STUDY MATERAL

MODULE II

CONTRACT MANAGEMENT, ECONOMIC LAWS AND COMPANY LAW

EXECUTIVE DIPLOMA IN FINANCE FOR ENGINEERS

INSTITUTE OF COST ACCOUNTANTS OF INDIA

CONTENTS

PART A: CONTRACT MANAGEMENT (30 MARKS)

1	Indian Contract Act	
2	Essential contract terms including Arbitration matters	
3	Precautions to be taken in respect of various contract terms	
4	Tenders, its types of Tenders and the Tendering Procedure	
5	Finalization of contracts	
6	Variation clauses (including Reward and penalty clauses, Escalation & clauses etc.) in contracts	
7	Award of contract , e-contract	

PART B: ECONOMIC LAWS (30 MARKS)

1.	**Industrial laws**	
a.	Factories Act	
b.	Code of Wages, 2019	
c.	Payment of Gratuity Act	
d.	Payment of Bonus (Amendment) Act ,2015	
e.	Employees Provident Fund Act	
f.	Employees State Insurance Act	
g.	Disciplinary Laws; Prevention of Sexual Harassment to Women a Law relating to Contract Labours; Law relating to Pollution & and Shops & Establishments	
2.	**Commercial Laws**	
a.	Sales of Goods Act	
b.	Negotiable Instruments Act	

PART C: COMPANY LAW (40 MARKS)

1.	Types of Companies	
2.	Incorporation of Companies	
3.	Various Stakeholders of the Companies	
4.	Shareholders and Shareholders' Meetings	
5	Directors and Directors' Meeting	

6	Accounts and Audit	
7	Roles and Responsibilities of Board of Directors and Committees	
8	Corporate Governance and CSR	
9	Profits and Dividends (basic concept)	
10	Understanding of Company Dissolution/Liquidation/ Winding Up (basic concept)	

PART A: CONTRACT MANAGEMENT (30 MARKS)

The Law of Contract

1.0 Meaning of Contract

A. Contract is an agreement or a promise enforceable by law creating an obligation of parties to do or not to do anything. Mere contract to make a contract is not a contract.

B. Contract can be either implied or express. In implied contract the conduct of the parties satisfies that one party is making an offer and the other party is accepting it. agreed place. Contract, therefore would comprise (i) agreement and (ii) legal obligation i.e. the agreement should be enforceable by law.
C. Law revolves around rights and liabilities. Human rights are above nations and is beyond constitutional or citizenship rights.
D. Wherein one gets constitutional rights by default being a citizen of the country, contractual rights are created by the parties. In a contract , both parties have interest and get benefits.
E. Every right has a corresponding obligation or liability.

1.1 Agreement

When two or more persons meet upon a common purpose and consent to do or refrain from doing anything, it will be called an agreement. Person can be a natural person or juristic person. In all agreement there is an obligation, which means duty to do or abstain from doing what one has promised to do or abstain from doing. The Act defines "every promise and every set of promises forming the consideration for each other, is an agreement"

1.2 Legal obligation

It is said that all contacts are agreements but all agreements are not contracts. This means that in order to be a contract there must be more than mere agreement. These are legal enforceability and consideration. Legal enforceability means that the contract, if not fulfilled should have legal consequences and parties to the contract should be aware of it. Consideration is the price which the other party agrees to pay to the person who performs the contract. This is to differentiate those agreements which are not legally enforceable, i.e. agreeing to go to some social/ religious function.

1.3 'promisor', 'promisee' and 'promise'.

A. Person making the proposal is called promisor and the person accepting the proposal is called promisee. The subject matter of the proposal is called promise. Person making the promise is also called offeror and the promissee is called offeree and promise is called offer.

1.4 Agreements not contracts

The following agreements are not contracts.
(i) Agreement relating to social matters.
(ii) Domestic arrangements between husband and wife.

1.5 Essentials of a valid contract

The essential of a valid contract are as follows:

(i) Offer and acceptance. There has to be an offer by other promisor to be accepted by other person, i.e. promise. Both offer and acceptance should not suffer from illegality.

It has been scientifically established that there is a time lag between making an offer nod acceptance of the offer. If a person having a plot of land offers it to someone he becomes the offeror and the other person becomes the offeree or promisor and promise respectively. If the buyer offers to buy by offering a price, he becomes the offeror. Offer once accepted becomes a contract.

(ii) Free consent of parties. Contract is voluntary agreement by parties and the consent should be free and genuine. No body can force other party to make a contract. They should agree upon the same thing in the same sense.

Consent shall be said to be free if it is not caused by (1) coercion, (2) undue influence, (3) fraud, (4) misrepresentation & (5) mistake. These terms are discussed further at later stage.

(iii) Intention to create legal relations or an intention to have legal consequences. The parties should know that by contracting, a legal relationship is being created and they have to face the consequences for non-performance of the contract. Parties should not have feeling that if I don't perform nothing will happen under law. Contract is a kind of commitment and contracting parties cannot come out of the commitment at sweet will of either of the party.

(iv) there should a Legal object not opposed to public policy- the object and subject matter of the contract should be lawful i. e. should not be against law and neither can be against the public policy i.e. Govt. Policy.

(v) Lawful Consideration – means any price either in cash or kind, which the promisee has to pay to the promisor for performance or non-performance as per mutual agreement.

(vi) Competent parties –contract should be always inter vivos .i. e between two living persons. Any living persons including artificial persons can contract unless should not be barred by contract law or any other law or by court order to enter into contracts or continue with a contract already made.

(vii) Terms of the contract are certain. There should not be any ambiguity or vagueness in terms of the agreement; otherwise it would lead to confusion regarding subject matter of contract.

(viii) Possibility of performance: the terms and conditions of the contract should be technically possible to comply.

2.0 Types of contract

(a) Void contract: means a contract which suffers from any shortfall which is essential to a contract. Therefore such contacts shall not legally be enforceable and considered to be non-existent.

Some of contracts have been expressly declared void under the law. They are:

(i) contract in restraint of marriage

(ii)contract in restraint of trade

(iii)contract in restraint of Legal Proceedings

(iv)Uncertain Agreements: terms and conditions are uncertain and unclear so far performance and other parameters are concerned.

(v)Wagering Agreements: contracts of betting and gambling.

(vi)Agreements contingent on impossible acts: some performance which depends on issues which are impossible.

(vii)Agreements to do impossible Acts. Here there is something which is naturally impossible and something which is technically impossible.

(b) Valid contacts: contract having all the essentials of a valid contact shall be considered valid in law.

(c) Voidable contract: when a contract suffers from certain irregularity, one of the parties may have the intention to condone that irregularity and consider the contract as valid. Alternatively, the party may choose to make the as void. Agreement becomes enforceable at the option of one of the parties.

(d) Unenforceable contract: contract otherwise valid is not capable of being enforced in a court of law, because of some technical grounds.

(e) Illegal and unlawful contract: contrary to law.

(f) Express and implied: when terms of contract or principal terms are decided before hand it is called express. If parties behave in manner that there appears to be a contract even without talking, it will be considered as implied contract.

A bus is running on particular route and u get into it. There is implied contract between the bus and the passenger that it will ply in particular direction and the passenger has to pay the fare.

(g) Quasi contract: sometimes people behave in a manner which shows that there is relationship in the nature of the contract. certain relationship resembling those created by contract. There may not be any contract existing. Suppose your friend is passing through financial distress and you make some payments to third party on his behalf, you are supposed get back though you have not made any contract to lend your friend. Supplies necessities to a person even when he does not want that but accepts the supplies is an example for quasi contract.

There may be situation where one party supplies the other party or his dependents any essential thing; this will amount to quasi contract. Similarly, a person, who is interested in the payment of money, which another is found by law to pay and who therefore pays it, is entitled to be reimbursed by the other. Obligation delivers anything to other person or his dependents; the latter is found to make compensation

9. Illegal agreement

A. An illegal agreement is one, which, like the void agreement has no legal effect as between the immediate parties, but has the further effect that transactions collateral to it become tainted with illegality and are therefore not enforceable.

(h) Executed: parties have signed and performed and executory: one of the part yet to sign or not performed.

(i) Contingent contract: A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

i) A contingent contract cannot be enforced by law until and unless that event has happened and in case the event becomes impossible, such contracts become void.

ii) A contract contingent upon not happening of an event can be enforced only when the event becomes impossible.

iii) A contract contingent on lapse of time can be enforced if at the expiration of the time fixed such event has not happened or before the time fixed the event becomes impossible.

iv) Contingent contracts to do anything if an impossible event happens are void.

2.3 Valid contracts transforming into void contract.

Sometimes a contract was legally valid at the time it was made, but subsequently with the change of situation, it may turn out to be non-operative.

(i) Subsequent illegality

(ii) Performance becoming impossible due change in situation

(iii) It is proved that the contract was made with coercion, undue influence.

(iv) In case on contingent contract, when the event on which the subject matter of the contract depends has become virtually impossible.

3.0 Offer and acceptance

3.1 offer:

An offer is a proposal by one person whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance.

The following are the rules, which govern offers:

(i) It must be clear, definite, complete and final. It must have a willingness to do or not to do anything.
(ii) Must be communicated to the offeree, i.e. by one person to another person. Communication shall be deemed to be complete when the knowledge of the offer reaches the offeree (except when it sent by post).
(iii) It may be expressed by word, may be in oral or written or it may be implied by conduct.
(iv) Communication of offer may be specific or general. Specific would mean that it is open for acceptance to those persons only. General offer, on the other hand would mean it can be accepted by any person.
(v) Invitation to make an offer is not an offer. If any person invites offer for sale of a particular item, it may not be necessary that he would sale at any offer or for that matter the best offer he has received. He may choose not to sale at all.
(vi) An offer should not have a condition that if the acceptor does not act contrary, it would amount to acceptance.
(vii) Offer to make an offer is not an offer.

3.2 Revocation of an offer. An offer may be revoked/ come to an end by the offer or any time before acceptance by:

(i) Communicating that the offer has been revoked / withdrawn.
(ii) Lapse of time as stipulated in the offer and if time is mentioned, after lapse of reasonable time.
(iii) Not accepted in the mode as mentioned in the offer and if mode is mentioned in the offer, by the usual mode. Usual mode would mean the mode by which such offers are usually accepted.
(iv) Non-fulfillment of condition(s) precedent to acceptance.
(v) By death or incapacity of the proposer or acceptor.
(vi) By rejection either express or implied by the person to whom it is made.
(vii) Offers shall also lapse if their subsequent illegality in the offer or there is destruction of the property which forms subject matter of the contract.

3.3 Acceptance and rules governing an acceptance

A. Acceptance is receiving and consenting to the proposal or promise by the promisee.

Rules governing acceptance are as follows.

(a) Acceptance may be oral or in writing or implied from the conduct.
(b) Acceptance should be by the person to whom the offer has been given.

