tax implications of your chosen business structure.

**Self-
Assessment**



1.As per Section 2(84) Share means share in the share capital of a Company and includes_____

- a. Debentures
- b. Preference Shares
- c. Stocks
- d. Bonds

2.KMP may be a director of any company with permission.

- a. CG
- b. ROC
- c. Board
- d. Shareholders

3.The term company is defined under which sec of the Act?

- a) Sec 3(1)
- b) Sec 4(2)
- c) Sec 2(4)
- d) Sec 1(3)

3.2.1 MEMORANDUM OF ASSOCIATION:



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The Memorandum of association is the most important document of the company. This is a document which sets out the constitution of a company. It defines the company's relations with the outside world, and the scope of its activities. Its

purpose is to enable the shareholders, creditors as well as those who deal with the company to know the company's permitted range of enterprises.

CLAUSES of Memorandum:

Name Clause:

The clause contains the name of the company. The name selected should not be similar to or identical with that of any existing company. Also the name must not be one which is considered undesirable by the Central Government. The name of the company should end with the word 'Limited' if it is a public company. If it is a private company the name should end with the words 'private limited'. The purpose of adding the word 'Limited' is to enable all those who deal with the company to know that the liability of the members is limited.

Situation Clause:

In this clause, the state in which the company's registered office is located should be given. To avoid any unnecessary legal formalities and expenses if there is a subsequent change in the address of the company, the exact address within the state is not given and only the name of the state is given.

Object Clause:

It should specify in unambiguous language the objects for which the company is

formed. Great care would be taken in drawing up this clause, as the company will not be allowed to do any business which is not specifically mentioned here. As it is difficult to alter the object clause later, it is necessary that promoter's should include in this clause, all possible types of business in which a company may engage in the future.

Liability Clause:

This clause states that the liability of members is limited to the face value of shares taken up by them. If a member has already paid some amount on the shares, he can be called upon to pay only the unpaid amount of the shares.

Capital Clause:

In this clause, particulars regarding the amount of share capital with which the company is proposed to be registered and the division for the capital into shares is fixed amount are included.

Association or subscription clause:

This contains a declaration by the subscribers to the memorandum. This declaration just precedes the names of the signatories to the memorandum.

3.2.2 ARTICLES OF ASSOCIATION



Meaning:

The articles are the internal regulation of the company on the basis of which its internal affairs are managed. They lay down the powers of the directors, shareholders and officers.

It is not compulsory for the a public company to prepare its own article of association as it can follow Table A of companies act whereas preparation of articles of association is compulsory for private company.

Contents:**The following are the contents of AOA:**

- Share capital and variation of rights
- Exercise of lien by the company
- Calls on shares
- Transfer, transmission, forfeiture and surrender of shares
- Issues of shares warrants
- Alteration and reduction of capital
- Voting powers of members
- Borrowing powers
- Proceedings at the board and at the general body meetings
- Appointment, powers, duties qualifications, remuneration etc, of directors.
- Appointment of manager, managing director and secretary
- Dividends and reserves
- Maintenance of books of accounts and their audit
- The company's seal
- Winding up

Doctrine of ultra vires memorandum and articles:

The term is derived from two latin words 'ultra' and 'vires'. Ultra means beyond and vires means power or authority. Ultra vires means doing an act which is beyond the legal powers and authority of the company. In corporate law, ultra vires describes acts attempted by a corporation that are beyond the scope of powers granted by the corporations' object clause, articles of association or in a clause in its Bye-laws, in the laws authorizing a corporation's formation or similar documents. Acts attempted by a corporation that are beyond the scope of its character are void and voidable.

3.2.3 Differences between Memorandum and Articles of

Association:

s.no	MOA	AOA
1.	It is the charter of the company setting out its constitution.	It is the bye-law of the company for the internal administration.
2.	It lays down the conditions of incorporation and defines the limits and powers of the company.	It defines the rights and duties of directors, members etc.
3.	It states the objects for which the company is established.	It states the rules or manners of carrying out the business as stated in the memorandum. They cannot be contrary to the powers and objects set forth in the memorandum.
4.	Its preparation is compulsory without which incorporation is not possible.	Its preparation is not compulsory for the public company. Table A will be applicable in its absence
5.	It governs the external relations of the company	It defines the relationship between members and the management of the company. Internal administration is its main area.
6.	It is a primary and fundamental document, foundation for	It is a secondary, subordinate, subsidiary document. It should be read

	company's structure, responsible for company's birth; it is unchallenged on statutory matters.	and understood in light of memorandum. It compliments or supplements memorandum.
7.	It lays down the area or scope of the company beyond which the company cannot go.	Its activities must be confined to the area and scope of memorandum. All the articles which are ultra vires articles and intra vires memorandum are not void and can be ratified by a special resolution.
8.	It can be altered only by a special resolution and subject to the sanction of the court or central government as the case may be.	It can be altered by a special resolution and the sanction is not necessary.



MOA and AOA stand for Memorandum of Association and Articles of Association, respectively. They are both crucial documents for any company, but they serve different purposes:

Memorandum of Association (MOA)

- Defines the company's fundamental details and acts like its birth certificate.
- Includes information like:

- Company name
- Registered office address
- Objects of the company (what it's authorized to do)
- Liability clause (limited or unlimited)
- Capital clause (authorized share capital)

Articles of Association (AOA)

- Lays down the internal rules and regulations for how the company will be run.
- Acts as a rulebook for the company's management.
- Covers aspects like:
 - Appointment and removal of directors
 - Shareholder meetings and voting rights
 - Issue of capital
 - Dividend distribution

In short, the MOA outlines the company's purpose and existence to the external world, while the AOA details how the company will function internally. Both are essential for company registration and governance.



4. Minimum number of members in case of private company is

a.1

b.2

c.3

d.4

5.If minimum subscription is not received application money should be refunded with
in _____days

a.20

b.25

c.30

d.10

6. Which documents contains the constitution of a company?

a) Memorandum of Association

b) Articles of Association

c) Both (a) and (b)

d) None of these

3.3.1 PROSPECTUS

MEANING:

According to sec 2(70) of the companies act of 2013, “A prospectus, notice, circular, advertisement or Other document inviting offers for the public for the subscription or purchase of any shares in Or debentures of a body corporate”.

Objects of prospectus

To inform the public about the forming of a new company) To induce the investors to invest in its shares and debentures) To preserve an authentic record of the

terms on which the investors have been invited and to) make the directors responsible for the statements in the prospectus

Types of prospectus

Red-herring prospectus

A prospectus for stocks and bonds are issued in different stages – the first stage is the preliminary prospectus, which contains the details of the business and proposed financial action. It is nicknamed as Red Herring. When a company decides to attract investors to invest in their company, they use a prospectus named Red Herring Prospectus. It is basically a prospectus which is used in the public issue to attract different investors. In this prospectus, the price and quantum are not mentioned or disclosed.

Pink-herring prospectus

A prospectus that is issued without disclosure of the number of securities being offered or, in an initial public offering, the estimated or indicative price range. It is a preliminary prospectus that precedes the filing of a red-herring prospectus.

Free-writing prospectus

Any sort of written, electronic, or graphic statement that describes an offer in terms of its issuer or securities. It includes a legend stating that the investor can have a copy of the prospectus at the website of relevant securities commission. Typically, the issuer must file this prospectus with the securities commission no later than the first date it is obtained. In the case of inexperienced issuers, the securities commission may require that a preliminary prospectus is filed before the filing of a free-writing prospectus.

Abridged prospectus

Abridged Prospectus is the actual summary of a prospectus. It contains all the

salient features of a prospectus. The original prospectus that a company files to the exchange regulator is too large. The abridged prospectus contains the summary of the same prospectus.

Reading the entire prospectus may be too much time consuming for an investor. Instead, they go through the abridged prospectus, which gives them the basic idea about the company.

The abridged prospectus contains all the important and materialistic information. No company will issue the share buying from without the abridged prospectus attached to it so that investors can take a well-informed decision.

Reconfirmation prospectus

A prospectus that a shell company must prepare and submit for the approval of relevant securities and exchange authorities (the SEC) prior to considering a reverse merger. This prospectus contains detailed information about the private company merging into the shell. It is handed over to purchasers in the shell's initial public offering (IPO) who must reconfirm their investment after perusing the prospectus before the merger can be finalized. At least 80 percent of purchasers must reconfirm so that the merger transaction can be effected. Purchasers who do not confirm will receive their investment back (of course, less expenses).

Other types:

i) Shelf prospectus Shelf means 'life' or 'validity' of a prospectus. Only selected companies bring their shelf prospectus. All companies are not eligible for designing a shelf prospectus. Normally finance-based companies are eligible for bringing out their shelf prospectus. Shelf prospectus has validity with a maximum of one year. There are various companies which frequently raise funds (ex. banks) for issuing loans. If any company submits their Shelf prospectus, they don't have to file the prospectus again and again while raising funds for that particular year.

ii) Deemed prospectus A prospectus that is deemed to have been made by the

issuer, though it is actually offered to the public by a third party or the issue house . The issuer saves the underwriting expenses in selling its securities.

3.3.2 CONTENTS OF PROSPECTUS

The revised format is effective from 1st November 1991.

Part 1 of schedule 1.

I.General Information

- a) Name and address of registered office of the company
- b) Date of opening of the issue
- c) Name and address of auditors and lead managers

II.Capital Structure of the Company

- a) Authorized capital
- b) Issued capital
- c) Subscribed capital
- d) Paid up capital

III. Terms of the present issue

- a) Right of the instrument holders
- b) How to apply, availability of forms, prospectus and mode of payment
- c) Any special tax benefits for company and its shareholders

IV. Particulars of the issue

- a) Objects

b) Project cost

V. Company, Management and Project

a) History and main objects and present business of the company

b) Subsidiary of the company if any

c) Promoter and their background

d) Infrastructure facilities for raw materials and utilities like water, electricity etc.

e) Nature of products

f) Approach to marketing

g) Export possibilities and export obligations if any

h) Future prospects – expected capacity utilization during the first three years from the date of commencement of production and the expected year when the company would be able to earn cash profits and net profits.

3.3.3 Appointment of Directors under Companies Act, 2013

Appointment
Of Directors



The Companies Act, 2013, outlines the procedures and requirements for appointing directors to ensure transparency, fairness, and accountability in the process.

Key aspects of director appointment include:

Shareholder Approval

- Directors are appointed by shareholders through ordinary or special resolutions passed at general meetings.
- The Act defines the minimum and maximum number of directors that a company can have, based on its type and structure.

Board Nomination

- The board of directors may nominate individuals for appointment as directors, subject to shareholder approval.
- Nomination committees, where applicable, assist in identifying suitable candidates based on their qualifications, experience, and expertise

Director Identification Number (DIN)

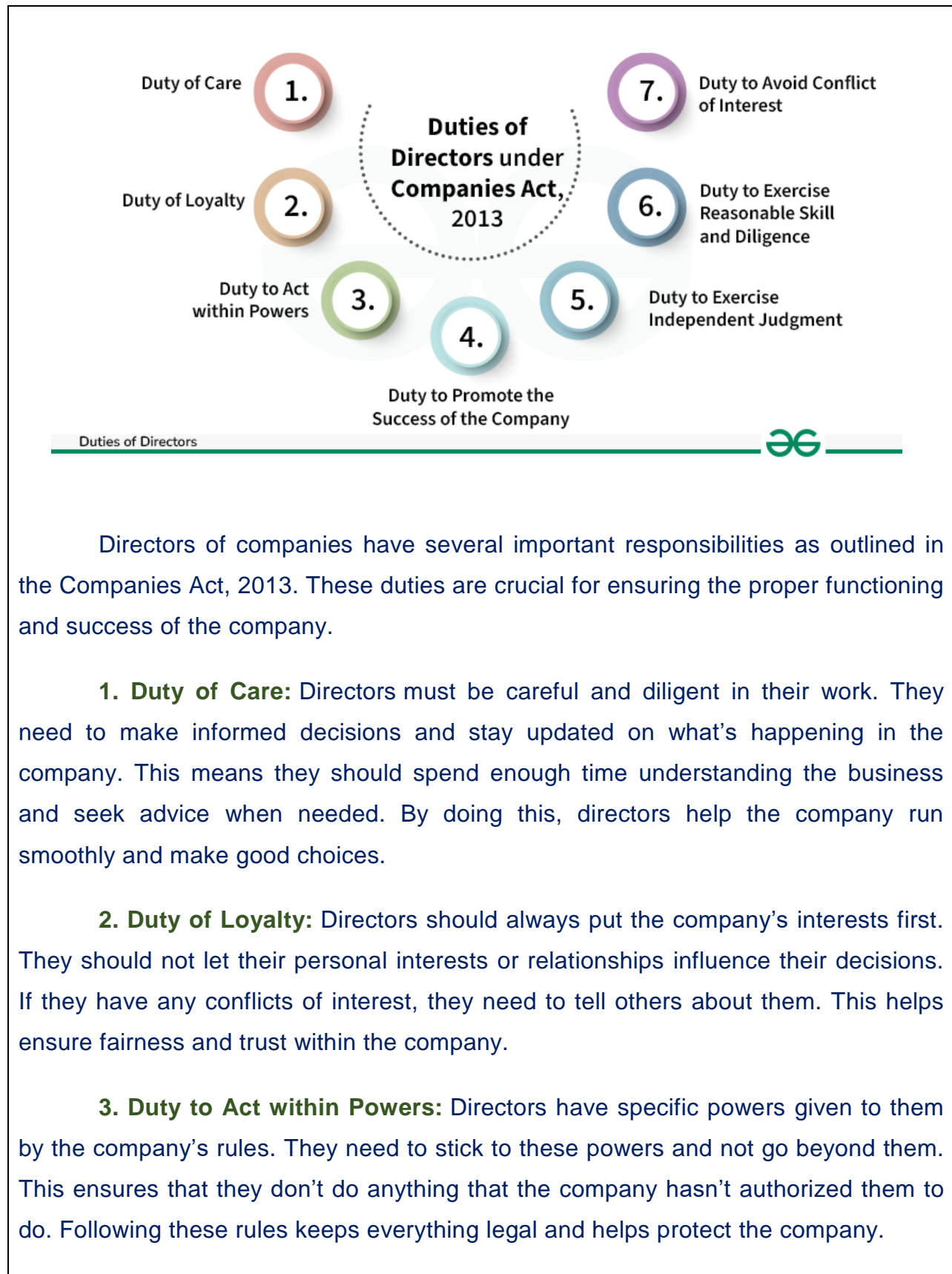
- Before appointment, every individual proposed as a director must obtain a Director Identification Number (DIN) from the Ministry of Corporate Affairs.
- The DIN serves as a unique identifier for directors and facilitates regulatory compliance.

Disclosure Requirements

- Companies are required to disclose information regarding director appointments in their annual financial statements and other regulatory filings.

Disclosure norms aim to enhance transparency and enable stakeholders to assess the composition and effectiveness of the board.

Duties of Directors:



Directors of companies have several important responsibilities as outlined in the Companies Act, 2013. These duties are crucial for ensuring the proper functioning and success of the company.

1. Duty of Care: Directors must be careful and diligent in their work. They need to make informed decisions and stay updated on what's happening in the company. This means they should spend enough time understanding the business and seek advice when needed. By doing this, directors help the company run smoothly and make good choices.

2. Duty of Loyalty: Directors should always put the company's interests first. They should not let their personal interests or relationships influence their decisions. If they have any conflicts of interest, they need to tell others about them. This helps ensure fairness and trust within the company.

3. Duty to Act within Powers: Directors have specific powers given to them by the company's rules. They need to stick to these powers and not go beyond them. This ensures that they don't do anything that the company hasn't authorized them to do. Following these rules keeps everything legal and helps protect the company.

4. Duty to Promote the Success of the Company: Directors are responsible for making decisions that will help the company succeed in the long term. This means considering the interests of everyone involved in the company, like shareholders, employees, customers, suppliers, and the community. By thinking about everyone, directors can make choices that benefit the company as a whole.

5. Duty to Exercise Independent Judgment: Directors need to make decisions based on what they think is best for the company, not what others want them to do. They should look at the facts and make up their own minds about things. Being independent in their thinking helps directors make good decisions that benefit the company.

6. Duty to Exercise Reasonable Skill and Diligence: Directors should use their skills and knowledge to make smart decisions for the company. This means staying informed about the industry and keeping up with what's happening in the business world. By using their skills well, directors can help the company stay competitive and successful.

7. Duty to Avoid Conflict of Interest: Directors need to avoid situations where their personal interests might conflict with what's best for the company. If they find themselves in such a situation, they should tell others about it and not get involved in decisions related to it. This helps maintain honesty and fairness within the company.

Meeting of company under company act

There are two main types of meetings in a company:

Meetings of Shareholders: These gatherings involve the company's owners, the shareholders. They are typically held annually and allow shareholders to:

- Be informed about the company's performance through financial statements and reports

- Vote on important matters like electing directors, approving major transactions, or changing company policies
- **Annual General Meeting (AGM):** This is a mandatory yearly meeting that all companies (except one-person companies in their first year) must hold
- **Extraordinary General Meeting (EGM):** This is a special meeting called to address urgent issues that require shareholder approval, such as mergers or acquisitions

Meetings of the Board of Directors: The board of directors is a smaller group elected by the shareholders to oversee the company's operations. They hold regular meetings to discuss and decide on various matters like:

- Setting the company's strategy and goals
- Approving budgets and financial plans
- Monitoring the company's performance and making adjustments as needed
- Appointing senior management

Resolutions of company under company act

Under the Companies Act, 2013, a resolution is a formal decision made by the members of a company, typically shareholders or directors, at a properly convened meeting. There are two main types of resolutions with different voting requirements:

1. **Ordinary Resolution:** This is the most common type of resolution. It requires a simple majority vote, meaning more votes are cast in favor of the resolution than against it, to be passed. This applies to resolutions on matters like approving financial statements or appointing auditors.
2. **Special Resolution:** This is required for more significant changes to the

company, and it requires a higher voting threshold. A special resolution needs to be passed by a majority of at least three times the number of votes cast against it . This applies to actions like changing the company's name or articles of association, increasing the authorized share capital, or approving a merger

Here's the general process for passing a resolution:

- **Notice:** A proper notice of the meeting must be given to all relevant members (shareholders or directors) specifying the date, time, venue, and agenda of the meeting.
- **Meeting:** At the meeting, the resolution is proposed and seconded by members.
- **Discussion:** Members can discuss the resolution before voting.
- **Voting:** Votes are cast, either by a show of hands, electronically, or by postal ballot.
- **Outcome:** If the required majority vote is achieved, the resolution is passed. The details of the resolution are documented in the meeting minutes.

Winding up

Winding up refers to the legal process of shutting down a company in India. It's governed by the Companies Act, 2013, and involves ceasing regular operations, settling debts, selling assets, and ultimately dissolving the company. There are two main ways a company can be wound up:

1. Compulsory Winding Up:

- Initiated by a court order through a petition filed by various parties as outlined in the Act [1].
- Common reasons include inability to pay debts, creditor petition, if the company ceases to operate for a significant period, or if the court finds it just and equitable.
- The court appoints a liquidator to oversee the winding-up process.

2. Voluntary Winding Up:

- Initiated by a decision of the company's members (shareholders) through a special resolution passed at a general meeting [2].
- There are three types of voluntary winding up:
 - **Members' Voluntary Winding Up:** Occurs when the company is solvent (has enough assets to cover its liabilities) and intends to distribute its assets to shareholders after settling debts [2].
 - **Creditors' Voluntary Winding Up:** Chosen when the company is insolvent and creditors will take priority in receiving their dues from the sale of assets.
 - **Voluntary Winding Up Subject to the Court's Supervision:** The company proposes to wind up voluntarily but seeks court oversight for some aspects of the process [2].

Process for Winding Up:

The specific steps involved in winding up will vary depending on the chosen method (compulsory or voluntary). However, the general process involves:

- Passing a resolution (voluntary) or filing a petition (compulsory).
- Appointing a liquidator (official responsible for overseeing the winding up).
- Notifying creditors and regulatory bodies.
- Selling company assets and collecting dues.
- Paying off creditors according to their priority.
- Distributing remaining assets to shareholders (voluntary winding up).
- Dissolving the company.



The appointment of directors in India is governed by the Companies Act, 2013. Here's a breakdown of the key points:

Eligibility:

- Only individuals can be directors, not companies or firms .
- The individual must be at least 18 years old and not disqualified under the Act's provisions .

Number of Directors:

- A minimum of 3 directors are required for a public company, 2 for a private company, and 1 for a one-person company.
- A maximum of 15 directors can be appointed without special permission.

Appointment Process:

- Directors are generally appointed by shareholders in a general meeting.
- This can happen at the Annual General Meeting (AGM) or a specially convened Extraordinary General Meeting (EGM).
- A resolution to appoint the director must be passed by the shareholders.

Documents and Filings:

- The proposed director must have a Director Identification Number (DIN).
- They must also provide a declaration stating they are not disqualified to be a director.
- Once appointed, the director's consent to the position needs to be filed.

- Details of the appointment are filed with the Registrar of Companies (ROC) using Form DIR-12.

Additional Points:

- The company's Articles of Association (AoA) may specify director appointment methods in a private company.
- The AoA can allow for appointment based on proportional representation of shareholders.



7. When there is a untrue statement in a prospectus who can sue

- a) Subscribed in primary market
- b) Subscribed in secondary market

c) Rights issue

d) None of the above

8. Who can be director?

a. Association of Persons

b. Body Corporate

c. Any person

d. None of the above

9. A person cannot act s managing director of more than _____ company/ companies at a time.

a. 5

b. 10

c. 15

d.20

10. Who undertakes the management and control of the affairs of the company on behalf of its owners?

a. company secretary

b. board of directors

c. promoters

d. one of the above

3.4.1 UNIT SUMMARY

- ✚ The Act outlines the process for registering a company, including minimum capital requirements and director appointments.
- ✚ The Act sets guidelines for appointing directors, their duties and responsibilities, and board meetings.
- ✚ The Act specifies procedures for holding shareholders' meetings (AGM & EGM) and board meetings.
- ✚ The Act regulates the issuance and management of shares (common stock) in a company.
- ✚ It promotes investor protection by mandating disclosures and regulations against unfair practices.
- ✚ This encourages companies to contribute to social causes and sustainable development.
- ✚ It also addresses insolvency situations, outlining processes for debt recovery and

company restructuring.	
3.4.2 Glossary	
Indian company act	The Companies Act, 2013 is the primary law governing the incorporation, operation, and winding up of companies in India. It replaced the Companies Act, 1956, and introduced significant changes to modernize company law in India.
Company	A company is a legal entity formed by a group of individuals to engage in and operate a business enterprise in a commercial or industrial capacity.
Formation of Company	Formation of a company is a complex activity involving completion of legal formalities and procedures. It involves three distinct stages that are promotion, incorporation and subscription of capital
Incorporation	Incorporation is the term used to describe the formation and registration of a limited company . When this process is complete, a certificate of incorporation will be issued. The legal status of a limited company is that it is a separate entity from the owners of that business.
Memorandum of Association	Memorandum of Association is a legal document that explains why the organization was founded. It

	establishes the company's authority and the terms under which it works. It is a manual that includes all of a company's laws and regulations for its interactions with the outside world.
Articles of Association	Articles of association form a document that specifies the regulations for a company's operations and defines the company's purpose.
Prospectus	A prospectus is a formal document required by and filed with the Securities and Exchange Commission (SEC) that provides details about an investment offering to the public.
Self – Assessment Questions	
<ol style="list-style-type: none"> 1) What is a company? Discuss its nature in details. 2) Describe the various types of companies. 3) Explain the stages in company formation. 4) Define Memorandum of Association. What are the various clauses associated with it? 5) Write a note on registration of articles. Distinguish between memorandum of association and articles of association. 6) State the various types of prospectus. What are its contents? 7) Elucidate the duties and power of director. 8) What do you mean by winding – up? Discuss the voluntary winding up in detail. 	

Activities / Exercises / Case Studies

Compliance Challenges for XYZ Pharmaceuticals Pvt. Ltd.



XYZ Pharmaceuticals Pvt. Ltd. is a mid-sized pharmaceutical company based in India. With a focus on research and development of generic drugs, the company has experienced steady growth in recent years. However, as the company expands its operations, it encounters several compliance challenges under the Indian Companies Act, 2013.