(b) Acceptance shall be in accordance with the procedure specified in the offer.
(c) Acceptance must be unqualified and absolute.
(d) A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse.
(e) Acceptance must be communicated to the offeror for acceptance.
(f) Mere silence or quite acceptance not evidenced by words or conduct on the part of the offeree does not amount to acceptance.
(g) Acceptance must be given within the time stipulated in the offer or within reasonable time. Time may have extended by the person who has given the offer.
(h) Rejected offers can be accepted on renewal of the offer.

4.0 Consideration

"the price for which a promise is bought".

Rules governing consideration:

(a) Every simple contract must be supported by valuable consideration otherwise it is formally void.

(b) There must be mutuality i.e. there should be give and take policy between the parties.
(c) Consideration must be real and not vague, indefinite or illusory.
(d) It need not to be adequate but it must have some value.
(e) Consideration must be lawful. It should be forbidden by law, opposed to public policy, immoral and is injurious to any person.
(f) Consideration must be paid by the promissee or any other person with the consent of the promissee.
(g) consideration may be past present or future.
(f) Consideration must be something more than the promisee is already bound to do for the promisor.

4. 1 Agreement without consideration

An agreement without consideration is valid when:

(i) If it is in writing and registered and is made out of natural love and affection between the parties. (gift)
(ii) If it is made to compensate a person who has done something voluntarily for the promisor or done something which the promisor was legally compellable to do.
(iii) If it is a promise to pay a debt barred by law of limitation. Since the debt is time barred it cannot be recovered. However, if there is any agreement to recover the amount without any consideration.
(iv) No consideration is required for creation of an agency though agency is a contract between the principal and the agent.
(v) Agreement to contribute to charity requires no consideration though legally it is enforceable.

5. Flaws of contract

The various flaws in a contract are:
(I) Incapacity, (ii) Misrepresentation, (iii) Fraud, (iv) Undue influence, (v) Coercion, (vi) Mistake, (vii) Illegality, (viii) Impossibility.

5.1 **Incapacity**: any person including a natural person can contract. Since a contract has to be between two living persons (inter vivo) parties to the contract should be living at the time of execution of contract. In case of company or any artificial person, such artificial person should be existing. Therefore, unincorporated company is competent to contract and so is a company, which has been dissolved by process of law. person is competent to contact except –

(1) He is a minor, as per law, which applies to him. An agreement with a minor is absolutely void and inoperative. However, when there is an agreement with minor by which he is beneficiary shall be valid. Since the agreement is void ab initio, it cannot be ratified when minor attains the age of maturity.

Minor can be appointed as apprentice because he is protected under the Apprenticeship act, but minor cannot be legally considered as partner, surety, shareholder, agent because all these relationships are legal contractual relationship which a minor cannot make. However, if necessaries are supplied to minor, the supplier is entitled to recover from the assets of minor.

(2) He is of unsound mind; sound mind has been defined as" a person if at the time when he makes contract, he is capable of understanding it and of forming a rational judgment as to its effects upon his interests."
Unsound mind may arise from lunacy, idiocy, drunkenness, mental decay, hypnotism etc. contracts with such persons when they are at the state of unsound mind is void ab initio and not operative. However, like minor, such persons can derive benefit out of the contract.
(3) He is bared by any law/ order of court to enter into contracts.
There are some categories of person who cannot contract. They are foreign sovereigns and ambassadors, alien enemies, convict, etc.

(4) Insolvent
(5) Married women- not for husband's properties, but for own properties.

5.2 **Misrepresentation:** (a) when one party makes a statement to other party either before the contract or after contract, which is not true with an intention to induce the other party to make the contract, it is positive assertion of fact or information, which is not true though he believes it to be true.

(b) any breach of duty which without an intention to deceive, gains an advantage to the person committing it or anyone claiming under him, by misleading another.

(c) Causing, however innocently, a party to an agreement, to make a mistake to the substance of the thing, which is the subject of the agreement.

5.3 Fraud: all acts committed by a person with an intention to deceive another.i.e. false statement with intention to cheat, suppression of material fact, false promises.

5.4 Undue influence: A contract is said to be induced by undue influence where(I) the relation between the parties are such that one is in a position to dominate the will of the other, and(ii) uses the position to obtain an unfair advantage over the other." Dominating position would be determined considering (a) one has real or apparent authority over the other (b) there is fiduciary relationship, i.e. mutual trust and confidence (c) mental condition is temporarily not normal.

5.5 Coercion: coercion is committing or threatening to commit, any act forbidden by Indian penal code or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

5.6 Mistake: mistakes are classified into two: (I)mistake of law: every person making a contract is deemed to have the knowledge of the law of the country and a contract cannot be canceled or withdrawn on the plea that the law was not known to any person.

(iii) mistake of fact: fact must be essential to the contract

(iv) (I) bi lateral mistake

(iv) Unilateral mistake: (a) normally not allowed

Making of Contract

1.0. In commercial world, there are big contracts which may run into few thousand crores and with a tenure for execution, ranging from 5 to 10 years. Making of a contact stands with calling of offers. The organization wants to get some party to perform a job/assignment and obviously looks for a party who will ideally and commercially perform a contract by proper execution of the terms and conditions of the contract. Therefore, terms conditions have to be very clear, definite, capable of performance both technically and commercially. This means the contract should have performance criteria which is possible to perform technically and it is worth for both the parties, i.e. it should be commercially acceptable by both the parties. In order to find out the right party to take up the job, the organization need to be clear as to what is wants. This is called "scope of work". This has to be prepared first. Sometimes the organization is not clear or do not have expertise to figure out what it wants or what will satisfy their requirements. In such case, the organization has following two options.

(a) appoint a consultant to prepare scope of work and, if required, to monitor the execution.
(b) call for "Request for Proposal" (RFP)

RFP is an open request from the organization to give a complete proposal by the party who would be taking up the contract, with scope of work, options, budgetary price. This facilitates the organization to decide what alternative can be taken or what will be done by the party. Various parties will give different proposals which would facility the organization to decide or form an opinion as what it wants. The vendor shall have adequate freedom to suggest and

propose and also reasons for acceptance of such proposals. RFP should not be confused with RFQ, which means "Request for Quotation".

1.1 Selection of parties

Quite offer, companies, organisations and even government finds it difficult to identify and select a party to execute a contract. Identification of probable parties would first require the kind of job to be done which is called "nature and scope of work". This has to be prepared before one looks for the probable parties. This is done based on experience of the people in the organisation. In few cases, the organization is not having capability to prepare scope of work, an expert agency or a consultant is appointed only the prepare scope of work and detailed tender document.
Once scope of work is made out, the organisation has few options.

(a) call for Expression of Interest(EOI
(b) Notify tender.- Notice Inviting Tender (NIT)

1.2 Expression of Interest (EOI)

Sometimes, the organization is not very sure about the specification of the job and wants to call for contractors who are interested in doing the job. The purpose may be listed as follows.

(i) Total specification is not made by the orgnaisation

(ii) organisation wants to know the parties who may be interested to do the job. This will help in short listing of parties.

(iii) The organization will get budgetary cost of the job. This is also called " price discovery".

Sometimes, a contract is settled with EOI also, But normally, after EPI a Nit is floated.

1.3 Notice Inviting Tender(NIT)

NIT is ultimate in the process. When the organization is definite about the job, it floats tender with all specification and calls for rates. Here the rate is very important as all tenderers are considered to be at equal footing, based on their creditability or pre-qualification. This is most common form of selecting parties and awarding contracts in Govt. or big private organizations.

2.0 Types of Tenders

2.1 Open vs Limited tender

Open tender means the notification of the tender is widely circulated and entities may participate subject to eligibility as per tender terms.it does not mean that anybody can participate regardless of eligibility. Limited tenders are called for few parties who are selected on some basis or a panel of vendors have been made by the company investing bids.

2.2 Local vs National tender

Small value tenders which namely performed by local vendors/contractors are called local tenders. Some tenders are of such job that it calls for participate of venders from anywhere in India.

2.3 Global tender

Here, offers are initiated from parties located anywhere in the world. This is a practice in case of big contracts or highly technical jobs where expertise is needed or adequate parties in the kind of job is not available in India.

2.4 E tender and e- contracts

With the growth of e commerce, physical tendering, i.e. with paper and in scaled cons is no more relevant. The procedure is structured in a way that all steps can be performed .Through interest based system. Adequate checks and access is proceeded in the system. E- contract are contracts made through electronic mode where parties may sign the document through digital signature. However, contracts of substantial value should be signed by hand in hard copies. Both physical and electronic contracts have same value and come under the preview of Indian Contract Act.

2.5 Tender cum auction (TCA)

As we can understand, tender is a one time offer. It may so happen that the offer received is not acceptable or the company grants better offer. In such case4, the company can call for bids through auction, keep the auction open for some time. If the bids received is better than the rate quested in the tender, the same shall be accepted. The mode of purchase/ sale through TCA should be declared at the time of treating the tender.

2.6 Auction cum tender

2.7 Swiss Challenge Method of Tendering

Swiss challenge is a system by which a vender/ supplier/ contractor propose a job with a challenge any other bidden to do the job at that price. This can be unsolicited offer (offer not wanted by the organisation) or can be solicited, i.e. asked by the organisation. Third party may wake a better offer to the organisation. However, the original offer should get the right to counter match any supplier offer given by the third party.

2.8 Reverse tendering/ Auctioning

When an organisation thoughts a tender, the idea is to get the rate for a job, which is defined in the tender document, under “scope of work” or “specification of job” obviously, the part who offers lowest rate is selected assuming that his other basis documentation is acceptable.

However, when you want a sell to give you offer and you are a purchaser, you will like to have higher offer to get more realisation of money. This is called reverse tenders or reverse auction. This procedure is now being followed in case of procurement. Sometimes, the ceiling piece is indicated and bidden are requested to bid below that price

3.0 Screening and Short Listing

While looking for party’s company notifies its intention in public domain for the parties. Sometimes there are huge responses from the venders/ contractors, which call for shortlisting of vendors to get the right kind of vendor. The method of shortlisting is as follows.

3.1 Pre- Qualification

Many cases, some essential qualification is mentioned like past record, achievements etc. for the venders this is called pre- Qualification. On the vendor passed through this test, commercial bids or qualification are initiated.

3.2 Bogus offers

Sometimes, some tenders give a bid which is either very low or high than the market rate or estimated rate. These rates very abnormally with rate of other parties and cannot be accepted. They are called bonus offers.

3.3 Earnest Money Deposit

In order to eliminate bonus offers and to ensure that you get bids from serious bidders, organisations ask for a deposit along with the offer, which may be a percentage of the bids value or a fixed amount. The shows the estimates of the bidder to do the job of perform the contract On finalization of tenders, the EMD of unsuccessful tenderers are returned normally without interest. If a tender is successful, i.e. he is selected to get the order but he withdraws or do not take adequate action to perform, the EMD is forfeited. therefore, only those bidders who are serious and confident of performing shall only participate in the tenders.

3.4 Validity of Offers

Offers are supported to kept valid as or terms of tenders. Valid means, the company treating tender shall have the right to accept the bid till the date of validity. It too happens often that the company is not able to decide to accept or reject the offers within the validity date. In such case, the normal course the requiring tender to extent the validity date. However, it cannot be taken for granted that all tenders shall extend the validity. Those who do not are automatically out of the race.

3.5 Competitive Offers

Competitive offers are offers which are close to market rate or estimate cost of the job. There will be less resistance in rates of the bidders who compete who compete with each other to get the order. Here the bidders are seriously interested in performing the contract.

3.6 Technical Bids

Here, the tenders mention about the technical capability and experience in the particular type of job and how technically, the tenderer shall execute the contract. He may have mentioned special conditions in addition to what is required under the tender’s condition.

3.7 Commercial Bids

Also called Price Bids, is the price that the tender offers with payment terms, time line, mode of payment, interest payable, etc. In most of the cases, price bid is opened only when the tenderers pass the test of technical bid, i.e. technical bid is acceptable by the company.

3.8 Pre Bid Meeting

Many a time, in order to explain the scope of work or to clarify any doubt of the tenders, a meeting is organised by the company treating the tender, the prospective bidders, who can be all the bidders who have shown interest or only to short list tenders.

3.9 Price Escalation de-escalation

There are contracts which for fairly long duration, may be one year or more. The rate granted may not be good for long time, obviously due to inflation. Sometimes tenders are granted based on input cost. The input cost may rise suddenly. For example, in transport contract the rates may be directly related to fuel cost which may rise time. Such clauses are called same, which will determine when escalation and hoe much escalation.

3.10 Variation clauses in tender

A tender term ultimately becomes the terms of the contract, once the tender is awarded to a party. In many cases, some of the terms of the agreement would depend on some eventualities, situations not expected, and on anything not within the control of the parties. Therefore, the agreement should be drafted in a manner that such issues can be addressed and terms and conditions can be varied.

Party to an agreement can always sit together and modify/change the terms of agreement. Such flexibility in the original contract is always good. However, price escalation or de-escalation is not considered as variation of a contract, since it is done as per the terms of contract only.

4.0 Retendering and Revised bids.

Sometimes due to certain reasons a particular tender is cancelled and fresh tender to floated. The reason can be, non of rates found acceptable, flaw/ shortcoming in the tender document, proper procedure is not followed. The is called re-tendering. The subject matters and scope of work remains same, may be modified slightly. The number or reference is changed and it forms a new tender with old scope pf work.
Revised bids mean the tender is same but the tenderers are given a scope of reviewing their bids, which have not been found acceptable. Here, no change is made in the tender documents, particularly scope of work.

5.0 Award of contract

A contract is awarded through a letter which is called work order. Sometimes, when the work is large with several clauses, a separate agreement is signed, for commercial and legal prudence, both should be done at the same time, since agreement to contract is not a contract, unless actually signed by the parties.
In few occasions, before issuing the work order, a “letter of intent” (LOI) is given. Li is an intention with a condition that subject to certain compliances. The “work order” shall be issued. Technically, LOI is not binding. It only communicates the intention. This needs to be formalized by an agreement.

5.1 Evaluation of bids

Bids are normally evaluated by group of executives called tender committee. The committee goes through the bids, makes critical examination and ultimately recommends a party for approval of the competent authority. Depending on the value the tender, there can few levels of approving authority in the organization. A finance officer is normally included in the tender committee for obvious reason. Sometimes, the final approval is also done with concurrence of a senior finance executive.

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5.2 Security/ Caution Deposit

Normally, the earnest money deport(EMD) deposited along with the bids is consulted into security deport. If the SD requirement is more, addition amount is asked for from the bidder/ vendor. The purpose of keeping the amount is to cover the risk of non-performance, wrong performance or any damage done to the property of the organization or against setting of loss done to any other reason.
Sometimes, a part payment, may be the last instalment is withhold against ultimate no claim by the stakeholders. This is returned after lapse of reasonable time.

5.3 Mobilization Advance

In few contracts, particularly engineering contracts the tenderer is required to make substantial investment/ expenditure initially. Therefore, all advances are paid to the tenderer to mobilise resources for the particular job/ project. This advancement is adjustment against further instalment payment or at the time of full and final payment.

6. Precaution to be taken in respect of various contract terms

Precaution depends on the type of organization, the value of the tender, the recorded credibility of the party etc. However, few precautions are very common and should be taken care of before awarding the contract.
(i) Terms and conditions should be clear, within law, commercially acceptable norms and technically possible ;
(ii) if there is SOP,, operational manual, DOP, the same to be followed. Diverting from your own prescription is not fair and may lead to confusion, misunderstand and criticism, apart from legal issues;
(iii) Adequate publicity with an intention to larger and valid participation is always good; more competition, more price advantage.
(iv) Datelines should be made for each element of event and to be strictly followed.

(v) Normally, in large companies, there are special and general terms. General terms apply to all tenders. Special terms apply to the particular tender for which bids are being called for.
(vi) Uniform bidding format for all so that like to like comparison can be made.
(vii) Calling of tender shall be with proper authority
(viii) The tender committee shall be constituted with proper authority and with persons having knowledge in the subject matter of the tender. However, only one person from the dealing departments should be there.

(i) Proper evaluation to be made with explanation. Qualified offers should be avoided. This should be clarified in pre bid meeting.
(ii) Acceptance should be done within the validity of the offer. Other offer may lapse and will result to legal complication
(iii) Finance officers should be involved in various stages. officers of suitable level to be associated, with proper approval of the seniors.
(iv) Should be approved by proper authority. Thereafter the work order to be issued.
(v) Proper acceptance to be taken and recorded.
(vi) Proper security deposit as per terms to be retained.

7.Essential Contract Terms with Arbitration Clause

A contract is a legally binding agreement between two or more parties, outlining their mutual rights, obligations, and responsibilities. It serves as the foundation for business relationships and provides a framework for resolving conflicts. A well-drafted contract not only protects the interests of the parties but also reduces the chances of disputes and facilitates smoother enforcement. Including an arbitration clause allows parties to settle disputes efficiently and

privately, avoiding lengthy court battles. Below are the essential terms that should be included in a contract with an arbitration clause:

1. Parties to the Contract

A contract must clearly identify the parties involved. This includes specifying the full legal names of the parties, their addresses, and their legal status (such as individual, partnership, or corporate entity). This section should also include the details of the authorized representatives signing the contract, ensuring that they have the necessary authority to bind the party they represent.

- **Example:**
    - **Party A:** XYZ Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at [Address].
    - **Party B:** ABC Pvt. Ltd., a company incorporated under the Companies Act, 2013, having its registered office at [Address].

This section helps establish the legal standing of the parties and avoids confusion regarding the identity of the parties involved.

2. Background (Preamble)

The preamble sets the context and purpose of the contract. It provides a brief background of why the parties are entering into the agreement and the key objectives they aim to achieve through the contract. While not legally binding, the preamble is helpful in interpreting the contract if there is any ambiguity in the terms.

- **Example:**
  "WHEREAS Party A is engaged in the business of software development and Party B intends to engage Party A to develop a customized software product for its business needs…"

The preamble gives insight into the intent and commercial background behind the agreement.

3. Definitions of Terms Used

Defining key terms in the contract ensures clarity and consistency. The definitions section prevents ambiguity and misinterpretation by clearly specifying the meaning of important terms used in the contract.

- **Example:**
    - "Agreement" means this contract and all annexures, schedules, and amendments attached hereto.
    - "Confidential Information" means any information disclosed by one party to the other that is marked confidential or should reasonably be treated as confidential.
    - "Force Majeure" refers to an event beyond the reasonable control of the parties, such as natural disasters, war, or government actions.

Precise definitions help in resolving disputes related to the interpretation of contract terms.

4. Subject Matter of the Contract

This section outlines the core purpose of the contract. It describes the products, services, or obligations to be delivered under the agreement. The scope, quality standards, timelines, and performance expectations should be detailed here.

- **Example:**

- Party A agrees to develop and deliver a customized software product in accordance with the specifications outlined in Annexure A.
- Party B agrees to provide all necessary support and information required for the successful completion of the project.

Clearly defining the subject matter ensures that both parties have aligned expectations and reduces the likelihood of misunderstandings.

5. Rights of Each Party

This section specifies the legal and commercial rights granted to each party under the contract. It includes the right to payment, the right to receive services/products, the right to terminate the contract, and any other specific entitlements.

- **Example:**
  - Party A has the right to receive timely payments as per the payment schedule.
  - Party B has the right to inspect and test the product before accepting delivery.

Defining the rights of each party ensures that their interests are protected and legally enforceable.

6. Obligations of Each Party

This section outlines the duties and responsibilities of each party under the contract. It specifies the expected standard of performance and the consequences of failure to meet these obligations.

- **Example:**
  - Party A shall deliver the software in compliance with the specifications within the agreed timeframe.
  - Party B shall make payments as per the agreed schedule and provide necessary cooperation.

Clearly defined obligations prevent disputes over performance and liability.

7. Warranties of each party; assumptions which the parties are making about each other.

8. Confidentiality and Privacy of the Agreement

This clause ensures that any sensitive information exchanged between the parties during the term of the contract is kept confidential. It defines what constitutes confidential information and the duration of confidentiality.

- **Example:**
  - Both parties agree not to disclose confidential information to third parties without prior written consent.
  - Confidentiality obligations shall survive for five (5) years after the termination of this agreement.

A strong confidentiality clause protects trade secrets and proprietary information.

9. Indemnity Against Any Wrong Doing

An indemnity clause protects one party from losses or damages arising from the actions or negligence of the other party. It outlines the extent of indemnification and any limitations.

- **Example:**

- Party A shall indemnify Party B against any claims, damages, or losses arising from Party A's breach of contract or negligence.

This section ensures that parties are compensated for losses caused by the other party's wrongful actions.

10. Designation of the persons who can Modify or Continue the Agreement

This section specifies the duration of the contract and the conditions under which it may be extended or modified.

- **Example:**
  - The contract shall remain valid for a period of 12 months unless terminated earlier by mutual consent.
  - Any modification or extension of the contract shall be done in writing and signed by both parties.

Defining the duration and modification terms ensures that the contract remains effective and adaptable.

11. Event of Breach/Non-Performance

This clause defines the events that constitute a breach of contract and the remedies available.

- **Example:**
  - Failure to deliver the product within the agreed timeline shall constitute a breach.
  - Non-payment within 30 days of the due date shall be considered a breach.

This section ensures that breaches are clearly identified and addressed.

12. Compensation Clause

(I) Pre-Determined Compensation (Liquidated Damages Clause):

This specifies the fixed amount payable in the event of a breach.

- **Example:**
  - Party A shall pay liquidated damages of ₹50,000 for each week of delay beyond the delivery date.

(ii) Claims for Loss:

The contract should allow for claims of actual loss incurred due to the breach.

- **Example:**
  - Party B may claim actual damages arising from Party A's failure to deliver the product.