Answers for check your progress

1. C Stock
2. c) Board
3. a) Sec 3(1)
4. b) 2
5. d) 10
6. a) Memorandum of Association
7. a) subscribed in primary market
8. b) Body corporate
9. c) 15
10. b) Board of director

Suggested Readings

- 1) <https://www.bmscw.edu.in/files/StudyMaterials/BCom/IBCom/CSA%20UNIT%201.pdf>
- 2) <https://cleartax.in/s/memorandum-of-association-moa>

<p>3) https://www.toppr.com/guides/business-laws-cs/elements-of-law/steps-in-incorporation-of-a-company/#:~:text=The%20incorporation%20of%20a%20company,'Limited'%20in%20their%20names. company-</p> <p>4) https://www.investopedia.com/terms/p/prospectus.asp</p> <p>5) https://www.investopedia.com/terms/a/articles-of-association.asp#:~:text=Articles%20of%20association%20form%20a,the%20handling%20of%20financial%20records.</p> <p>6) https://www.1stformations.co.uk/blog/what-is-company-formation/</p>		
Open-Source E-Content Links		
1)	https://youtu.be/IFwpKo4UM4o?si=Ucry1vtx2QH4UZK	
2)	https://youtu.be/p87kWjTgz_c?si=Fly9R_ivTV1GKJZA	
3)	https://youtu.be/MmNu1D7Acsk?si=R93nBiF6VEbo5saV	

4)	https://youtu.be/aebYX3aZ3Qo?si=NhBkrbxThgqoxPe	
5)	https://youtu.be/CtXL58ccz-k?si=j31cEovSCC8Yc5IP	
References		
<ol style="list-style-type: none">1. https://www.bmscw.edu.in/files/StudyMaterials/BCom/IBCom/CSA%20UNIT%201.pdf2. https://cleartax.in/s/memorandum-of-association-moa3. https://www.toppr.com/guides/business-laws-cs/elements-of-company-law/steps-in-incorporation-of-a-company/#:~:text=The%20incorporation%20of%20a%20company,'Limited'%20in%20their%20names.4. https://www.investopedia.com/terms/p/prospectus.asp5. https://www.investopedia.com/terms/a/articles-of-association.asp#:~:text=Articles%20of%20association%20form%20a,the%200handling%20of%20financial%20records.6. https://www.1stformations.co.uk/blog/what-is-company-formation/		

Self-Learning Material Development – STAGE 1		
Unit 4	Consumer Protection Act	
Consumer Protection Act – RTI		
Unit Module Structuring		
STAGE – 2 – Modules Sections and Sub-sections structuring		
Section	Topic	Page No
4.1.1	Consumer	2
4.1.2	Consumer protection act	3
4.1.3	Objective of the act	6
4.1.4	Consumer rights	9
4.1.5	Let's sum up	11
4.1.6	Self-assessment	12

4.2.1	Consumer Dispute	13
4.2.2	Unfair trade practice	14
4.2.3	Restrictive trade practice	15
4.2.4	Consumer protection council	17
4.2.5	Structure of consumer protection council	21
4.2.6	Let's sum up	23
4.2.7	Self-assessment	25
4.3.1	The rights to information	26
4.3.2	Objective of the RTI act	27
4.3.3	Significance of the RTI act	29
4.3.3	Let's sum up	33
4.3.4	Self-assessment	34
4.4.1	Unit Summary	35
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4.4.5	E-Contents/Videos	39
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4.1.1 Consumer

A consumer is someone who buys goods and services for their own use, not for resale or business purposes. Here's a breakdown of the term:

- **In general:** A person or group that uses goods or services. This can apply to anything from the products you buy at the store to the energy used to power your home.
- **In economics:** Consumers are the driving force behind demand. They decide what products and services they want to buy, which influences what businesses produce.
- **Legally:** The term consumer has a specific meaning. It refers to someone who purchases goods or services for personal use, as distinguished from commercial use

Who is a Consumer?

A Consumer is a person who purchases a product or avails a service for a consideration, either for his personal use or to earn his livelihood.

The consideration may be:

- Paid
- Promised

→ Partly paid and promised to paid

- It also includes a beneficiary of such goods/services when such use is made with the approval of such person.
- Buying goods/ hiring services includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing

Who is not a Consumer?

A person is not a consumer if he/she:

purchases any goods or avails any service free of charge

purchases a good or hires a service for commercial purpose;

avails any service under contract of service

4.1.2 Consumer Protection Act

In 1986, the Indian Parliament passed the landmark Consumer Protection Act which is a milestone in the history of socio-economic legislation and is directed towards achieving public welfare by enabling the consumer to participate directly in the market. The Consumer Protection Act, 1986 was a very unique piece of social welfare legislation.

The Act was enacted with an objective to provide better protection of the interests of the Consumers. It was intended to provide effective and efficient safeguards to the consumers against various forms of exploitations and unfair dealings.

The Act is designed to make available cheap and quick remedy to a small consumer. The Act was passed in 1986 and was made effective in 1987. Amendments were made in 1991 to provide for situations of absence of President of Forum. Major changes were made in 1993 (effective from 18-6-1993). On getting further experience of implementation of the Act, substantial changes have been made by Amendment Act, 2002. Major changes made in the Amendment Act are

- .Enhancement in monetary limit of District Forum from Rs 5 lakhs to 20 lakhs and of State Commission from Rs 20 lakhs to Rs one crore
- Payment of fees for filing complaint/appeal
- Complaint/appeal will have to be admitted first
- Reason to be recorded if decision not given within specified time
- Cost of adjournment can be imposed
- Interim orders can be passed
- In absence of President, senior most member can discharge functions of President
- Pre-deposit of certain amount before appeal is entertained
- Notice can be sent by Fax/courier.
- The Act was enacted with an objective to provide better protection of the interests of the consumers.
 - It applies to all goods and services and covers all sectors-private, public and cooperatives
 - The Consumer Protection Act is a weapon in the hands of consumers to fight against exploitation by traders, manufacturers and sellers on one hand and providers of services on the other.
 - It provides redress to the grievances of the consumers and makes provision for the establishment of Consumer Councils and other quasi-judicial authorities for the settlement of consumer disputes.
 - It provides for simple, speedy and inexpensive access to redress of consumer grievances and provides for granting compensation to the consumers for the inconvenience suffered.
 - The Act has been amended thrice in 1991, 1993 and 2002 to keep pace

with time and to provide more teeth. The third amendment has brought drastic changes in the Act.

What is Consumer Protection Act, 2019 ?

With the advent in technology, digitization has become norm of the day. E Commerce, direct selling have redefined the market and provided a new dimension to consumer-seller relationship. These practices besides providing ease of transaction have also posed certain challenges for the consumers to deal with. With the aim to address the new challenges faced by consumers in the digital era and provide timely and effective administration and settlement of consumer disputes, the Parliament, passed the landmark Consumer Protection Bill, 2019 on 6 August 2019. The Consumer Protection Act, 2019 received the assent of the President of India and was published in the Official Gazette on 9 August 2019. Barring a few provisions, the New Act has come into force from 20th July 2020 with government notifying Rules and provisions like Consumer Protection Councils, Consumer Disputes Redressal Commissions, Mediation, Product Liability and punishment for manufacture or sale of products containing adulterant / spurious goods.

The New Act replaces the more than three-decade old Consumer Protection Act, 1986. The 1986 Act has been in operation for more than 33 years, still there were deficiencies and shortcomings with respect to its operation which made it difficult for the consumers to get relief. The Act was amended from time-to-time to bring it in accordance with changes brought about by liberalization, globalization and digitalization. But it failed to achieve desired objective of providing better protection of the interests of consumers.

4.1.3 Objective of the Act

An Act to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.

Salient Features of the Act

- Wider Ambit to address New Emerging Challenges

The New Act equip the machinery to meet the new emerging challenges like ecommerce, telemarketing, misleading advertisements, etc. and ensure efficiency in grievance redressal.

- Inclusion of e- Commerce

The earlier Act did not specifically include e-commerce transactions. This lacuna has been addressed by the New Act. 'E-commerce' and 'electronic service provider' have been defined under the Act. 'E-commerce' has been defined as buying or selling of goods or services including digital products over digital or electronic network. The central government has been authorized to take measures and make rules to prevent unfair trade practices in e-commerce.

- Broader Definition of Consumer

The definition of 'consumer' under section 2(7) is broader and includes both offline and online transactions. The ambit of consumer has been widened to cover not only online transactions but also telemarketing and multi-level marketing which will impose responsibility at all levels.

- Enhanced Pecuniary Jurisdiction

Pecuniary Jurisdiction under CP Act, 2019

District Commission	Upto Rupees One Crore
State Commission	More than Rupees One Crore upto Rupees 10 Crore

National Commission

Above Rupees 10 Crore

- Flexibility in Place of Filing the Complaint

The New Act provides flexibility to the consumer to file complaints with the consumer commission located at the place of residence or work of the consumer.

- E-Filing of Complaints

The New Act also enables consumers to file complaints electronically and for hearing and/or examining parties through video-conferencing. This is to ensure procedural ease and reduce inconvenience and harassment to the consumers.

- Establishment of Regulator for Consumer Protection

The New Act provides for establishment of the Central Consumer Protection Authority (CCPA) to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

- Unfair Trade Practices

The New Act introduces a specific broad definition of Unfair Trade Practices, which also includes sharing of personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of any other law.

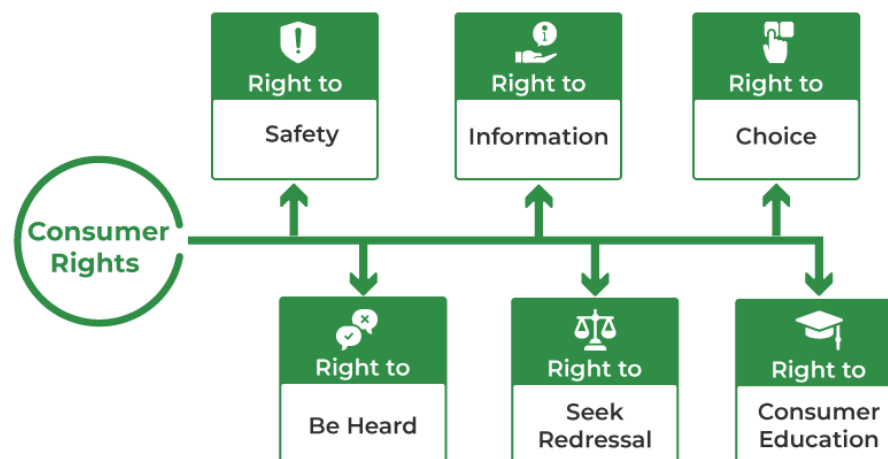
- Introduction of Mediation to resolve Consumer Grievances

The New Act provides for mediation as an Alternate Dispute Resolution mechanism, making the process of dispute adjudication simpler and quicker. This will help with the speedier resolution of disputes and reduce pressure on consumer commissions.

- Product Liability

The New Act introduces Chapter VI dealing with Product Liability. These provisions based on strict liability principles will enable the complainant to claim compensation for the harm caused due to defective product or services.

Consumer rights



“Consumer’s Right”, by definition, is the right of a consumer to have adequate information regarding the quality, quantity, potency, purity, price, and standard of the commodity they are using and that they are protected against any malpractices as a consumer. The following are the fundamental consumer rights of an individual in India:

- **Right to Safety:** The consumer has the right to ensure the quality of the product available in the market in order to safeguard their long-term interests. The quality marks for products in India are Indian Standards Institution (ISI) (for industrial, electrical products), AGMARK (or Agriculture Mark for agricultural products), FPO mark (for processed fruit items), etc.
- **Right to be Informed:** The consumer can insist on acquiring all the necessary details regarding the products and protect themselves from malpractices.
- **Right to Choose:** It is the right of a consumer to have accessibility to a variety of products available in the market at fair prices.
- **Right to be Heard:** The consumer’s interest will be given proper consideration

and they will be provided with the appropriate forum to do so.

- **Right to Seek Redressal:** The consumer has the right to claim for redressal in case of exploitation and demand for a fair settlement.
- **Right to Consumer Education:** It is also the responsibility of the consumer to be aware of their rights and hence the right to consumer education means the right to acquire relevant skills and knowledge as required to be an informed consumer.

Consumer duties

While consumer rights are well-known, there are also important duties or responsibilities consumers hold. These duties ensure a fair and healthy marketplace for everyone. Here are some key consumer duties:

- **Be Informed:** This means researching products and services before buying. Read reviews, compare prices, and understand the terms and conditions of any warranties or contracts.
- **Be Responsible with Money:** Don't overspend or go into debt beyond what you can manage. Budget wisely and avoid impulse purchases.
- **Be Aware of Scams:** Protect yourself from deceptive marketing practices and fraud. Don't share personal information readily and be wary of offers that seem too good to be true.
- **Use Products Safely:** Follow the instructions and warnings that come with products. Improper use can lead to safety hazards and may void warranties.
- **Be Respectful to Sellers:** Treat customer service representatives and retail staff with courtesy.
- **Report Issues:** If you encounter a defective product or unfair business practice, bring it to the attention of the seller and relevant authorities.

By fulfilling these duties, consumers play an active role in maintaining a fair marketplace. They can make informed decisions, protect themselves from harm, and

hold businesses accountable for their practices.



There are actually two main Consumer Protection Acts to consider, depending on the specific location:

- **The Consumer Protection Act of 1986:** This act was a major step in India towards safeguarding consumer rights. It established a framework for:
 - **Consumer councils:** These councils were set up at the Central and State level to promote consumer awareness and address grievances.
 - **Consumer Dispute Redressal Commissions:** These commissions provide a platform for consumers to file complaints against businesses and seek redressal.
- **The Consumer Protection Act of 2019:** This act revamped the 1986 act and introduced several new provisions including:
 - **Central Consumer Protection Authority (CCPA):** This central body empowers the government to regulate and address consumer concerns more effectively.
 - **Stricter penalties:** The new act allows for harsher penalties against businesses that violate consumer rights.
 - **E-commerce regulations:** Specific regulations were introduced to address consumer issues related to online shopping.

1.) When was Consumer Protection Act 2019 ratified?

- a) August 9th 2019
- b) August 7th 2019



c) August 9th 2018

d) August 10th 2019

2.) Who can make a complaint under this Act?

a) Consumer

b) 3rd Person

c) Alien

d) None of the above

3.) Which Consumers Right is not guaranteed under Consumer Protection Act, 2019?

a) Right to Choose

b) Right to Exploitation

c) Right to be Heard

d) Right to seek redressal

4.2.1 consumer dispute

A consumer dispute is a disagreement between a consumer and a business about a good or service purchased. These disputes can arise from a number of situations, such as:

- **Faulty or defective products:** This could be anything from a malfunctioning appliance to clothes with rips or tears.
- **Misrepresentation or false advertising:** If a product or service is advertised inaccurately, and you buy it based on that advertising, you may have a claim.

- **Warranty issues:** If a product breaks down during the warranty period, the business may be obligated to repair or replace it.
- **Billing problems:** This could include being charged for something you didn't order, or being charged the wrong amount.
- **Poor service:** If you receive inadequate or unprofessional service from a business, you may have a cause for complaint.

There are a few ways to resolve a consumer dispute:

- **Contacting the business directly:** Often, the simplest way to resolve a dispute is to speak to the business directly. Explain the problem and see if they can offer a solution.
- **Consumer mediation:** Mediation is a process where a neutral third party helps both sides reach an agreement.
- **Consumer arbitration:** Arbitration is similar to mediation, but the arbitrator's decision is binding.
- **Filing a complaint with a consumer protection agency:** Most governments have agencies set up to help consumers resolve disputes.

Here are some resources that can help you with consumer disputes:

- **Consumer Protection Agencies:** Look for government agencies dedicated to consumer affairs in your region.
- **Consumer advocacy groups:** These groups can provide advice and support to consumers involved in disputes.

4.2.2 Unfair trade practice

Unfair trade practices are business actions that mislead, deceive, or exploit consumers for an advantage. These practices are illegal and violate consumer

protection laws. Here's a breakdown of unfair trade practices:

- **Deceptive Acts:** This includes false advertising, misleading claims about a product's quality or features, and hiding important information.
- **Fraudulent Acts:** This involves intentional deception to take advantage of consumers. Examples include bait-and-switch tactics, pyramid schemes, and fake reviews.
- **Unfair Practices:** These are actions that create an uneven playing field for consumers. This can include tying the sale of one product to another (tied selling), charging hidden fees, or using high-pressure sales tactics.

Here are some specific examples of unfair trade practices:

- **False advertising:** A company claims their product is organic when it's not.
- **Bait-and-switch:** A store advertises a low price on an item but then tries to pressure you into buying a more expensive one.
- **Hidden fees:** A service seems affordable until you discover extra charges at checkout.
- **Deceptive pricing:** A product's price is unclear or uses misleading tactics like saying "sale" without mentioning the original price.
- **Non-compliance with safety standards:** A product is sold despite failing safety regulations, putting consumers at risk.

4.2.3 Restrictive trade practice

Restrictive trade practices (RTPs) are business agreements or activities that limit competition in a market. These practices can harm consumers by driving up prices, reducing choices, and stifling innovation. Here's a closer look at RTPs:

- **Impact:** RTPs can distort the natural flow of competition in a market. This can

lead to:

- **Higher Prices:** When competition is limited, businesses may be able to charge more for their products or services.
- **Lower Quality:** With less pressure to innovate, businesses may be less likely to improve the quality of their offerings.
- **Reduced Choice:** Consumers may have fewer options to choose from when RTPs limit competition.
- **Examples:** Some common types of RTPs include:
 - **Price fixing:** Businesses agree to set prices at a certain level, eliminating competition on price.
 - **Market allocation:** Businesses divide up a market among themselves, limiting competition in specific territories.
 - **Exclusive dealing:** A supplier agrees to sell only to a certain retailer, limiting consumer choice.
 - **Tied selling:** A business requires a customer to buy one product to get another (e.g., forcing a phone case purchase with a new phone).
 - **Resale price maintenance:** A manufacturer dictates the price at which retailers can sell its products.
- **Legality:** RTPs are generally considered illegal in most countries, including India's Competition Act of 2002. Competition commissions and authorities enforce these laws to promote fair competition in the marketplace.
- **Exemptions:** There may be some exceptions to restrictions on RTPs in specific situations, often when they can demonstrably improve efficiency or benefit consumers. However, these exceptions are generally narrowly defined.

Difference between RTP and UTP

Basis of Difference	RTP	UTP
Objective	The objective of it is the promotion of competition in the market.	It is concerned with the protection of consumer interest.
Deemed to be prejudicial	An RTP is deemed to be prejudicial to the public interest unless the commission is satisfied of any one or more of the circumstances or gateways of public interest.	No such deeming provision in the case of an UTP.
Cease and desist order	When the commission is of the opinion that the practice is prejudicial to public interest only, then the cease and desist order can be issued.	The commission can pass cease and desist order if it is of the opinion that the practice is prejudicial to the interest of any consumer, consumers in general or public interest.

4.2.4 Consumer Protection Council in India



India's Consumer Protection Council is a statutory organization created in accordance with the Consumer Protection Act of 1986. The council is in charge of advancing and defending Indian consumer

rights.

The council's principal goal is to make sure that customers understand their rights and can exercise them. Also, the council offers a forum for customers to protest about dishonest business practices, faulty goods, and subpar services. The central government appoints the president and several other members of the Consumer Protection Council. The council has the authority to look into complaints, give directives to companies, and file lawsuits against anyone who breaks consumer protection rules.

The council also promotes consumer understanding of their rights and obligations through a number of awareness initiatives and campaigns. Moreover, it works along with other departments, offices, and groups to advance consumer protection and raise standards for all products and services. The council has experienced considerable changes recently, including the replacement of the 1986 statute with a new Consumer Protection Act in 2019. The new act has a number of measures aimed at enhancing consumer rights and supplying more effective channels for grievance redressal.

Functions of Consumer Protection Council

Following are some of the important functions of the Consumer Protection Council:

Consumer Education

The main task of the Consumer Protection Council is to inform customers of

their rights and obligations. The organization conducts a number of consumer education initiatives to disseminate knowledge about the risks associated with the use of shoddy goods and services. To educate consumers about their rights, the council also distributes resources including brochures, leaflets, and instructions.

For example, In Lagos, Nigeria, the Consumer Protection Council launched a consumer education campaign to teach people how to spot substandard products. The campaign is designed to raise awareness of the risks associated with the use of counterfeit and substandard goods and how to avoid them.

Complaints Handling

Consumers, who feel that businesses or service providers have taken full advantage of or treated them unfairly, file a complaint with the Consumer Protection Department. The organization reviews complaints and takes necessary measures to protect the interests of customers. Council also provides a venue for customers to report fraud, false advertising, and unfair business practices.

For example, A customer spoke to Consumer Protection about a furniture manufacturer who, upon receipt of full payment, supplied a substandard product. The company was deemed to have committed fraud when the agency reviewed the situation. The company was fined and refunded the consumer's money by the board.

Product Standards and Quality Control

Customer Protection may enforce product standards and quality control procedures. An agency that prescribes requirements for goods and services to ensure that they meet basic quality requirements. The items are also tested and controlled by the Board to verify their safety.

For example, The Consumer Protection Council examined a well-known brand of bottled water and discovered that it contained hazardous germs. The FDA mandated a recall of all tainted items as well as compensation for impacted customers. The council has issued new bottled water rules to ensure that firms fulfill

minimal quality standards.

Market Tracking

The Consumer Protection Council monitors the market to identify corporations and service providers who participate in deceptive business practices. Organizes market surveillance and conducts investigations for price fixing, price manipulation, and other anti-competitive acts. The board also works with other government agencies to ensure companies comply with regulations.

For example, In Abuja, Nigeria, the Consumer Protection Council conducted market surveillance and determined that some gas stations were selling fuel at a price higher than the government-approved price. The agency has ordered gas stations to reduce prices to the allowable level or face penalties for price abuse.

Advocacy and Stakeholder Engagement

The Consumer Protection Council works with stakeholders such as trade associations, government agencies, and civil society groups to protect the rights and interests of consumers. The agency encourages dialogue and cooperation among stakeholders to achieve the common goal of protecting the interests of consumers.

For example, The Manufacturers Association of Nigeria (MAN) and the Consumer Protection Council collaborated to promote the use of standardized goods throughout the country. The agency encouraged businesses to follow the criteria created in partnership with MAN for the development of safe, high-quality products.

4.2.5 Structure of Consumer Protection Councils

Consumer Protection Councils may have different structures and compositions based on national or regional regulations. However, they typically include the following elements:

1. Central Consumer Protection Council: At the national level, a Central

Consumer Protection Council is established. It consists of government representatives, consumer activists, experts, and other stakeholders. The council serves as the apex body for consumer protection and policy formulation.

2. State Consumer Protection Councils: Each state in a country may have its own State Consumer Protection Council. These councils address consumer issues specific to the state and work in coordination with the central council.

3. District Consumer Protection Councils: At the district level, District Consumer Protection Councils are established. They focus on addressing consumer grievances and resolving disputes at the local level.

Benefits of Consumer Protection Councils

Consumer Protection Councils offer several benefits to both consumers and the overall marketplace:

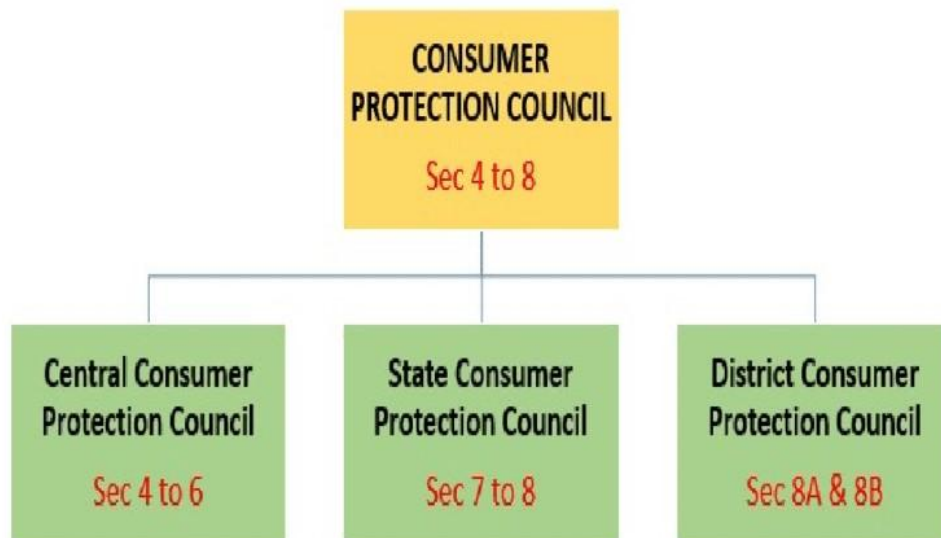
1. Redressal of Consumer Complaints: Consumer Protection Councils provide a platform for consumers to lodge complaints and seek resolution. They facilitate the timely and efficient redressal of grievances, ensuring that consumers receive the necessary relief or compensation.

2. Awareness and Empowerment: These councils educate consumers about their rights, responsibilities, and available remedies. By increasing consumer awareness, they empower individuals to make informed choices, thereby creating a more equitable marketplace.

3. Fair Market Practices: Consumer Protection Councils play a vital role in monitoring market activities and ensuring compliance with consumer protection laws. They promote fair practices, discourage unfair trade practices, and contribute to a transparent and competitive marketplace.

4. Policy Advocacy: These councils advocate for consumer-friendly policies, regulations, and reforms. They voice consumer concerns and recommendations to

government authorities, influencing policy decisions that enhance consumer welfare.



In India, there are two main bodies that deal with consumer protection:

- **Central Consumer Protection Council (CCPC):** A national-level body established under the Consumer Protection Act, 2019. It is headed by the Minister in-charge of the Department of Consumer Affairs in the Central Government. The CCPC's main functions include advising the central government on consumer protection matters, promoting consumer awareness, and coordinating the activities of state governments and consumer organizations.

- **District Consumer Protection Council (DCPC):** District-level bodies established under Section 8(A) of the Consumer Protection Act, 1986. Each DCPC is chaired by the District Collector and comprises representatives from various government departments, public sector undertakings, voluntary consumer

organizations, and public representatives. The DCPCs are primarily responsible for protecting the rights of consumers within their respective districts.