13. Settlement of Disputes

(I) Arbitration Clause:

- Any dispute arising from this agreement shall be referred to arbitration under the Arbitration and Conciliation Act, 1996. One person may be selected as arbitrator by both the parties or each party shall appoint one arbitrator and these two arbitrators shall appoint third arbitrator, who will be the presiding arbitrator.
- The seat of arbitration shall be, and the language shall be English.

(ii) Mediation Clause:

- The parties shall first attempt to resolve the dispute through mediation before proceeding to arbitration.

14. Force Majeure

This clause protects parties from liability due to events beyond their control.

- **Example:**
    - Neither party shall be liable for any delay or failure due to war, natural disasters, or government actions.

15. Closure of the Agreement

This clause outlines the conditions under which the contract is considered closed.

- **Example:**
    - The contract shall be deemed closed upon successful completion of terms or mutual termination.
    - If there is a breach, the contract shall be closed after the parties have settled all claims.

By successful execution of the term of agreement, the parties shall jointly decide the agreement closed without any claim on each other. This can also be done where there is a breach of contract and settlement arrived at after the breach.

PART B: ECONOMIC LAWS (30 MARKS)

1.	**Industrial laws**	
a.	Factories Act	
b.	Code of Wages, 2019	
c.	Payment of Gratuity Act	
d.	Payment of Bonus (Amendment) Act ,2015	
e.	Employees Provident Fund Act	
f.	Employees State Insurance Act	
g.	Disciplinary Laws; Prevention of Sexual Harassment to Women a Law relating to Contract Labors; Law relating to Pollution & and Shops & Establishments	
2.	**Commercial Laws**	
a.	Sales of Goods Act	
b.	Negotiable Instruments Act	

Factories Act

1.0 Introduction

Factories Act is a social legislation and it provides for the health, safety, welfare and other aspects ofthe workers in the factories. The Act is meant to provide protection to the workers from beingexploited by the greedy business establishments and it also provides for the improvement of workingconditions within the factory premises.

The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processesand establishments falling within the definition of 'factory' .

1.1 Important definitions

Competent person

A person or an institution recognized as such by the Chief Inspector for the purposes of carrying outtests, examinations and inspections required to be done in a factory under the provisions of this Act.

Hazardous Process

any process or activity in relation to anindustry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes, or effluents thereof would-

- cause material impairment to the health of the persons engaged in or connected therewith, or
- result in the pollution of the general environment.

Manufacturing process

- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport,delivery or disposal. It cannot be restricted an activity which may result into manufacturing somethingor production of a commercially different article.The 'manufacturing process' cannot be interpretedin a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

Worker

a person employed, directly or by or through any agency(including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing

process.

Factory

any premises including the precincts thereof-

- whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without theaid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belongingto the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

- For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

Occupier

Section 2(n) defines the term 'occupier' of a factory as the person who has **ultimate control** over thee affairs of the factory, which may b:

- any one of the individual partners;
- in the case of a company, any one of the directors:
- in the case of a factory owned or controlled by the Central Government or any State Government,or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shallbe deemed to be the occupier;

Notice by occupier

at least 15 days before he begins to occupy or use anypremises as a factory, send to the Chief Inspector, a written notice containing the name and situation of the factory, the name and address of the occupier, the nature of manufacturing process,the details of workers etc. Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the dateon which such person takes over charge.

Duties of occupier

Every occupier shall ensure, so far as is reasonablypracticable, the health, safety and welfare of all workers while they are at work in the factory.

Inspector

Section 8 provides that the State Government may appoint such persons with the powers as detailed below-

- to enter into any place which is used, or which he has reason to believe is used as a factory;
- make examination of the premises, plant, machinery, article or substance;
- inquire into any accident or dangerous occurrence,
- require the production of any document relating to factory;
- seize or take copies of any register, record or other documents of any portion thereof as he may consider necessary;
- to take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination;

- to exercise such other powers as may be prescribed.

Certified surgeons

.The duties of certified surgeons are asfollows-

- the examination and certification of young persons;
- the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;

-

2. 0 Welfare measures

The Factories Act takes care of the workers in the following aspects-

- health of the workers in the working environment;
- safety of the workers including in the hazardous process;
- welfare of the workers;
- working hours of adults;
- employment of young persons;
- Annual leave with wages;

2.1 Health

The following are to be taken care of by the occupier of the factory:

- cleanliness;
- disposal of waste and effluents;
- ventilation and temperature;
- dust and fume;
- artificial humidification;
- overcrowding;
- lighting;
- drinking water;
- latrines and urinals;
- spittoons

2.2 Cleanliness

every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisances. Others to be taken care of are:

Disposal of wastes and effluents

Ventilation and temperature

Dust and fume

Artificial humidification

Overcrowding

Lighting

Drinking water

Latrines and urinals

Spittoons

2.3 Safety

The factory is to take safety measures in respect of the following-

- Fencing of machinery;
- Work on or near machinery in motion;
- Employment of young persons on dangerous machines;
- Striking gear and devices for cutting off power;
- Self-acting machines;
- Casing of a new machinery;
- Prohibition of employment of women and children near cotton openers;
- Lifting machines, chains, ropes and lifting tackles;
- Revolving machinery;
- Floors, stairs and means of access;
- Pits, sumps openings in floors etc.,
- Excessive weights;
- Protection of eyes;
- Precaution against dangerous fumes, gases, etc.,
- Precautions regarding the use of portable electric light;
- Explosive or inflammable dust, gas etc.,
- Precaution in case of fire;
- Safety on buildings and machinery;
- Maintenance of buildings;
- appointment of safety officers.

2.4 Hazardous Processes

The State Governmentmay, may appoint a Site Appraisal Committee.

to examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within 90 days of the receipt of such application. It shall not be necessary to obtain a further approval from the Central Boardof the State Board of pollution authorities.

3. Responsibility of the occupier

The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards;
- to draw up an onsite emergency plan and detailed disaster control measures;
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises;
- maintain the health records of the employees.

- appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

4. Welfare

The Act provides the welfare measures to be taken in a factory for the workmen employed in thefactory. The following are the welfare measures prescribed in the Act to be provided by the factory to their workmen-

Washing facilities

Separate and adequately screened facilities shall be provided for the use of male and female workers.The washing facility shall be convenientlyaccessible and shall be kept clean.

Facilities for storing and drying clothing

make provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

Facilities for sitting

arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they make take advantage of any opportunities for rest which may occur in the course of their work.

First aid appliances

first aid appliances shall be provided and maintained so as to be readilyaccessible during all working hours.In a factory where more than 500 workers are employed an ambulance of the prescribed size containing the prescribed equipment, nursing staff etc., shall be provided and made readily available at all times.

Canteens

if more than 250 workers are employed in a factory a canteen or canteens shall be provided and maintained by the occupier for the user of the workers.

Shelters, rest rooms and lunch rooms

if more than 150 workers are employed adequate and suitable sheltersor rest rooms and a suitable lunch room with provision for drinking water,

Crèches

if more than 30 women workers underthe charge of women trained in the care of children and infants.

Welfare Officers

if 500 or more than workers

5.0 Working hours of adults Working hours

no adult worker shall be required or allowed to work in factory for more thannine hours in any day; no period shall exceed five hours at a stretch.

inclusive of his intervals for rest, they shall not spread over more than ten and half hours in any day.

5.1 Weekly holidays

no adult worker shall be required or allowed to work in a factory on the first day of the week unless-

- he has or will have a holiday for a whole day on one of the three days immediately before or afterthe said day; and

- the manager of the factory, has, before the said day or the substituted day whichever is earlier-
    - delivered a notice at the office of the Inspector of his intention to require the worker to workon the said day and of the day which is to be substituted; and
    - displayed a notice to that effect in the factory.

But for any special reasons, it becomes necessary to make Sunday the working day, a substitutional holiday is made compulsory. But the intendment of the section is not that the employers will at their will convert successive on all theSundays primarily intended to be holidays as working days and make any other working day of theweek a holiday instead of Sunday.

5.2 Compensatory holidays

Section 53 provides that if a worker is deprived of any of the weekly holidays he shall be allowed within the month in which the holidays were due to him or within two months immediately followingthat month, compensatory holidays of equal number to the holidays so lost shall be given.

5.3 Shift duty

- a holiday for a whole day shall mean in his case a periodof 24 consecutive hours beginning when his shift ends;
- the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

5.4 Overtime

where a worker works in a factory for more than 9 hours in any day or formore than 48 hours in any week, he shall, in respect of the overtime work, be entitled to wages at therate of twice his ordinary rate of wages.

5.5 Double employment

no adult worker shall be required or allowed to work in any factoryon any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

6. Employment of women and children

- no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M.;
- the State Government may authorize the employment of any women between the hours of 10PM and 5 A.M.;
- there shall be no change of shifts except after a weekly holiday or any other holiday.

Employment of young persons

Chapter VII of the Act deals with the employment of young persons.

Prohibition of employment of young children

The Act provides that no child who has not completed his 14^{th} year shall be required or allowed towork in any factory. no child shall be employed or permitted to work in any factory for morethan four and a half hours in any day and during night.The period of work of all children employedin a factory shall be limited to two shifts which shall not overlap or spread over more than five hourseach. Each child shall be employed in only one of the relays which shall not, except with the previouspermission.

Adolescent worker

A child who has completed his 14^{th} year or an adolescent shall not be allowed to work in any factory unless-

- a certificate of fitness granted is in the custody of the manager of the factory; and
- such child or adolescent carries while he is at work a token giving a reference to such certificate.

7.0 Annual leave

Every worker who has worked for a period 240 days or more in a factoryduring a calendar year shall be allowed leave with wages for a number days calculated at the rateof-

- if an adult, one day for every 20 days of work performed by him during the previous calendar year;
- if a child, one day for every 15 days of work performed by him during the previous calendar year.

The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more-

- any days of lay off, by agreement or contract or as permissible under the standing orders;
- in the case of a female worker, maternity leave for any number of days not exceeding 12 weeks;

and

- the leave earned in the year prior to that in which the leave is enjoyed

but the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusiveof all holidays whether occurring during or at either end of the period of leave.

7.1 Carry forward of leave

The total number of leave that may becarried forward shall not exceed 30 days in the case of an adult or 40 in the case of a child. A worker,who has applied for leave with wages but has not been granted, shall be entitled to carry forwardthe leave refused without any limit.

7.2 Availing of leave

apply in writing to the Manager not less than 15 days before the dateon which he wishes his leave to begin, to take all the leave or any portion thereof allowable to himduring the calendar year. Such application shall be made not less than 30 days before the date on which he wishes his leave to begin, if he is employed in a **public utility service.** An application for leaveshall not be refused unless refusal is in accordance with the scheme for the time being in operation.

Wages during leave period

entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediatelypreceding his leave, exclusive of any over time and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles.

Advance payment

worker who has been allowed leave for not less than four days, in case ofan adult, and five days, in the case of a child, shall, before his leave begins be paid the wages duefor the period of the leave allowed.