The primary legislation regarding consumer protection in India is the Consumer Protection Act, 2019. It supersedes the Consumer Protection Act, 1986, although some provisions of the 1986 Act might still be in effect. Here's a breakdown of the 2019 Act:

Key features of the Consumer Protection Act,

2019:

- **Objectives:** Aims to provide better protection of consumer interests, ensure speedy and simple redressal of consumer disputes, and promote consumer awareness.
- **Consumer Definition:** Expands the definition of a "consumer" to include anyone who buys goods or avails services for personal use, not for resale or commercial purposes.
- **Rights of Consumers:** The Act emphasizes six key consumer rights:
 - Right to safety
 - Right to choose
 - Right to be informed
 - Right to be heard
 - Right to seek redressal
 - Right to consumer education
- **Consumer Disputes Redressal Commissions:** Establishes a three-tier quasi-judicial system to handle consumer complaints:

- District Consumer Disputes Redressal Commission (DCDRC)
- State Consumer Disputes Redressal Commission (SCDRC)
- National Consumer Disputes Redressal Commission (NCDRC)

• **Product Liability:** Holds manufacturers, sellers, and service providers liable for product defects that cause harm to consumers.

• **Unfair Trade Practices:** Prohibits unfair trade practices like misleading advertisements, denial of service, and hidden conditions.

• **E-commerce Regulations:** Includes specific regulations for e-commerce platforms to ensure consumer protection in the online marketplace.



4. Consumer Protection Act is significant to

- a) Immovable Goods
- b) Movable Goods
- c) Particular Goods and Services
- d) All Goods and Services

5. How many rights does a consumer have under the Consumer Protection Act?

- a) 8
- b) 6
- c) 4
- d) 5

6. Under the Consumer Protection Act, the rights of a consumer do not include to be

- a) Safety

- b) Choose
- c) Presented
- d) Informed

7. What is the Fiscal jurisdiction of the District Commission?

- a) Up to 1 Crore
- b) Up to 5 Crore
- c) Up to 10 Crore
- d) None of the above

4.3.1 The Right to Information

Historical Background

The right to information is a fundamental right under Article 19 (1) of the Indian Constitution. In 1976, in the Raj Narain vs the State of Uttar Pradesh case, the Supreme Court ruled that Right to information will be treated as a fundamental right under article 19. The Supreme Court held that in Indian democracy, people are the masters and they have the right to know about the working of the government.

Thus the government enacted the Right to Information act in 2005 which provides machinery for exercising this fundamental right.

The Right to Information Act of 2005

The act is one of the most important acts which empowers ordinary citizens to question the government and its working. This has been widely used by citizens and media to uncover corruption, progress in government work, expenses-related

information, etc.

The primary goal of the Right to Information Act is to empower citizens, promote openness and accountability in government operations, combat corruption, and make our democracy truly function for the people. It goes without saying that an informed citizen is better equipped to keep a required track on governance instruments and hold the government responsible to the governed. The Act is a significant step in informing citizens about the activities of the government.

All constitutional authorities, agencies, owned and controlled, also those organisations which are substantially financed by the government comes under the purview of the act. The act also mandates public authorities of union government or state government, to provide timely response to the citizens' request for information.

The act also imposes penalties if the authorities delay in responding to the citizen in the stipulated time..

What type of information can be requested through RTI?

The citizens can seek any information from the government authorities that the government can disclose to the parliament.

Some information that can affect the sovereignty and the integrity of India is exempted from the purview of RTI.

Information relating to internal security, relations with foreign countries, intellectual property rights (IPR), cabinet discussions are exempted from RTI.

4.3.2 Objectives of the RTI Act

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the

instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

1. Empower citizens to question the government.
2. The act promotes transparency and accountability in the working of the government.
3. The act also helps in containing corruption in the government and work for the people in a better way.
4. The act envisages building better-informed citizens who would keep necessary vigil about the functioning of the government machinery.

Important provisions under the Right to Information Act, 2005

- Section 2(h): Public authorities mean all authorities and bodies under the union government, state government or local bodies. The civil societies that are substantially funded, directly or indirectly, by the public funds also fall within the ambit of RTI.
- Section 4 1(b): Government has to maintain and proactively disclose information.
- Section 6: Prescribes a simple procedure for securing information.
- Section 7: Prescribes a time frame for providing information(s) by PIOs.
- Section 8: Only minimum information exempted from disclosure.
- Section 8 (1) mentions exemptions against furnishing information under the RTI Act.
- Section 8 (2) provides for disclosure of information exempted under the Official Secrets Act, 1923 if the larger public interest is served.

- Section 19: Two-tier mechanism for appeal.
- Section 20: Provides penalties in case of failure to provide information on time, incorrect, incomplete or misleading or distorted information.
- Section 23: Lower courts are barred from entertaining suits or applications. However, the writ jurisdiction of the Supreme Court of India and high courts under Articles 32 and 226 of the Constitution remains unaffected.

4.3.3 Significance of the RTI Act

- The RTI Act, 2005 empowers the citizen to question the secrecy and abuse of power practised in governance.
- It is through the information commissions at the central and state levels that access to such information is provided.
- RTI information can be regarded as a public good, for it is relevant to the interests of citizens and is a crucial pillar for the functioning of a transparent and vibrant democracy.
- The information obtained not only helps in making government accountable but also useful for other purposes which would serve the overall interests of the society.
- Every year, around six million applications are filed under the RTI Act, making it the most extensively used sunshine legislation globally.
- These applications seek information on a range of issues, from holding the government accountable for the delivery of basic rights and entitlements to questioning the highest offices of the country.
- Using the RTI Act, people have sought information that governments would not like to reveal as it may expose corruption, human rights violations, and wrongdoings by the state.

- The access to information about policies, decisions and actions of the government that affect the lives of citizens is an instrument to ensure accountability.
- The Supreme Court has, in several judgments, held that the RTI is a fundamental right flowing from Articles 19 and 21 of the Constitution, which guarantee to citizens the freedom of speech and expression and the right to life, respectively.

Recent Amendments

- The RTI amendment Bill 2013 removes political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act.
- The draft provision 2017 which provides for closure of case in case of death of applicant can lead to more attacks on the lives of whistleblowers.
- The proposed RTI Amendment Act 2018 is aimed at giving the Centre the power to fix the tenures and salaries of state and central information commissioners, which are statutorily protected under the RTI Act. The move will dilute the autonomy and independence of CIC.
- The Act proposes to replace the fixed 5-year tenure with as much prescribed by the government.

Criticism of RTI Act

- One of the major set-back to the act is that poor record-keeping within the bureaucracy results in missing files.
- There is a lack of staffing to run the information commissions.
- The supplementary laws like the Whistle Blower's Act are diluted, this reduces the effect of RTI law.
- Since the government does not proactively publish information in the public domain as envisaged in the act and this leads to an increase in the number of RTI

applications.

- There have been reports of frivolous RTI applications and also the information obtained have been used to blackmail the government authorities.

RTI Act – Associated Challenges

- Different types of information are sought which has no public interest and sometimes can be used to misuse the law and harass the public authorities. For example-

- ✓ Asking for desperate and voluminous information.
- ✓ To attain publicity by filing RTI
- ✓ RTI filed as a vindictive tool to harass or pressurize the public authority

Because of illiteracy and unawareness among the majority of the population in the country, the RTI cannot be exercised.

Though RTI's aim is not to create a grievance redressal mechanism, the notices from Information Commissions often spur the public authorities to redress grievances.

Right To Information Act vs Legislations for Non Disclosure of Information

- Some provisions of the Indian Evidence Act (Sections 123, 124, and 162) provide to hold the disclosure of documents.

- ✓ Under these provisions, head of department may refuse to provide information on affairs of state and only swearing that it is a state secret will entitle not to disclose the information.
- ✓ In a similar manner no public officer shall be compelled to disclose communications made to him in official confidence.

The Atomic Energy Act, 1912 provides that it shall be an offence to disclose information restricted by the Central Government.

The Central Civil Services Act provides a government servant not to communicate or part with any official documents except in accordance with a general or special order of government.

The Official Secrets Act, 1923 provides that any government official can mark a document as confidential so as to prevent its publication.



The Right to Information (RTI) Act of 2005 is a landmark legislation in India that empowers citizens to access information under the control of public authorities. Here's a breakdown of the key points:

Objectives of the RTI Act:

- Promote transparency and accountability in the functioning of government bodies.
- Empower citizens by enabling them to access information.
- Reduce corruption by increasing public scrutiny of government activities.

Key Provisions of the RTI Act:

- **Right to Information:** Grants every citizen the right to request information from any public authority.
- **Public Authorities:** Defines a wide range of bodies as public authorities, including government departments, local bodies, and organizations substantially financed by the government.
- **Information Officers:** Mandates the designation of Public Information Officers (PIOs) in each public authority to handle RTI requests.

- **Time Limits:** Prescribes time limits for responding to RTI requests (usually 30 days).
- **Exemptions:** Allows exemptions from disclosure of certain information related to national security, personal privacy, or commercial confidentiality.
- **Appellate Mechanism:** Provides an appellate process for citizens who are dissatisfied with the response to their RTI request. This involves First Appellate Authorities (FAAs) and the Central Information Commission (CIC) at the national level and State Information Commissions (SICs) at the state level.

Benefits of the RTI Act:

- Increased public participation in governance.
- Improved accountability of government officials.
- Reduced corruption and bureaucratic inefficiency.
- Empowered citizens to hold authorities accountable.



8. RTI Act 2005 came into force on

- (a) 12 October 2005
- (b) 15 August 2005
- (c) 15 June 2005
- (d) 1 November 2005

9. Which of the following is not come under the definition of 'information' under RTI Act2005?

- (a) Log books
- (b) File notings

(c) Data material held in any electronic form

(d) Circulars

10. What is the time limit to get the information under RTI Act 2005?

(a) 15 days

(b) 45 days

(c) 60 days

(d) 30 days

4.4.1 UNIT SUMMARY

- ✚ The Consumer Protection Act, 2019 is the main legislation safeguarding consumer rights in India
- ✚ The Act defines a consumer as someone who buys goods or avails services for personal use, not for resale or commercial purposes.
- ✚ Freedom to choose goods and services from a variety of options without undue influence.
- ✚ Access to clear and accurate information about products and services.
- ✚ The Act holds manufacturers, sellers, and service providers accountable for product defects that cause harm to consumers.
- ✚ The Act includes specific regulations for e-commerce platforms to ensure consumer protection in the online marketplace.

4.4.2 Glossary

Consumer

A customer who purchases goods or services primarily for personal use, not for resale or

	business purposes.
Consumer protection Act	The Consumer Protection Act, 2019 (CPA) is the main legal framework safeguarding consumer rights in India
Consumer duties	It's a consumer's responsibility to research products and services before making a purchase. This includes reading reviews, comparing prices, and understanding product specifications
Consumer rights	The Consumer Protection Act, 2019 (CPA) empowers Indian consumers with six key rights. These rights ensure you have a safe and fair experience in the marketplace.
Consumer disputes	The Consumer Protection Act, 2019 (CPA) empowers Indian consumers with six key rights. These rights ensure you have a safe and fair experience in the marketplace.
RTI	RTI stands for Right to Information, a powerful tool for Indian citizens enshrined in the Right to Information Act of 2005. This act empowers you to access information under the control of "public authorities," which includes various government bodies.

Self – Assessment Questions

1. Explain the concept of consumer. What are the various types of consumers?
2. Define and explain consumer protection. What is the need of consumer protection in this competitive business world?
3. Enumerate the various rights of the consumers.
4. Discuss briefly the duties of consumers.
5. Difference between RTPs and UTPs.
6. Explain consumer protection council
7. Discuss about RTI.


Activities / Exercises / Case Studies

1. Mr. Singh purchased a new refrigerator from a reputable electronics store in his city. However, after a few weeks of use, he noticed that the refrigerator was not cooling properly, and the ice dispenser was malfunctioning. Despite contacting the store several times and requesting repairs or a replacement, Mr. Singh's complaints were ignored, and he did not receive any satisfactory resolution.

2. Mrs. Patel, a resident of a rural village, noticed irregularities in the implementation of a government-funded development project in her locality. Concerned about the misuse of funds and lack of transparency, she decided to exercise her right to information under the RTI Act to obtain details about the project's budget, expenditure, and progress.

Answers for check your progress

1. a) August 9th 2019
2. a) consumer
3. b) Right to exploitation
4. d) all goods and service
5. b) 6

	<p>6. c)presented</p> <p>7. a)upto 1 crore</p> <p>8. a)12 october 2005</p> <p>9. b)file noting</p> <p>10.d)30 days</p>	
<p>Suggested Readings</p>		
<ul style="list-style-type: none"> • https://byjus.com/free-ias-prep/right-to-information-rti/ • https://www.indiacode.nic.in/bitstream/123456789/15256/1/a2019-35.pdf • https://consumeraffairs.nic.in/acts-and-rules/consumer-protection • https://legal251.com/resources/consumer-protection-councils/ • https://s3e21e4e58ad9ab56e8a4634046da90113.s3waas.gov.in/state-distt-level-consumer-protection-organization/ • https://www.writinglaw.com/duties-of-indian-consumers/ 		
<p>Open-Source E-Content Links</p>		
<p>1.</p>	<p>https://youtu.be/IPKC4IS4uyo?si=6y7D7XpzmklKaaGY</p>	

2.	https://youtu.be/kzCILWqLSq4?si=lyZf2c1wc9m0S7cd	
3.	https://youtu.be/wEG0gtGtYrc?si=QRorjv-z2FFwm8Yo	
4.	https://youtu.be/KACHSfHbXbA?si=ccXH H_d3QjRWCwls	
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- <https://legal251.com/resources/consumer-protection-councils/>
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- <https://www.writinglaw.com/duties-of-indian-consumers/>

Self-Learning Material Development – STAGE 1		
Unit 5	Cyber laws	
Brief outline of cyber laws- IT Act 2000 & 2008		
Unit Module Structuring		
STAGE – 2 – Modules Sections and Sub-sections structuring		
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5.1.1 Cyber Law



Cyber law, also known as internet law or digital law, is a legal field that governs the use of communications technology, particularly the internet. It deals with the legal issues related to the use of computers, networks, and

electronic information.

Here are some of the key areas that cyber law covers:

- **Online privacy:** This includes laws that protect the privacy of personal information collected online, such as data protection laws and cookies laws.
- **Cybercrime:** This includes laws that deal with criminal activities that take place online, such as hacking, identity theft, and online fraud.
- **Intellectual property:** This includes laws that protect intellectual property rights online, such as copyright, trademarks, and patents.
- **E-commerce:** This includes laws that govern online commerce, such as laws on online contracts, consumer protection, and electronic payments.
- **Freedom of speech:** This includes laws that deal with the balance between freedom of speech and the need to remove harmful content online, such as hate speech and defamation.

What Is Cyber Law?

Cyber law, also known as internet law or digital law, signifies the legal regulations and frameworks governing digital activities. It covers a large range of

issues, including online communication, e-commerce, digital privacy, and the prevention and prosecution of cybercrimes. As the internet has become a fundamental part of our daily lives, cyber law has become crucial in ensuring digital space's orderly and secure functioning.

Cyber law deals with the legal aspects of cyberspace, the internet, and computing. In a broader view, cyber law handles the issues of intellectual property, contract, jurisdiction, data protection laws, privacy, and freedom of expression in the digital space.

In addition to regulating the overall internet's happenings and crimes, cyber law recognizes popular usages, which include e-documents. Earlier, contracts, agreements, or anything of a legal nature was made on paper. With the recognition of e-documents and digital signatures, the world is moving fast toward a paperless future. Since this reduces the use of paper and increases sustainability, these processes are widely encouraged by several environmental enthusiasts.

The very first cyber law to exist was the Computer Fraud and Abuse Act (1986.) Currently, there are several cyber laws around the world, and the penalties, punishments, and regulations vary to an extent.

Significance of Cyber Law

The significance of cyber law lies in its capacity to navigate and regulate the intricate challenges that arise from the pervasive use of technology. Cyberlaw provides a framework for protecting individuals and organizations from cyber threats, ensuring the privacy and security of digital transactions, and establishing guidelines for ethical and legal conduct in cyberspace. As the digital world evolves, the importance of cyber law becomes more pronounced, serving as a cornerstone for the responsible and lawful utilization of digital resources.

5.1.2 Advantages of Cyber Law

- **Protection Against Cybercrimes:**

Cyber laws act as a deterrent by offering legal recourse and prescribing

penalties for various cybercrimes. This proactive approach helps curb illegal online activities and provides a safer digital environment for individuals and businesses alike.

- **Data Privacy:**

Safeguarding individuals' digital information is a paramount concern addressed by cyber laws. These regulations ensure that organizations handle personal data responsibly, establishing a foundation of trust in digital transactions and interactions.

- **E-commerce Regulation:**

The legal framework provided by cyber laws is crucial for the regulation of e-commerce. It defines rules for online transactions, contracts, and consumer protection, thereby fostering a fair and secure online marketplace.

- **Intellectual Property Protection:**

Cyber laws play a pivotal role in protecting intellectual property rights in the vast digital domain. These laws prevent the unauthorized use and distribution of digital content, encouraging innovation and creativity by safeguarding the fruits of intellectual labor.

- **Cyber security Standards:**

Cyber laws contribute significantly to the establishment of cyber security standards. By mandating organizations to implement measures for the protection of their networks and systems, these laws address the evolving landscape of cyber threats.

5.1.3 Types of Cybercrime

- **Phishing:**

Phishing involves deceptive attempts to obtain sensitive information, like passwords or credit card details, by posing as a trustworthy entity. Cyber laws play a

crucial role in prosecuting individuals engaged in phishing activities.

- **Hacking:**

Unapproved access to computer systems or networks to gather, alter, or destroy data constitutes hacking. Cyber laws define and penalize such activities, ensuring legal consequences for those who breach digital security.

- **Identity Theft:**

Illegally acquiring and using someone else's personal information for fraudulent activities falls under the purview of cyber laws. The legal framework addresses identity theft, protecting individuals whose identities may be compromised.

- **Ransom ware:**

Ransom ware involves the use of malicious software to encrypt files, demanding payment for their release. Cyber laws aim to prevent and prosecute individuals involved in orchestrating ransom ware attacks.

- **Online Scams:**

Cyber laws address fraudulent schemes conducted over the internet to deceive individuals for financial gain. These laws provide legal recourse for victims and impose penalties on perpetrators.

- **PUPs (Potentially Unwanted Programs):**

Cyber laws address software that may harm a computer or its user, often installed without the user's knowledge. This helps regulate the distribution of potentially harmful programs and protects users.

- **Denial of Service Attack:**

Overloading a system, network, or website to make it unavailable to users constitutes a denial of service attack. Cyber laws define and penalize such attacks, discouraging individuals from engaging in disruptive online activities.

- **Cyber stalking:**

Cyber laws are made to tackle ongoing online harassment or stalking carried out through electronic methods. These laws recognize the seriousness of cyber stalking and provide legal avenues for victims to seek protection.

5.1.4 Cyber Law in India: A Brief Understanding

India witnesses many cybercrimes annually, with over 44,000 reported cases. Among the states in India, Karnataka emerges as the leader in terms of cybercrime rates. According to a 2022 report by Statistic, the average cost of data breaches was USD 2 million in India. This financial impact reflects the consequences of data breach incidents. For more detailed statistical information,.

Cyber law in India is governed by two key legislations: the Indian Penal Code and the Information Technology Act of 2000. These legal frameworks provide the necessary guidelines and provisions to address cybercrime and protect digital assets and individuals' rights in cyberspace.

A variety of cybercrimes are addressed by Indian cyber laws, covering two main aspects: hacking systems and employing them to commit crimes of different magnitudes. Additionally, Indian cyber law encompasses a comprehensive range of domains, such as intellectual property rights and privacy rights, among others.

Cyber law in India encompasses a broad range of subjects, although it is important to note that the list provided is not exhaustive. Similar concepts may also be addressed in other jurisdictions globally. The following outlines the various types of cybercrimes and the corresponding cyber law protections.

5.1.5 Types of Cyber Law

There are several types of cyber laws, each addressing specific aspects of digital activities and cyber security. Here are some common categories of cyber laws:

1. **Privacy Laws:**

- Privacy laws govern the collection, use, and protection of individuals'

personal information online.

- Examples include the General Data Protection Regulation (GDPR) in Europe and the California Consumer Privacy Act (CCPA) in the United States.

2. Cybercrime Laws:

- Cybercrime laws focus on criminal activities conducted online, including hacking, identity theft, online fraud, and cyber bullying.
- These laws define offenses, penalties, and procedures for investigation and prosecution.

3. Data Breach Notification Laws:

- Data breach notification laws mandate that organizations inform affected individuals and authorities when a data breach occurs.
- These laws aim to ensure transparency and help individuals take necessary actions to protect themselves.

4. Intellectual Property Laws:

- Intellectual property laws protect digital content, patents, trademarks, and copyrights in the digital realm.
- They address issues like copyright infringement and online piracy.

5. Cyber security Laws:

- Cyber security laws require organizations to implement measures to protect their digital infrastructure and sensitive data.
- These laws often set standards and requirements for data security practices.

6. E-Commerce and Online Contracts:

- Laws related to e-commerce and online contracts establish legal frameworks for online transactions, electronic signatures, and consumer rights.
- They provide a basis for resolving disputes in the digital marketplace.

7. Social Media and Online Content Regulations:

- Regulations governing social media and online content address issues such as hate speech, defamation, and harmful content.
- They set guidelines for the removal or restriction of such content.

8. Computer Crime Laws:

- Computer crime laws specifically target offenses involving computer systems and networks.
- They encompass unauthorized access, malware distribution, and cyber attacks on critical infrastructure.

9. Crypto currency and Block chain Regulations:

- As digital currencies and block chain technology gain prominence, regulations address issues like crypto currency trading, initial coin offerings (ICOs), and block chain-based contracts.

10. International Cyber security Agreements:

- Some laws and agreements focus on international cooperation in combating cybercrimes and promoting cyber security best practices.
- Examples include the Budapest Convention on Cybercrime and bilateral cyber security agreements between nations.



Here's a brief outline of cyber law:

I. Core Concepts

- Defines the legal framework for online activity.
- Intersection of various legal areas like privacy, contracts, and intellectual property.

II. Key Areas

- **Data Protection & Privacy:** Safeguarding personal information online.
- **Cybercrime:** Combating online criminal activities (hacking, fraud, etc.).
- **Intellectual Property:** Protecting copyrights, trademarks, and patents online.
- **E-commerce:** Regulating online commerce (contracts, consumer rights, payments).
- **Freedom of Speech:** Balancing free speech with removing harmful content.

III. Importance

- Protects individuals and organizations in the digital space.
- Ensures secure online transactions and data privacy.
- Promotes ethical and legal conduct online.

IV. Challenges

- Rapidly evolving technology creates new legal issues.
- Complexities in enforcing laws across borders.



1. Tampering with Computer Source Documents is _____ offence.

(a) Bailable

(b) Non-bailable

(c) Non-cognizable

(d) Both (a) and (c)

2. The authentication to be affected by use of asymmetric crypto system and hash function is known as :

(a) Public key

(b) Private key

(c) Digital signature

(d) E-governance

3. Cyber squatting is associated with :

(a) Domain Name Dispute

(b) IP addressing dispute

(c) e-mail dispute

(d) Password dispute

5.2.1 What is E-governance?



E-governance is one of the most cutting-edge efforts to develop effective governance. Currently, practically all developed, undeveloped, and developing nations use e-governance aspects to aid in their national growth. Thus, its significance in the modern world is enormous. The solutions to all the queries about e-governance are provided below. By integrating ICT into the governance processes, a new paradigm known as “Electronic-Governance” or “E-Government” has emerged in the field of governance.

In terms of dependable access to information within government, between government, at the national, state, municipal, and local level, among citizens, and businesses, e-governance improves transparency, accountability, efficiency, and effectiveness of the governing process. It also empowers businesses through information access and use. Giving citizens access to transparent, egalitarian, and accountable service delivery is the main goal of electronic government. The goal of e-governance is to ensure that people participate in the political process through electronic channels like email, websites, SMS connectivity, and others while facilitating and improving the quality of governance.

E-governance raises the transparency, accountability, efficiency, effectiveness, and inclusiveness in the governing process in terms of reliable access to the information within government, between government, national, state, municipal, and local level governments, citizens, and businesses and empowers business through access and use of information (Dwivedi and Bharti: 2005).

The tremendous potential of the government to serve the people is realized through its practical application and use of ICT to provide efficient and affordable services, information, and knowledge to the citizens being governed. It established connections between the state and society, government and people, human interaction, and governance. It will alter how people interact with the government in the same ways that it alters how people interact with one another.

5.2.2 SMART Governance: With the use of ICTs, we are able to achieve smart governance as discussed in below mentioned points.

- **S(Simple)** : Means avoiding complex procedures and simplifying government rules and regulations, resulting in a more user-friendly administration.

- **M(Moral)** : It refers to the introduction of a new system into the political and administrative structures along with technological advancements to increase the effectiveness of various government institutions.

- **A(Accountable)** : Ensure that public service employees are held accountable by creating efficient information management systems and other performance monitoring tools.

- **R(Responsive)** : Process streamlining speeds up the system's response time, making it more responsive.

- **T(Transparent)** : Providing information in the public domain, such as via websites or other portals, makes government functions and processes transparent.

Objectives of E-Governance

The objectives of e-governance are as follows-

1. One of the basic **objectives of e-governance** is to make every information of the government available to all in the public interest.

2. One of its goals is to create a cooperative structure between the government and the people and to seek help and advice from the people, to make the government aware of the problems of the people.