Encashment of leave

discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir ornominee, shall be entitled to the wages in lieu of the quantum of leave to which he was entitled immediately before such termination of his services. Such payment shall be made before the expiryof the **second working day** from the date of discharge, dismissal or quitting and where the worker is superannuated or dies while in service, before the expiry of **two months** from such date.

Code on Wages

General Introduction to labour codes

Labour laws, also called industrial law, are one of the tools of social sector reforms and regulations. There may be other schemes in establishments but labour laws specifies the minimum benchmark for compliance for factories and industrial establishments. There are employers in India (not many) who extent more wages, facilities and benefits than the minimum bench mark stipulated under the law.

Business being considered as extension of the society, the provisions in labour laws relating to health, sanitation, working conditions, future provisions, compensations are called social security legislations as workers are part of the society.

With huge population employed in organised sector labour laws play an important role in social sector in India. However, almost 65 % of the working force are engaged in unorganised sector, which includes self employment, domestic services, agricultural workers etc. There is hardly any protection or welfare measures for the unorganised sector barring few laws which have remained without any impact in view of the mass population which come under this category.

With much talks year after year in various forums, there was no change in labour laws for decades. The concept remained same, threshold limits on bonus, gratuity, minimum wage changed due to inflation and of course, there is maternity leave enhancement.

The code addresses few concerns of the workers and employees and also of employers.

Code of Wages, 2019

General

(1) The inspector of Factories is re-designated as Inspector cum Facilitator
(2) No discrimination on wages on the ground of gender

(3) No discrimination on recruitment on the ground of gender, unless employment of women in the job is prohibited by law

Minimum wages

Shall be fixed by AG on time rate/ piece rate and on hourly, daily, or monthly basis. Central Govt. may fix minimum floor level of wages and also for overtime.

(most of the present provisions under the Minimum Wages Act has been retained}

Payment of wages

May be made by electronic mode Central Govt.(CG) may make it mandatory

Wage period and payment shall be as follows

Basis	**When payable**
Daily	At the end of the shift
Weekly	Last day of the week
Fortnightly	Before the end of the second day after the end of fortnight
Monthly	Within the end of 7th/ 10^{th} day after the month

The list of authorised deduction is mentioned in the code and is similar to the present Act. Maximum deduction can be 50% of the wages.

Bonus

Provisions under the present Act is retained. Minimum working of 30 days in the previous year qualifies to get bonus. Minimum amount is Rs.100 or 8.33% of the wages drawn in last year, whichever is higher.

Employees drawing up to Rs, 21000 per month are eligible to get bonus but the calculation will be made assuming the monthly wages as 7000/-. The minimum bonus in percentage term is 8.33 and maximum is 20.A list of establishment where the Act will not apply has been mentioned in the code. The provisions shall not apply to Govt. organisation, unless specifically made applicable, by appropriate Govt.(AG)

Provisions relating to dis qualification, method of calculation, allocable surplus, set on set of are same as the present Bonus Act

Few important definitions introduced

"unorganised sector" means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, with employees less than ten; also includes a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by the Industrial Disputes Act, 1947 or Chapters III to VII of this Code.

"fixed term employment" means the engagement of an employee on the basis of a written contract of employment for a fixed period:

"gig worker" means a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship;

"home-based worker" means a person engaged in, the production of goods or services for an employer in his home or other premises of his choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;

"social security" means the measures of protection afforded to employees, unorganised workers, gig workers and platform workers to ensure access to health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code.

The Payment of Gratuity Act, 1972

1.0 Introduction and Background

The Payment of Gratuity Act, 1972 is a landmark labor welfare legislation in India that provides financial benefits to employees as a token of appreciation for their long-term service. It ensures that employees receive a lump-sum payment upon retirement, resignation, death, or disablement. The Act applies to establishments with 10 or more employees and mandates gratuity payments for those who have completed five years of continuous service.

Before the enactment of the Payment of Gratuity Act, 1972, there was no uniform gratuity law in India. Different states had their own gratuity provisions, creating inconsistencies in employee benefits. Recognizing the need for a centralized framework, the Indian government introduced the Act to ensure that employees across industries received a standardized gratuity payment upon completing a certain tenure.

The Act was passed in 1972 and came into force on September 16, 1972. Since then, it has undergone several amendments to enhance employee benefits, increase the maximum gratuity ceiling, and include additional categories of workers.

2.0 Objectives of the Act

The primary objectives of the Payment of Gratuity Act, 1972 are:

- Financial Security: To provide employees with financial support upon retirement or resignation.
- Employee Welfare: To recognize and reward long-term service in an organization.
- Legal Obligation on Employers: To make gratuity payments a statutory right for eligible employees.
- Uniformity: To ensure a standardized approach to gratuity payments across different industries.
- Protection Against Employer Misuse: To prevent employers from denying gratuity to eligible employees.

3.0 Applicability of the Act

The Act applies to:

1. Industries & Establishments Covered:

- Factories
- Mines
- Oilfields
- Plantations
- Ports and Railways
- Shops and commercial establishments with 10 or more employees

2. Employees Covered:

- Any employee (skilled, unskilled, managerial, or clerical) who has completed at least five years of continuous service.
- The Act applies to both private and public sector employees.
- Government employees are covered under separate gratuity rules.

3. When the Act Becomes Applicable:

- Once an establishment has 10 or more employees, the Act becomes applicable.
- If the number of employees falls below 10 later, the employer must still comply with the Act.

4. Some important definitions

This section defines key terms used in the Act, including:

"Appropriate Government" – Refers to the Central Government for public sector companies and the State Government for private sector companies.

"Completed Year of Service" – Continuous service for one year.

(c) "Continuous Service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike or a lock-out or cessation of work not due to any fault of the employees concerned,

in case of interrupted service for one year, he has been actually employed by an employer during the twelve months immediately preceding the year for not less than-

- 190 days, if employed below the ground in a mine, or
- 240 days, in any other case, except when he is employed in seasonal establishment.

seasonal establishment (not less than seventy-five per cent of the number of days on which the establishment was in operation during the year.)

"Employee" – Any person (other than an apprentice) engaged in wages in an establishment, irrespective of their designation or role.

"Employer" – The owner, agent, or manager responsible for managing an establishment.

5. Nomination

Employee, who has completed one year of service, shall make within thirty days of completion a nomination

(a) If an employee has a family at the time of making a nomination the nomination shall be made in favor of one or more members of his family otherwise, the nomination shall be void.

(b) If at the time of making a nomination, the employee has no family, the nomination can be made , but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make within 90 days a fresh nomination in favour of one or more members of this family.

6. Claim

An employee or his nominee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, shall apply ordinarily within thirty days from the date of gratuity became payable:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

A legal heir of an employee who is eligible for payment of gratuity shall apply, within one year;

after the expiry of the periods specified above shall also be entertained by the employer if the applicant adduces a sufficient cause for the delay.

7. Who can get Gratuity and when

An employee is entitled to gratuity under the following conditions:

- Retirement: When an employee retires after completing at least five years of continuous service.
- Resignation: If an employee voluntarily resigns after serving for at least five years.
- Death or Disablement: In the case of death or permanent disability, gratuity is paid to the nominee or legal heir. The five-year service rule is waived in such cases.
- Termination: If an employee is terminated for reasons other than misconduct, they are entitled to gratuity.
- Superannuation: If an employee reaches the age of superannuation as per company policy.

8. Calculation of Gratuity

Gratuity is calculated using the following formula:

\text{Gratuity} = (\text {Last Drawn Salary} \times 15 \times \text {Number of Years of Service}) / 26

Where:

Last drawn salary includes basic pay + dearness allowance.

15 days' wages are considered for each completed year of service.

The division by 26 accounts for working days in a month.

Example Calculation:

If an employee’s last drawn salary (basic + DA) is ₹50,000 and they have worked for 20 years, their gratuity would be:

(50,000 \times 15 \times 20) / 26 = ₹5,76,923

Gratuity Limit:

The maximum gratuity amount payable is ₹20 lakhs as per the latest amendment.

Any amount exceeding this is taxable under the Income Tax Act.

8. Forfeiture of Gratuity

Employers have the right to forfeit gratuity in certain cases, as per Section 4(6) of the Act:

- Misconduct Involving Moral Turpitude: If an employee is dismissed due to serious misconduct, such as theft, fraud, or violence, gratuity can be forfeited.
- Willful Negligence: If an employee causes financial loss to the employer due to negligence.
- Violation of Company Code of Conduct: If an employee engages in criminal activities that harm the organization.

9. Employer's Obligations Under the Act

Employers must:

- Maintain Gratuity Records: Keep track of eligible employees and their gratuity contributions.
- Pay Gratuity on Time: Ensure gratuity is paid within 30 days of the employee's termination.
- Nomination Process: Employees must nominate a beneficiary (spouse, children, or other legal heirs) for gratuity payment in case of death.
- Interest on Delayed Payment: If an employer fails to pay gratuity on time, they must pay interest on the amount.
- Submit Gratuity Forms: Employers must file necessary forms with the Controlling Authority.

10. Legal Remedies for Employees

If an employer fails to pay gratuity, the employee can take legal action:

- Filing a Complaint: Employees can approach the Controlling Authority under the Act.
- Labor Court Proceedings: If the issue is unresolved, the case can be taken to the Labour Court or Industrial Tribunal.
- Penalty for Non-Compliance: Employers refusing to pay gratuity may face:
- A fine of ₹10,000 or more.
- Imprisonment of up to two years for willful default.

11. Authority under the Act

If an employer-

- refuses to accept a nomination or to entertain an application for payment of gratuity, or
- Offers to pay less than what is payable or
- rejecting eligibility to payment of gratuity, or

having received an application for payment of gratuity, fails to issue notice within fifteen days; the claimant employee, nominee, or legal heir, as the case may be, may within ninety days of the occurrence of the cause for the application, apply to the controlling authority for issuing a direction.

Appeal. -Any person aggrieved by an order of the controlling authority may, within sixty days from the date of the receipt of the order, prefer an appeal to the s the appellate authority

12. Compulsory insurance

Every employer, the Central Government or a State Government, shall, obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India

may, be exempted where there is established an approved gratuity fund arrangement, and every employer employing five hundred or more persons

failing which he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

Introduction

The Payment of Bonus Act, 1965 is the act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. It extends to the whole of India, in every other establishment in which twenty or more persons are employed on any day during an accounting year.

Scope

The act applies to all factories and other establishments employing 20 or more workers on any day during an accounting year, mandating that eligible employees receive a minimum bonus of 8.33% of their salary, aiming to share profits with workers and promote industrial peace

History

The practice of paying bonuses in India appears to have originated during the First World War when certain textile mills granted 10% of wages as war bonus to their workers in 1917.

In certain cases of industrial disputes demand for payment of bonus was also included. In 1950, the Full Bench of the Labor Appellate evolved a formula for determination of bonus.

Traditionally, the owners, during a festival eve, would call the workers and pay some cash to meet additional expenditure.