3. To increase and encourage people's participation in the governance process.

4. E-Governance improves the country's information and communication technology and electronic media, with the aim of strengthening the country's economy by keeping governments, people, and businesses in tune with the modern world.

5. One of its main objectives is to establish transparency and accountability in the governance process.

6. To reduce government spending on information and services.

5.2.3 Features of E-Governance

It has been proven from the concept of e-governance that it is a powerful means of public service in the present era. Some of its features can be found by observing the functioning of e-governance.

1. **De bureaucratization:** Due to e-governance, the gap between the people and the government in all the services of the government is narrowing and the dependence of the people on the bureaucracy is also greatly reduced.

2. **E-Services:** Its main feature is the provision of services through the Internet. As a result, we get G2C, G2B, G2E, etc. services. This is already discussed in the section on 'types of governance'.

3. **International Services:** through e-governance, all the essential services can be delivered to the citizens who are living outside of their country for job purposes or any other reasons.

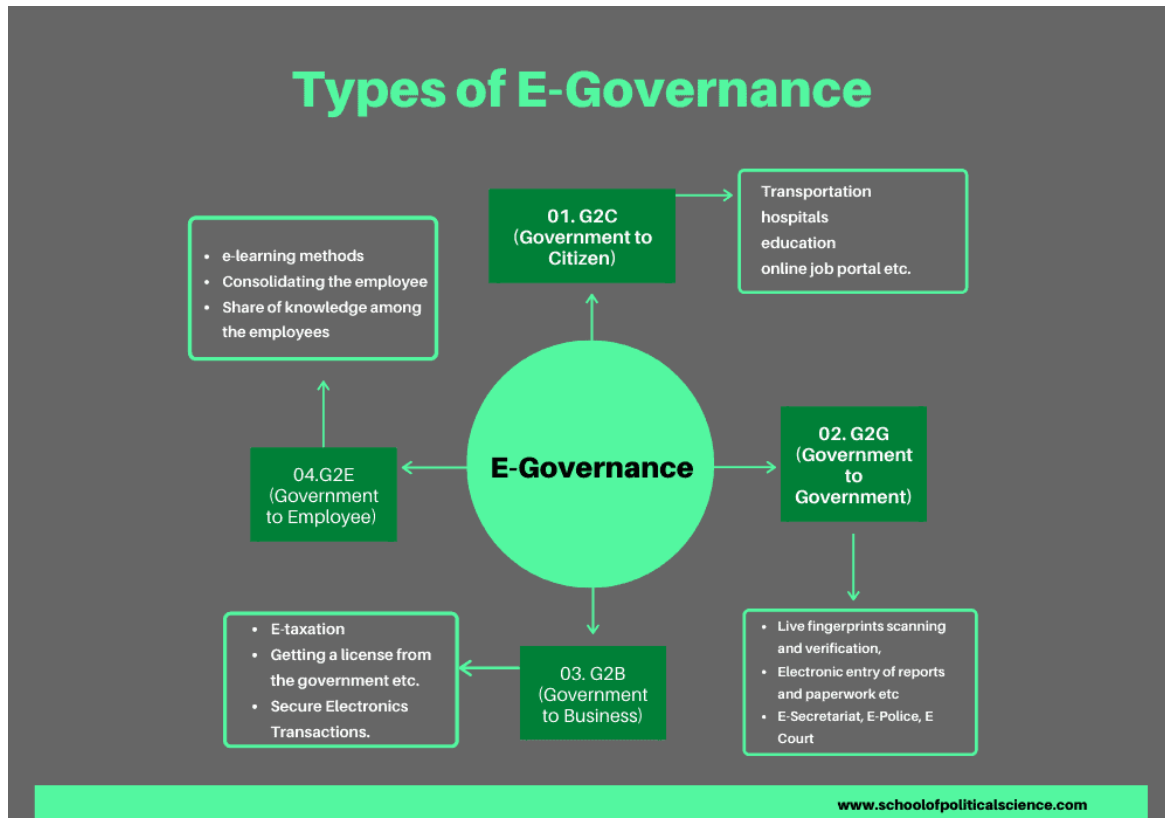
4. It enhances the **right to express** to the citizens. Using the means of e-governance anyone can share their views with the government on any bill or act or decision taken by the government.

5. **Economic Development:** With the introduction of e-governance, various information like import-export, registration of companies, investment situations, etc. are available through the Internet. As a result, time is saved, procrastination decreases, and economic dynamism increases.

6. **Reduce inequality:** using e-governance tools everyone can gather information and empower themselves. In this globalized world, knowledge is power, and means of e-governance empower us by providing relevant information at minimal cost, effort, and time.

5.2.4 Types of E-Governance

E-Governance can be considered as the socially inclusive policy for the development of transparency and accountability of both people in society and administration. This policy involves providing services to the people with the collection of information through institutional and communicational development.



It provides quality services in several ways. Those ways are also called types of e-governance. These are mentioned below-

1. G2C (Government to Citizen)
2. G2G (Government to Government)
3. G2B (Government to Business)
4. G2E (Government to Employee)

1. G2C (Government to Citizen)

As people are the key concept of politics and government as well as

governance, the government is compelled to connect with citizens through a transparent and accountable order. In this connection, the government is responsible for promoting social opportunities and public services in the field of-

- Transportation (Registration of motor vehicles, Issue of driving licenses, Issue of plying permissions, Tax and fee collection through cash and bank challans and control of pollution, etc.),
- hospitals (linking various hospitals in different parts of the country to ensure better medical services to citizens),
- education (availability of the e-learning modules to the citizens, right to education),
- online job portal and various customer services.

It also ensures services such as the issuing of certificates, job cards, passports, ration cards, payments of bills, and filing taxes from the doorstep through the e-governance platform. The main objectives of the G2C services are to ensure equitable distribution of information for all, acceptance of citizens' feedback, and improve welfare services.

2. G2G (Government to Government)

G2G has been referring to raising the quality of the government process by cost-cutting, managing performance, and making strategic connections within the government.

It enables government institutions to be more efficient and more effective through the use of IT tools such as-

- Live fingerprints scanning and verification,
- Electronic entry of reports and paperwork etc.

The major key areas in this type of e-governance are

- E-Secretariat (all the valuable information regarding the function of the government is interlinked throughout the various departments),

- E-Police (police personnel records, criminal records, etc), and
- E-Court (creating a database of all the previous cases, pending and ongoing cases) and Statewide Networks (Kumar: 2011).

3. G2B (Government to Business)

G2B is mainly concerned with these things-

- E-taxation,
- Getting a license from the government etc.
- Secure Electronic Transactions.

It has included the policy of the government with business. According to S.P Kumar, 'the essentials for the achievement of G2B services for secure and authentic transactions include Standards for electronic transactions, a secure payment mechanism, and Public key infrastructure' (Kumar: 2011).

4. G2E (Government to Employee)

The G2E model refers to providing information and services from the government to employees and employee to the government as well. It involves training through-

- e-learning methods;
- Consolidating the employee and
- Share of knowledge among the employees.

It has also facilitated the employee to access information regarding pay and benefits policies and manages their profits through online.



E-governance, short for electronic governance, is all about using information and communication technology (ICT) to improve government functioning. This includes tools like

the internet, mobile apps, and wide area networks.

Here are some key goals of e-governance:

- **Enhanced Efficiency:** Streamlining government processes can save time and resources. Imagine applying for a permit online instead of waiting in long lines!
- **Improved Effectiveness:** E-governance can make service delivery more effective by ensuring information reaches the right people and services are targeted efficiently.
- **Increased Transparency:** Online access to government information and data can promote transparency and accountability. Citizens can see how their tax rupees are being spent, for instance.
- **Greater Citizen Participation:** E-governance tools can make it easier for citizens to engage with the government. This could involve online surveys, forums for discussion, or e-petitions.

Examples of e-governance initiatives include:

- **Online portals:** For applying for government services, paying taxes, or filing complaints.
- **Mobile apps:** Providing citizens with government services on their phones.
- **Data sharing:** Enabling government agencies to share information securely for better coordination.



4. What is E – Governance ?

- a) Electronic Governance
- b) Engaging governance
- c) Efficient Governance
- d) Effective governance

5. Which of the following is not an E – Governance model ?

a)G2B

b)B2C

c)C2C

d)B2B

6.Which of the following is an example of E- Governanace infrastructure?

a)Social media

b) cyber cafes

c) Mobile device

d) All of the above

5.3.1 INFORMATION TECHNOLOGY ACT, 2000

Introduction:

The Information Technology Act, 2000 provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend The Indian Penal Code, The Indian Evidence Act, 1872, The Banker's Books Evidence Act, 1891 and The Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto. The Information Technology Act, 2000 extend to the whole of India and it applies also to any offence or contravention there under committed outside India by any person.

Salient Features of The Information Technology Act, 2000

The salient features of The IT Act, 2000 are as follows –

- Digital signature has been replaced with electronic signature to make it a more technology neutral act.
- It elaborates on offenses, penalties, and breaches.
- It outlines the Justice Dispensation Systems for cyber-crimes.
- The Information Technology Act defines in a new section that cyber café is any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.
- It provides for the constitution of the Cyber Regulations Advisory Committee.
- The Information Technology Act is based on The Indian Penal Code, 1860, The Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934, etc.
- It adds a provision to Section 81, which states that the provisions of the Act shall have overriding effect. The provision states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.

Applications of The Information Technology Act, 2000

Nothing in The Information Technology Act, 2000 shall apply to documents or transactions specified in the First Schedule: Provided that the Central Government may, by notification in the Official Gazette, amend the First Schedule by way of addition or deletion of entries thereto. Every notification issued shall be laid before each House of Parliament. Following are the documents or transactions to which the Act shall not apply –

- Negotiable Instrument (Other than a cheque) as defined in The Negotiable Instruments Act, 1881;
- A power-of-attorney as defined in The Powers of Attorney Act, 1882;
- A trust as defined in The Indian Trusts Act, 1882;
- A will as defined in The Indian Succession Act, 1925 including any other

testamentary disposition;

- Any contract for the sale or conveyance of immovable property or any interest in such property;
- Any such class of documents or transactions as maybe notified by the Central Government.

Amendments Brought in The Information Technology Act, 2000

The Information Technology Act, 2000 has brought amendment in four statutes vide section 91- 94. These changes have been provided in schedule 1-4.

- The first schedule contains the amendments in the Penal Code. It has widened the scope of the term “document” to bring within its ambit electronic documents.
- The second schedule deals with amendments to the India Evidence Act. It pertains to the inclusion of electronic document in the definition of evidence.
- The third schedule amends the Banker’s Books Evidence Act. This amendment brings about change in the definition of “Banker’s-book”. It includes printouts of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device. Similar change has been brought about in the expression “Certified-copy” to include such printouts within its purview
- The fourth schedule amends the Reserve Bank of India Act. It pertains to the regulation of fund transfer through electronic means between the banks or between the banks and other financial institution.

A major amendment was made in 2008. Amendment introduced the Section 66A which penalized sending of “offensive messages”. It also introduced the Section 69, which gave authorities the power of “interception or monitoring or decryption of any information through any computer resource”. It also introduced penalties for child porn, cyber terrorism and voyeurism. Amendment was passed on 22 December 2008 without any debate in Lok Sabha. The next day it was passed by the Rajya Sabha. It was signed by the then President (Pratibha Patil) on 5 February 2009.

Objectives of the Amendments in The Information Technology Act,

2000:

- With proliferation of information technology enabled services such as e - governance, e-commerce and e-transactions, protection of personal data and information and implementation of security practices and procedures relating to these applications of electronic communications have assumed greater importance and they require harmonization with the provisions of the Information Technology Act. Further, protection of Critical Information Infrastructure is pivotal to national security, economy, public health and safety, so it has become necessary to declare such infrastructure as a protected system so as to restrict its access.

- A rapid increase in the use of computer and internet has given rise to new forms of crimes like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, ecommerce frauds like personating commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal Code, the Indian Evidence Act and the Code of Criminal Procedure to prevent such crimes.

- The United Nations Commission on International Trade Law (UNCITRAL) in the year 2001 adopted the Model Law on Electronic Signatures. The General Assembly of the United Nations by its resolution No. 56/80, dated 12th December, 2001, recommended that all States accord favorable consideration to the said Model Law on Electronic Signatures. Since the digital signatures are linked to a specific technology under the existing provisions of the Information Technology Act, it has become necessary to provide for alternate technology of electronic signatures for bringing harmonization with the said Model Law.

- The service providers may be authorized by the Central Government or the State Government to set up, maintain and upgrade the computerized facilities and also collect, retain appropriate service charges for providing such services at such scale as may be specified by the Central Government or the State Government.

5.3.2 Information Technology (Amendment) Act, 2008**BRIEF HISTORY**

The Indian Information Technology Act 2000 (“**Act**”) was based on the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law^[1]; the suggestion was that all States intending to enact a law for the impugned purpose, give favorable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information. Thus the Act was enacted to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involved the use of alternatives to traditional or paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies. Also it was considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records. The Act received the assent of the President on the 9th of June, 2000.

The Act was subsequently and substantially amended in 2006 and again in 2008 citing the following objectives:

- With proliferation of information technology enabled services such as e-governance, ecommerce and e-transactions, protection of personal data and information and implementation of security practices and procedures relating to these applications of electronic communications have assumed greater importance and they require harmonization with the provisions of the Information Technology Act. Further, protection of Critical Information Infrastructure is pivotal to national security, economy, public health and safety, so it has become necessary **to declare such infrastructure as a protected system so as to restrict its access.**

- A rapid increase in the use of computer and internet has given **rise to new forms of crimes** like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, e-commerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal Code, the Indian Evidence Act and the Code of Criminal Procedure to prevent such crimes.

- The United Nations Commission on International Trade Law (UNCITRAL) in the year 2001 adopted the Model Law on Electronic Signatures. The General Assembly of the United Nations by its resolution No. 56/80, dated 12th December, 2001, recommended that **all States accord favorable consideration to the said Model Law on Electronic Signatures**. Since the digital signatures are linked to a specific technology under the existing provisions of the Information Technology Act, it has become necessary to provide for alternate technology of electronic signatures for bringing harmonization with the said Model Law.

- The **service providers may be authorized** by the Central Government or the State Government to set up, maintain and upgrade the computerized facilities and also **collect, retain appropriate service charges** for providing such services at such scale as may be specified by the Central Government or the State Government.

Information Technology (Amendment) Act, 2008

BRIEF HISTORY

The Indian Information Technology Act 2000 (“**Act**”) was based on the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law^[1]; the suggestion was that all States intending to enact a law for the impugned purpose, give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information.

Thus the Act was enacted to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involved the use of alternatives to traditional or paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies. Also it was considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic

records. The Act received the assent of the President on the 9th of June, 2000.

The Act was subsequently and substantially amended in 2006 and again in 2008 citing the following objectives:

- With proliferation of information technology enabled services such as e-governance, ecommerce and e-transactions, protection of personal data and information and implementation of security practices and procedures relating to these applications of electronic communications have assumed greater importance and they require harmonization with the provisions of the Information Technology Act. Further, protection of Critical Information Infrastructure is pivotal to national security, economy, public health and safety, so it has become necessary **to declare such infrastructure as a protected system so as to restrict its access.**

- A rapid increase in the use of computer and internet has given **rise to new forms of crimes** like publishing sexually explicit materials in electronic form, video voyeurism and breach of confidentiality and leakage of data by intermediary, e-commerce frauds like personation commonly known as Phishing, identity theft and offensive messages through communication services. So, penal provisions are required to be included in the Information Technology Act, the Indian Penal Code, the Indian Evidence Act and the Code of Criminal Procedure to prevent such crimes.

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- The **service providers may be authorized** by the Central Government or the State Government to set up, maintain and upgrade the computerized facilities and also **collect, retain appropriate service charges** for providing such services at such

scale as may be specified by the Central Government or the State Government.

EXTENT APPLICABILITY OF THE ACT

The Act extends to the whole of India, save as otherwise provided in this Act. *It can also apply to any offence or contravention provided for in the Act, whether committed in India & outside India by any person, if the act or conduct constituting the offence involves a computer, computer system or computer network located in India .*

The main provisions of the Act come in to force on the 9th of June 2000. Certain provisions were given effect on later dates by issuing specific notifications in this regards.

The Act shall not apply to documents or transactions specified in the First Schedule. Every notification issued to amend the first schedule shall be laid before each House of Parliament. Presently, the First schedule contains the following entries:

1. A negotiable instrument (other than cheque) as defined in negotiable instrument Act, 1881.
2. Power of Attorney as defined in P-O-A Act, 1882.
3. A trust as defined in Indian Trusts Act, 1882.
4. A will as defined in Indian Succession Act, 1925 including any other testamentary disposition by whatever name called.
5. Any contract for sale or conveyance of immovable property or any interest in such property.

For this purpose every notification issued by the Central Government to add, amend or delete any item mentioned in the schedule as a pre-requisite place before both houses of the Parliament for their scrutiny and approval.

The provisions of the Act have an overriding effect, notwithstanding anything

inconsistent therewith contained in any other law for the time being in force.

The Information Technology (Amendment) Act, 2008 is a significant update to the original Information Technology Act, 2000 in India. Enacted on October 27, 2009, it aimed to address emerging challenges in cyberspace and strengthen cybersecurity measures. Here are some key aspects of the IT (Amendment) Act, 2008:

1. Data Protection and Privacy: The amendment introduced new provisions related to the protection of personal data and privacy. It outlined regulations concerning the collection, storage, processing, and transfer of sensitive personal information. This was a crucial addition given the growing concerns over data privacy in the digital age.

2. Cyber security Enhancements: The Act included provisions to enhance cyber security measures, such as the establishment of the Indian Computer Emergency Response Team (CERT-IN) as the national agency for responding to cyber security incidents. It also outlined requirements for securing computer systems and networks, as well as reporting cyber security incidents.

3. Penalties for Cyber Offenses: The amendment expanded the scope of cyber offenses and increased the penalties for various cybercrimes such as hacking, identity theft, and cyber terrorism. It introduced stricter punishments to deter individuals and organizations from engaging in illegal activities online.

4. Intermediary Liability: Building upon the provisions of the original IT Act, the amendment further clarified the liability of intermediaries such as internet service providers (ISPs) and online platforms for third-party content. It defined conditions under which intermediaries could claim immunity from liability while also imposing obligations on them to take down unlawful content.

5. Electronic Signatures and Authentication: The Act strengthened the legal framework for electronic signatures and authentication methods, ensuring their validity and reliability in electronic transactions. It provided guidelines for the use of electronic signatures and digital certificates issued by Certifying Authorities.

6. Other Provisions: The amendment addressed various other aspects,

including the recognition of electronic contracts, electronic filing of documents, and the admissibility of electronic records as evidence in legal proceedings. It aimed to promote the growth of e-commerce and electronic governance while safeguarding the interests of stakeholders.

Overall, the IT (Amendment) Act, 2008, played a crucial role in updating and modernizing India's legal framework for information technology and cybersecurity. It aimed to address the evolving challenges and opportunities presented by the digital revolution while promoting trust and confidence in electronic transactions and communications.



The Information Technology Act (ITA) in India is a comprehensive legislation that governs various aspects of electronic commerce and cyber security. Here's a comparison between the Information Technology Act, 2000 (ITA 2000) and its significant amendment, the Information Technology (Amendment) Act, 2008 (ITA 2008):

Information Technology Act, 2000 (ITA 2000):

1. **Enactment Date:** ITA 2000 was enacted on June 9, 2000.
2. **Focus:** ITA 2000 was primarily focused on providing a legal framework for electronic governance and e-commerce, aiming to facilitate electronic transactions and provide legal recognition for electronic records and digital signatures.
3. **Key Provisions:**
 - Legal recognition of electronic records and digital signatures.
 - Regulation of certifying authorities issuing digital certificates.
 - Promotion of electronic governance in government processes.
 - Addressing cybercrimes and specifying penalties for offenses.
 - Establishing adjudicating authorities and the Cyber Appellate Tribunal.

Information Technology (Amendment) Act, 2008 (ITA 2008):

1. **Enactment Date:** ITA 2008 was enacted on October 27, 2009.
2. **Focus:** ITA 2008 aimed to address emerging challenges in cyberspace and strengthen cyber security measures. It sought to update and enhance the provisions of ITA 2000 in response to evolving technologies and cyber threats.
3. **Key Amendments:**
 - Introduction of provisions related to data protection and privacy, including regulations for the collection, storage, and processing of personal data.
 - Establishment of CERT-IN as the national agency for responding to cyber security incidents.
 - Expansion of cyber offenses and increased penalties for various cybercrimes.
 - Clarification of intermediary liability and obligations for online platforms.
 - Strengthening of the legal framework for electronic signatures and authentication.
 - Other provisions aimed at promoting e-commerce and electronic governance while safeguarding stakeholders' interests.



7. Digital signature are based on _____ key encryption

- a) Private
- b) public
- c) shared
- d) internal

8. In which year India's IT Act came into existence?

- (a) 2000
- (b) 2001
- (c) 2002
- (d) 2003

9. What is the updated version of the IT Act, 2000?

- (a) IT Act, 2007
- (b) Advanced IT Act, 2007
- (c) IT Act, 2008
- (d) Advanced IT Act, 2008

10. Digital signature are created and verified using

- a) program
- b) Graphical coding
- c) Html
- d) cryptography

5.4.1 UNIT SUMMARY

- ✚ Cybercrime refers to criminal activities carried out using computers and the internet.
- ✚ Unauthorized access to computer systems or networks.
- ✚ Cybercrime can lead to financial loss, data breaches, privacy violations, and damage to reputation.
- ✚ Strong cyber security measures, such as firewalls and encryption, can prevent cybercrimes.
- ✚ Law enforcement agencies investigate and prosecute cybercriminals under relevant laws, including the ITA.
- ✚ The Information Technology Act (ITA) in India is a comprehensive legislation that governs various aspects of electronic commerce and cyber security.
- ✚ Legal recognition of electronic records and digital signatures.
- ✚ Regulation of certifying authorities issuing digital certificates.

✚ Addressing cybercrimes and specifying penalties for offenses.

5.4.2 Glossary

<p>Cyber law</p>	<p>"Cyber law" refers to the legal framework that governs cyberspace, encompassing various legal issues related to the internet, digital communications, electronic commerce, and online activities. It includes both statutes and regulations developed to address the unique challenges and opportunities presented by the digital age.</p>
<p>Cyber crime</p>	<p>Cybercrime refers to criminal activities carried out using computers, networks, and the internet. These offenses target individuals, businesses, organizations, and governments, with the aim of causing harm, financial gain, or disruption.</p>
<p>E governance</p>	<p>E-governance, short for electronic governance, refers to the use of information and communication technologies (ICTs) by governments to enhance the delivery of public services, improve efficiency, transparency, and accountability, and foster citizen participation in decision-making processes.</p>
<p>ITA 2000</p>	<p>The Information Technology Act, 2000 (ITA 2000) is a crucial piece of legislation enacted in India to provide a legal framework for electronic governance and e-commerce.</p>

<p style="text-align: center;">ITA 2008</p>	<p>The Information Technology (Amendment) Act, 2008 is a significant update to the original Information Technology Act, 2000 in India. The IT (Amendment) Act, 2008 was enacted on October 27, 2009, and it introduced several amendments to the IT Act, 2000, to address emerging challenges in cyberspace.</p>
<p>Self – Assessment Questions</p>	
<ol style="list-style-type: none"> 1. What is Cyber law? 2. What is the signature of E- governance? 3. What is cyber crime? What are the difference types of cyber crime? 4. What are the object and scope of the information technology act 2000? 5. What are the object and scope of the information technology act 2008? 6. Discuss the factors contributing to cyber crime? 	
<p>Activities / Exercises / Case Studies</p>	
<p>Case Study: Phishing Attack on a Financial Institution</p> <p>Background: A prominent financial institution, XYZ Bank, experienced a sophisticated phishing attack targeting its customers. The attackers sent deceptive emails posing as legitimate representatives of the bank, urging recipients to update their account information to avoid service disruptions.</p>	
<p>Answers for check your progress</p>	<p>1.b) non- bail able</p>

	<p>2.c) digital signature</p> <p>3.a) domain name dispute</p> <p>4.a) Electronic governance</p> <p>5.c) C2C</p> <p>6.d)All of the above</p> <p>7.b)public</p> <p>8.a)2000</p> <p>9.c)IT Act 2008</p> <p>10.d)Cryptography</p>
<p>Suggested Readings</p>	
<ol style="list-style-type: none"> 1. https://www.meity.gov.in/content/cyber-laws 2. https://www.shiksha.com/online-courses/what-is-cyber-law-st603-tg165 3. https://iritm.indianrailways.gov.in/uploads/files/1360312590693-12.Cyber-Laws-chapter-in-Legal-Aspects-Book.pdf 4. https://intellipaat.com/blog/what-is-cyber-law/ 5. https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf 6. https://cleartax.in/s/it-act-2000 	
<p>Open-Source E-Content Links</p>	

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	https://youtu.be/q0ZkowJxxUM?si=4SS97WJSSAf3Z323	
References		
<ol style="list-style-type: none">1. https://www.meity.gov.in/content/cyber-laws2. https://www.shiksha.com/online-courses/what-is-cyber-law-st603-tg1653. https://iritm.indianrailways.gov.in/uploads/files/1360312590693-12.Cyber-Laws-chapter-in-Legal-Aspects-Book.pdf4. https://intellipaat.com/blog/what-is-cyber-law/5. https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_u		

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6. <https://cleartax.in/s/it-act-2000>