Applicability

(a) Every factory & Every other establishment in which 20 or more persons (less than 20 but 10 or more if appropriate Govt. notifies) are employed on any day subject to certain exemptions.

(b) Bonus to be paid within eight months from the expiry of the accounting year.

- **Establishments to include departments, undertakings and branches**

  Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus.

  Accounting Year

Definitions

1. **"Accounting Year"**

   The year commencing on the 1st day of April;

2. **"Employee"**

   Any person (other than an apprentice) employed on a salary or wages not exceeding Rs.21000/- per menses in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work or hire or reward, whether the terms of employment be express or implied. [Section 2(13)].

   Part time permanent employees working on fixed hours are employees.

3. **Employer**

In relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under clause (f) of Sub-section 7(1) of the Factories Act, 1948, the person so named; and

In relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent. [Section 2(14)].

4. **Salary or Wages**

The "Salary or Wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living) but does not include:

- Any other allowance which the employee is for the time being entitled to;
- The value of any house accommodation or of supply of light, water, medical attendance or any other amenity or of any service or of any concession supply of food grains or other articles;
- Any traveling concession;
- Any bonus (including incentive, production and attendance bonus);
- Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;
- Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him;
- Any commission payable to the employee [Section 2(21)].

5. **Establishment**

The word 'establishment' is not defined in the Act. Normally, 'establishment' is a permanently fixed place for business. The term 'establishment' is much wider than 'factory'. It covers any office or fixed place where business is carried out.

- **Establishments to Include Departments, Undertakings and Branches**

  Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act.

Bonus Eligibility

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

Bonus Disqualification

An employee shall be disqualified from receiving bonus under this Act: -

(a) fraud; or
(b) riotous or violent behavior while on the premises of the establishment; or
(c) theft, misappropriation or sabotage of any property of the establishment

Act not to apply to certain classes of employees

1. Employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;
2. Seamen as defined in clause (42) of Section 3 of the Merchant Shipping Act, 1958;
3. Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by registered or listed employers;
4. Employees employed by an establishment engaged in any industry called on by or under the authority of any department of Central Government or a State Government or a local authority;
5. Employees employed by:
    a. The Indian Red Cross Society or any other institution of a like nature including its branches;
    b. Universities and other educational institutions;

c. Institutions (including hospitals, chambers of commerce and social welfare institutions) established not for the purpose of profit;

6. Employees employed through contractors on building operations;
7. Employees employed by the Reserve Bank of India;
8. Employees employed by:
   The Industrial Finance Corporation of India;
   Any Financial Corporation established under Section 3, or any Joint Financial Corporation established under Section 3A of the State Financial Corporations Act, 1961;
9. The Small Industries Development Bank of India established under Section 3 of the Small Industries Development Bank of India Act, 1989;
10. The National Housing Bank;

    The appropriate Government has necessary powers under Section 36 to exempt any establishment or class of establishments from all or any of the provisions of the Act for a specified period having regard to its financial position and other relevant circumstances and it is of the opinion that it will not be in the public interest to apply all or any of the provisions of this Act thereto.

Computation for Number of Working Days

An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which, -

a. he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
b. he has been on leave with salary or wages;
c. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
d. the employee has been on maternity leave with salary or wages, during the accounting year

Calculation of Bonus

The method for calculation of annual bonus is as follows:

- Calculate the Available Surplus.
- Available Surplus = Gross Profit – (deduct) the following:
- Depreciation admissible u/s 32 of the Income Tax Act.
- Development allowance

Calculation of Bonus Simplified

The method for calculation of annual bonus is as follow:

1. Calculate the gross profit in the manner specified in-
   First Schedule, in case of a banking company, or
   Second Schedule, in any other case.
2. Calculate the Available Surplus. Available Surplus = A+B, where A = Gross Profit – Depreciation admissible u/s 32 of the Income Tax Act - Development allowance - Direct taxes payable for the accounting year (calculated as per Sec.7) – Sums specified in the Third Schedule.

   B = Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year – Direct Taxes in respect of such gross profits as reduced by the amount of bonus, for the immediately preceding accounting year.
3. Calculate Allocable Surplus

   Allocable Surplus = 60% of Available Surplus, 67% in case of foreign companies.
   Make adjustment for ‘Set-on’ and ‘Set-off’. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years, as illustrated in Fourth Schedule.
   The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.
4. In case of an employee receiving salary or wages above Rs.21000 the bonus payable is to be calculated as if the salary or wages were Rs. 7000 p.m. only.

Allocable & Available Surplus

Allocable Surplus:

(a) Company with Indian owners, 67% of the available surplus in an accounting year.

(b) In any other case, 60% of such available surplus [Section 2(4)].

Available Surplus:

It means the available surplus under Section 5. {Section 2(6)}.

Available Surplus (Deductions)

- Direct taxes payable for the accounting year (calculated as per Sec.7) – Sums specified in the Third Schedule.
- Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year.
- Allocable Surplus = 60% of Available Surplus, 67% in case of foreign companies.
- Make adjustment for 'Set-on' and 'Set-off'. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years.

Set On & Set Off

- Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.
- The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.
- It may happen that in some years, the allocable surplus is more than the amount paid to employees as bonus calculating it @ 20%. Such excess 'allocable surplus' is carried forward to next year for calculation purposes. This is called 'carry forward for being set on in succeeding years'. The ceiling on set on that is required to be carried forward is 20% of total salary and wages of employees employed in the establishment. In other words, even if actual excess is more than 20% of salary/wages, only 20% is required to be carried forward. The amount set on is carried forward only up to and inclusive of the fourth accounting year. If the amount carried forward is not utilised in that period, it lapses [section 15(1)].
- Similarly, in a particular year, there may be lower 'allocable surplus' or no 'allocable surplus' even for payment of 8.33% bonus. Such shortfall is also carried to next year. This is called 'carry forward for being set off in succeeding years'. Thus, in every year, 'allocable surplus' is calculated. To this amount, set on from previous years is added. Similarly, set off, if any, from previous years is deducted. This gives amount which is available for distribution as bonus. The amount set off is carried forward only up to and inclusive of the fourth accounting year. If the amount carried forward is not set off in that period, it lapses. [section 15(2)].

Time-limit for payment of bonus

(a) where there is a dispute regarding payment of bonus pending before any authority under section 22, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute;

(b) in any other case, within a period of eight months from the close of the accounting year.

Recovery of Bonus Due from an Employer (Sec-21)

Where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person or in the case of the death of the employee, his assignee or heirs may, make an application to the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in particular employee.

Amount of bonus

- To be proportionate to his earning,
- Min. 8.33% max, 20%of last year wages drawn, subject to Rs.100/- (adult) Rs.60 (adolescent).

Rights of Employees

- Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.
- Right to refer any dispute to the Labour Court/Tribunal.

- Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.
- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

Disputes under the Bonus Act

Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to investigation and settlement of industrial disputes in force in a State and the provisions of that Act.

Maintenance of Register, Records & Inspectors

- Every employer shall prepare and maintain such registers, records and other documents in such form and in such manner as may prescribed.
- The appropriate Government may, by notification on the Official Gazette, appoint such person as it think fit to be Inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

Inspector's Duties

An Inspector appointed may,

(a) Require an employer to furnish such information as he may consider necessary;
(b) At any reasonable time and with such assistance, if any, as he thinks fit enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment.

The Employee's Provident Fund Act 1952

Introduction:

- Provident Fund has come into force to give better future to employees on their retirement & his dependents in case of his death during employment
- The Employees Provident Funds Act 1952 is compulsory contributory fund for the future of an employee after retirement or for his dependents in case of his early death
- Act is applicable to all states of India except Jammu and Kashmir.

Eligibility:

- Every industry employing 10 or more persons (180 industries are specified in Schedule 1 of the Act)
- Every industry employing 10 or more persons which the Central Govt. may notify
- Any other establishment notified by the Central Government even if employing less than 10 persons.

Eligibility & Entitlement:

- Every employee employed directly / through a contractor who is in receipt of wages are eligible to become a member of the fund (exception - Apprentice under the Apprentices Act and casual laborers)
- Irrespective of permanent / probationary employees, all employees are eligible for joining the PF scheme from the date of joining the service
- Minimum 10% of the basic pay for establishments employed less than 10 persons; sick industries declared by necessary authority; Jute, Beedi, Brick, Coir & Guar Gum Industries / Factories
- Other industries maximum 12% of the basic pay

A member can contribute voluntarily more than statutorily prescribed rate which will be transferred to his PF A/c. No employers' contribution.

Wages and salaries

- Basic Wages means all emoluments which are earned by an employee while on duty or [on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in case to him, but does not include-
- I) the cash value of any food concession;
- ii) any dearness allowance (that is to say, all cash payments by whatever name caller paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
- iii) any presents made by the employer.
- Salary consists of two parts i.e. earnings & deductions
- Provident Fund is one of the statutory deduction done by the employer at the time of salary payment.

Exempted Establishment

- Exempted establishment does not mean that the establishment is exempted from the provisions / applicability of EPF&MP Act 1952.

  Exempted establishment means the establishment which is permitted to form its own Provident Fund Trust for benefits of employees. The employer executes the Trust Deed, prepares the Provident Fund Rules and nominates the trustees amongst its employees both from management and employee side for administering and managing the Trust.

On Withdrawal or change of job

- The PF amount should be withdrawn only when one doesn't have any job for more than 2 months or is not willing to join any job further or the organisation which he has joined do not have Pf facilities.
- If one has been employed with the past employer for a period less than six months, it is better to get the PF amount transferred to the new company, otherwise he will not be getting the employer contribution.

Benefits

- Employees can take advances / withdraw the PF in case of retirement, medical care, housing, family obligation, education of children & financing of life Insurance Polices
- Upto 90% of the PF amount can be withdrawn at the age of 58 years or before one year of actual retirement

- PF amount of the deceased member is payable to nominees / legal heirs
- Equal contribution by the employer
- present interest rate @ 8.5%
- PF A/c can be transferred if any member changes from one establishment to other where the PF Scheme is applicable.

Interest

- Interest is credited to the members PF A/c on monthly running balance
- Interest rate is fixed by the Central Government in consultation with the Central Board of trustees of EEPF every year during March / April
- The present rate of interest is 8.1%

Nomination

- The member can nominate other person / persons to receive the Fund amount in the event of his death.
- The nomination details provided by the members are maintained at the Regional Provident Fund Office for use in the event of death of the member.

Full Settlement

- PF A/c settled immediately under the circumstances;
    - Retirement
    - Retirement on account of permanent incapacity
    - Termination of service on retrenchment
    - Voluntary Retirement Scheme (VRS)
    - Permanent migration from India to settle abroad / taking employment
    - For female members leaving service for getting married
- PF A/c settled after two months under the circumstances;
    - Resignation from the services

Employers' Role & Responsibility

Monthly Returns

- Filing monthly PF returns with the EPFO within 15 days of the close of each month

Annual Returns

- Employer shall send to the Commissioner within one month of the close of the year, a consolidated Annual Contribution Statement

Penalty

- 12–37% interest is payable for the delayed period in remitting contributions/ administrative charges depending upon the delayed period
- Collect nomination on joining: must be family member, if having family: wife and children, in case of married.

The Employees Deposit-Linked Insurance Scheme 1976 (EDLI)

Application

- EDLI scheme is compulsory for all the existing members who become members of the PF Scheme
- Life insurance benefit (death coverage) of the employee is available under this scheme while in service

Calculation

- EDLI is calculated on EDLI slab – Rs. 6500/-
- 0.50% EDLI calculated on total EDLI slab (Rs. 6500) wages and transferred to EDLI fund
- 0.01% EDLI Administration charges calculated on total EDLI wages
- EDLI / administration charges are payable by the employer

Eligible

- Person who is eligible to receive PF dues of deceased member who died while in service is only eligible to receive EDLI fund

Exemption

- Employer can seek exemption from the Scheme if similar / better benefits are provided other than the Scheme with the consent of majority of employees

Summary of Contributions Contd..

- **Notes:**
- Amount is deposited with Central PF Commissioner
- Exempted establishment: not to deposit with Commissioner-may have own PF Trust
- This trust has to be created by the employer and shall have to be recognized by the Provident Fund and Income Tax Authorities. Once they are recognized, they need not have to deposit PF amount with the PF Commissioner.
- Instead they will invest amount in certain types of securities as prescribed under IT Rules and Government Guidelines.
- If interest is more than minimum rate, the same shall be shared between the employees proportionately.
- In case of less interest the employer has to pay the minimum rate of interest.
- Trust will be represented both by management and workman and shall be subject to audit and inspection both by PF and IT Authorities.
- VPF: Voluntary contribution by employee over and above Statutory contribution- no matching contribution by employer
- PF Commissioner to invest funds in specified investments

Administration of the Act

- EPFO is one of the World's largest Social Security Organisation in terms of clientele and the volume of financial transactions undertaken. At present it maintains 19.34 crore accounts pertaining to its members.
- The Act and Schemes framed there under are administered by a tri-partite Board known as the Central Board of Trustees, Employees' Provident Fund, consisting of representatives of Government (Both Central and State), Employers, and Employees.
- The Central Board of Trustees administers a contributory provident fund, pension scheme and an insurance scheme for the workforce engaged in the organized sector in India. The Board is assisted by the Employees' PF Organization (EPFO), consisting of offices at 135 locations across the country. The Organization has a well equipped training set up where officers and employees of the Organization as well as Representatives of the Employers and Employees attend sessions for trainings and seminars.The EPFO is under the administrative control of Ministry of Labour and Employment, The Board operates three schemes - EPF Scheme 1952, Pension Scheme 1995 (EPS) and Insurance Scheme 1976 (EDLI).

Employees' State Insurance Act, 1948

1. **Objective and coverage of the Act**

To provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for related matters in an integrated form through a contributory fund. Employees' State Insurance Act, 1948 extends to the whole of India Corporation.

The ESI Act is applicable to all non-seasonal factories employing 10 or more persons. The Central Govt. has extended the coverage to Shops, Hotels, Restaurants, Road Motor Transport establishments, Cinema including preview theatres, Newspaper establishments, establishment engaged in Insurance Business, Non-Banking Financial Companies, Port Trust, Airport Authorities, Warehousing establishments employing 20 or more Persons, where Central Govt. is the appropriate Govt.

The existing wage limit for coverage under the Act, effective from 01.01.2017, is Rs. 21,000/- per month (Rs. 25,000/- per month in the case of Persons with Disability).

AREAS COVERED

The ESI Scheme is now notified 668 Districts in 36 States and Union Territories, which include 565 fully notified districts and 103 partially notified districts where scheme is notified in Districts Headquarters Area & in Prominent Industrial Centres Under Section 1(3) of ESI Act, 1948.

2.Definitions.

"contribution" means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act**;**

"immediate employer" in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer:

"insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act;

"permanent partial disablement" means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement: Provided that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement;]

"permanent total disablement" means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement: s; (21)

"temporary disablement" means a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury temporarily incapable of 2 [doing the work which he was doing prior to or at the time of the injury]; (22)

"wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes 3 [any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or layoff and] other additional remuneration, if any,

3.Administration of the Act

The ESI Act is administered by a corporate body called the Employees' State Insurance Corporation (ESIC),

It has members representing Employees, Employers, the Central Government, State Governments, Medical Profession and the Parliament.
The Director General is the Chief Executive Officer of the Corporation
The other bodies at the national level are the Standing Committee the Medical Benefit Council, a specialized body which advises the Corporation on administration of Medical Benefit.
At the Regional and Local levels, the Regional Boards and Local Committees have been constituted.

It discharges its obligations and duties through a net-work of Regional Offices and Branch Offices, Hospitals and Dispensaries spread over the entire country.

The designation of Inspector has been re-designated as “Social Security Officer” to enroll them as facilitator of the Scheme rather than to act as mere inspectors

4. Contribution-

The Employees' State Insurance Funds are primarily built out of employer’s contribution and employees contribution payable monthly as a fixed percentage of wages.

Total contribution-6%

Employer’s contribution-4.75%

Employee’s contribution-1.75%

N.B.- Employee’s receiving a daily average wage up-to Rs 149/- are exempted from payment of contribution. Employees will, however, contribute their own share in respect of these employees.

4.1ContributionPeriods and Benefit Periods

Workers, covered under the ESI Act, are required to pay contribution towards' the scheme on a monthly basis. Cash benefits under the scheme are generally linked with contributions paid.
Starts 3 months after the closure of a contribution period. There are two contribution periods each of six months’ duration and two corresponding benefit periods also of six months’ duration as under.

Contribution period	**Corresponding** Benefit period
1st April to 30th Sept.	1st Jan to 30th June of the following year
1st Oct to 31st March	1st July to #1st Dec. of the following year

5. Benefits

5.1 Maternity Benefit

Claimed after confinement or for miscarriage, by obtaining a certificate of confinement or miscarriage from the Insurance Medical Officer/insurance Medical Practitioner, and submit it to her Branch Office personally or by post along with a claim for Maternity Benefit. The claim form also contains a declaration of abstention from work.

If Benefit is desired before confinement, a Notice and Certificate of Pregnancy and a Certificate of Expected Confinement obtained from the Insurance medical Officer/ Insurance Medical Practitioner are also required to be submitted.

For claiming Benefit in the event of death of an insured woman leaving behind a child, her nominee and if there is no such nominee, her legal representative should submit personally or by post to the Branch Office of the deceased insured woman, claim for the Benefit together with a certificate of death of the insured woman.

An insured woman claiming Maternity Benefit for Sickness arising out of pregnancy, confinement, premature birth of child or miscarriage should submit her claim in the manner as for sickness benefit.

5.2SicknessBenefit

Sickness signifies a state of health necessitating medical treatment and attendance and abstention from work on medical grounds. Financial support extended-by the Corporation is such a contingency is called Sickness Benefit.

- Contributions should have been paid in respect of an insured person in the corresponding contribution period for not less than 78 days.
- The daily rate of Sickness Benefit during any benefit period is the "standard benefit rate". This rate corresponds to the average daily wage of an insured person during the corresponding contribution period and is roughly half of the daily wage rate. Benefit is paid for Sundays also.
- Sickness benefit is payable' for a maximum period of 91 days in any two consecutive benefit periods.
- **Extended Sickness Benefit** is a Cash Benefit paid for prolonged illness due to any of the 34 specified diseases as mentioned below.
- The daily rate of Extended Sickness Benefit is 40% more than the Standard Sickness Benefit rate admissible.
- After exhausting Sickness Benefit payable for 91 days the ESB is payable up to a further period of 124/309 days that can be extended up to 2 years in special circumstances.

Enhanced Sickness Benefit is cash benefit for the insured persons undergoing sterilization operation of vasectomy/ tubectomy for family planning.

5.3Disablementbenefit-

Employment injury means a personal injury caused to an employee by an accident or occupational disease arising out of and in course of his employment in a factory or establishment covered under the Employees' State Insurance Act.

Also, an accident arising in the course of employment is presumed also to have arisen out of his employment if there is no evidence to the contrary. This is called **notional extension** of employers' premises.

An accident happening while traveling in a transport provided by the employer or while meeting an emergency is accepted subject to certain conditions, to have arisen in the course of and out of employment.

Injuries suffered while under the influence of drink sand drugs take away the right to the employee to this benefit.

Temporary Disablement Benefit is paid periodically in arrears as the evidence of incapacity (medical certificate) is produced.

Permanent total disablement and permanent partial disablement benefits are paid in the form of pensions. Current employment for wages or engagement in any gainful activities is no bar to payment of permanent disablement benefits.

An insured person suffering from an occupation disease is also entitled to full medical care

The daily benefit rate for permanent total disablement and temporary disablement is 40% more than the Standard Sickness Benefit rate and is roughly equivalent to about '10%of the wage rate.

For permanent partial disablement, the rate of benefit is proportionate to the percentage of loss of earning capacity.

The benefit is paid for Sundays also.

Temporary Disablement Benefit is paid as long as disablement lasts.

The permanent disablement benefit is paid for the life-time of the beneficiary

5.4Dependents'Benefit

It is a monthly pension payable to the eligible dependents of an insured person who dies as a result of an Employment Injury or occupational disease.

Dependent- A widow, a legitimate or adopted son, below the age of 25 years and an unmarried legitimate or adopted daughter.

Benefit for each Beneficiary
The total divisible benefit is equivalent to the temporary disablement benefit rate (roughly 70% of the wage rate). The widow/widows share 3/5th of the benefit and the legitimate or adopted son and daughter 2/5th each of the benefit.

5.5Funeralexpenses

This component consists of a lump sum payment toward the expenditure on the funeral of the deceased insured person.

The lump sum amount of this benefit is equal to the actual expenditure, not exceeding Rs. 5000/- towards the funeral of the deceased insured person.

No contribution condition is required for this Benefit. The only condition for admissibility of this Benefit is that the deceased person should have been an insured person at the time of his death.

The expenses are payable to the eldest surviving member of the family of the deceased insured person.

5.6Physicalrehabilitation
The Corporation at its cost arranges for the vocational rehabilitation of disabled insured persons provided the disability has been assessed at above 40% and the beneficiary is not over 45 years of age. The training is provided at vocational rehabilitation centers run by the Govt. of India etc. The fee, travelling expenses etc. are borne by the Corporation

Sexual Harassment of Women at Workplace (POSH) Act

1.0 Introduction and background: The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressed) Act,2013, also known as POSH Act is a legislation aimed at preventing and addressing sexual harassment of women at the workplace in India. This is a landmark legislation and made an instrument for women to legally protect their rights at workplace.

The Supreme Court of India laid down the significant set of guidelines for preventing and addressing sexual harassment at workplace in the historical case of **Vaisakha vs. State of Rajasthan, 1997**. These guidelines are remarkable steps towards recognizing the growing issue of Sexual harassment at workplace. The Supreme Court drew its strength from the various article of Constitution such as Article 14, 15, 19(1)(g) and 21, also from the rules of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The POSH Act was passed by the Look Sabha on 3rd September 2012 and it was passed by the Raja Sabha on 26th February, 2013. In April, 2013, the President approved the Bill. Finally, the Act came into effect on 9th December, 2013 by extending its applicability throughout the whole India.

2.0 Key provisions of the POSH Act: The Act consist of 8 chapters, 30 Sections. Some key provisions of this Act are as follows: -

- **Definition of Sexual Harassment:** According to Section 2(n) of POSH Act, 'Sexual Harassment' means any unwelcome act or behavior, whether directly or indirectly, such as physical contact and advances, demand or request for sexual favors, making sexually coloured remarks or showing pornography or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.
- **According to Section 3(2), These are some acts which may amounts to sexual harassment mentioned below:** -
    - **I.** Implied or explicit promise of preferential treatment at her workplace, or;
    - **II.** An Implied or explicit threat of detrimental treatment at her workplace;
    - **III.** Implied or explicit threat that affect her present or future employment status,
    - **IV.** Interfering in her work or creating an intimidating or offensive or hostile work environment for her;
    - **V.** Humiliating treatment that could affect her health and safety

- **Aggrieved woman:** defines the term 'Aggrieved woman' by mentioning two situations, i.e., I) in case of workplace, a woman of any age, whether employed or not, is subject to sexual harassment by the employer and ii) in case of any dwelling house or place, a woman of any age, who is an employee in such dwelling place is subject to sexual harassment is fall under this section.
- **Appropriate government** Any workplace which is controlled, established, owned and wholly or partially financed by any funds which provided by any central government or state government shall be termed as 'Appropriate Government.'
- **Employee: Section 2(f)** defines the term 'employee', any person who is employed directly or indirectly at any place on daily or temporary basis through an agent, including contractor, with or without the knowledge of principal employer, and whether for any remuneration or not, working voluntarily or otherwise in any organisations. Co-workers, trainee, probationer also termed as employee under this section.
- **Workplace: Section 2(o)** defines the term 'workplace', workplace means any government and non government organisation, nursing homes, any sports stadium whether residential or not used for training

purpose, any place visited by the employee during the course of employment including the transportation facilitated by the employer, and a dwelling place or house.

- **Complaint for sexual harassment:** According to **section 9** any aggrieved woman can make a complaint to the internal committee, if it is constituted or local committee in case internal committee is not constituted, within three months from the date of incidents and in case of series of act, the date of last incidents. Where such aggrieved woman is unable to make complaints, her legal heir can make complaints on behalf of her.
- **Conciliation:** Section 10 states that an internal committee or local committee before initiating an inquiry under section 11, arrange a settlement between the aggrieved woman and respondents at request of the aggrieved woman.
- **Inquiry:**
    - The Internal committee or local committee should follow the service rules provided by the organisation in case the accused person is an employee of that organisation.
    - In case of domestic worker, the local committee shall forward the case to the police within a period of seven days from the date of registering the case under IPC (Bharatiya Nyaya Sanhita)
    - The local committee and the internal committee shall have the same right as vested in the civil court when they are conducting a suit in the following matter, such as- summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery of evidence, and they have to complete the enquiry within 90 days.
- **Punishment for false or malicious complaint and false evidence**: The local committee and internal committee, if it is satisfied that the complaint against the respondent is false or malicious, they can take legal action against the complainant in accordance with the rules prescribed by the organisation and if no such rules exist, in such manner as may be prescribed. This provision also states that a complaint is not considered false or malicious for the reason of insufficient proof of evidence. Proper inquiry should be made before establishing the malicious intent of the complainant.
- **Confidentiality**: Section 16 of this Act makes it clear that the information related to sexual harassment does not subject to the provision of Right to Information Act, 2005. Confidentiality must be maintained through out the proceeding of this Act. The contents of the complaints, address and identity of the aggrieved party, information relating to inquire, proceedings etc. shall not be communicated to or published by the media, press and public at large.
- **Penalties for non-compliance of this Act:** Section 26 of this Act provides penalties for non-compliance of this Act. If an employer does not comply with the provision of this Act in the following circumstances, he is liable to pay monetary damages of Rupees 50,000,
    - Fail to constitute internal committee,
    - Fails to act upon the complaints of the internal complaints committee,
    - Contravening or attempts to contravene or abetting contravention of provision of this Act or rules
    - Fails to file an annual report with the District Officer
    - Fails to formulate POSH Policy for the organisation.

This provision also states that if employer convicted of the same offence then he shall be liable to get twice the punishment than the first conviction, liable to cancellation of license, liable to withdrawal or non-renewal or approval or cancellation of the registration.

Laws relating to Pollution and Environment :

Environment (Protection) Act, 1986; Air (Prevention and Control of Pollution) Act, 1981; Water (Prevention and Control of Pollution) Act, 1974.

Environment (Protection) Act, 1986

Purpose of the Act:

The Act was passed after the **Bhopal Gas Tragedy (1984)** to give the **Central Government** the power to protect the environment from pollution caused by industries and human activities. It applies to the whole of India and covers air, water, land, and hazardous substances.

Key Features and Provisions:

(a) Powers of the Central Government (Section 3 & 5)

- The Central Government can take **any necessary steps** to prevent and control environmental pollution.
- It can **set environmental standards** for industries and other activities.
- It has the power to **issue directions** to industries, authorities, and individuals to stop harmful activities.

(b) Restrictions on Polluting Activities (Section 7 & 8)

- Industries **cannot release pollutants** (such as toxic chemicals, smoke, and waste) beyond the prescribed limits.
- Anyone working in an industry or business must take **proper safety measures** to prevent environmental harm.

(c) Inspection and Enforcement (Section 10 & 11)

- Government officials can **enter any premises, inspect factories, collect samples, and check whether pollution control measures are followed**.
- They can conduct **scientific tests** to determine the level of pollution caused by an industry.

(d) Penalties for Violations (Section 15)

- If anyone **violates** the Act, they can be punished with:
    - **Imprisonment** up to **5 years**, or
    - **Fine** up to **₹1 lakh**, or both.
    - If the violation continues, an additional fine of **₹5,000 per day** is imposed.
    - In extreme cases, the imprisonment may be extended up to **7 years**.

(e) Public Participation and Complaints (Section 19 & 20)

- Citizens can **file complaints in court** against environmental violations.
- The government can **publish reports** on environmental pollution to raise awareness.

Significance of this Act:

- This Act provides **broad powers** to regulate all kinds of environmental pollution.
- It is an **umbrella law** that works alongside the **Air Act, Water Act, and Hazardous Waste Rules**.

Air (Prevention and Control of Pollution) Act, 1981

Purpose of the Act:

The Air Act was passed to **control air pollution** caused by industries, vehicles, and power plants. It helps ensure **clean air** by regulating the emission of harmful gases and particles.

Key Features and Provisions:

(a) Creation of Pollution Control Boards (Section 3 & 4)

- **Central Pollution Control Board (CPCB)** monitors air pollution at the national level.
- **State Pollution Control Boards (SPCBs)** enforce air quality rules in states.

(b) Declaring Air Pollution Control Areas (Section 19)

- The **State Government** can declare certain areas as **Air Pollution Control Areas** where industrial activities causing pollution may be **restricted or banned**.

(c) Requirement for Industry Approval (Section 21)

- Industries **must obtain permission** from the State Pollution Control Board **before starting operations**.
- If they emit harmful gases or smoke beyond the prescribed limit, their operations can be **stopped or fined**.

(d) Prevention of Air Pollution from Vehicles (Section 20 & 22)

- Vehicles must meet **pollution control standards**, and **emission checks (PUC certificates)** are required.
- Factories using **fuel like coal or diesel** should take **pollution control measures** to reduce smoke and harmful gases.

(e) Inspection and Monitoring (Section 26 & 28)

- Pollution Control Boards can **inspect factories, collect samples, and test emissions** to ensure compliance.

(f) Penalties for Violations (Section 37)

- If any industry **violates air pollution norms**, they can face:
    - **Imprisonment up to 6 months**, or
    - **Fine up to ₹10,000**, or both.
    - For repeated violations, imprisonment can be extended to **7 years**.

Significance of this Act:

- Helps **control air pollution from industries and vehicles**.
- Empowers authorities to **take strict action** against polluters.
- Helps improve **air quality for public health and the environment**.

Water (Prevention and Control of Pollution) Act, 1974

Purpose of the Act:

The Water Act was passed to **prevent water pollution** and protect **rivers, lakes, and groundwater** from industrial waste and sewage. It ensures that **clean water** is available for drinking, agriculture, and other purposes.

Key Features and Provisions:

(a) Establishment of Pollution Control Boards (Section 3 & 4)

- The **CPCB and SPCBs** are responsible for monitoring **water pollution levels** and enforcing pollution control rules.

(b) Restrictions on Polluting Water Sources (Section 24 & 25)

- **Industries and municipal bodies cannot discharge pollutants into water bodies** without proper treatment.
- Before setting up a factory, industries must **get approval** from the SPCB for waste disposal.

(c) Pollution Control Measures (Section 17 & 18)

- Pollution Control Boards can:
    - **Set water quality standards** for rivers, lakes, and wells.
    - **Inspect industries and sewage treatment plants**.
    - **Order industries to install treatment plants** before discharging waste.

(d) Power to Enter, Inspect, and Collect Samples (Section 20 & 21)

- Government officials can **enter any premises, collect water samples, and check pollution levels**.

(e) Penalties for Violations (Section 41, 42 & 43)

- If any industry or person **pollutes water sources**, they can face:
    - **Imprisonment up to 6 years**,
    - **Heavy fines**, or
    - **Closure of the polluting industry**.

Significance of this Act:

- Helps protect **rivers, lakes, and groundwater** from pollution.
- Ensures **clean drinking water** for people.
- Imposes **strict penalties** on industries that pollute water bodies.

Conclusion:

These three laws form the **foundation of India's environmental protection framework**:

1. **Environment (Protection) Act, 1986** – A **broad law** that covers all forms of pollution and empowers the government to take preventive and corrective actions.
2. **Air (Prevention and Control of Pollution) Act, 1981** – Focuses specifically on **reducing air pollution** from industries and vehicles.
3. **Water (Prevention and Control of Pollution) Act, 1974** – Aims to **protect water bodies** from industrial and sewage pollution.

COMMERCIAL LAW

Sale of Goods Act

Sale is an absolute transfer. It will never come back or revert to the seller unless he repurchases. Other kind of transfer may revert to the transferor. When we go to buy something, we make assumptions in sale transactions

- seller is the absolute owner with authority to sale
- goods are free from any encumbrance(right)
- seller is clear about buyer's requirement
- buyer shall pay immediately on delivery of goods at the agreed price.

1 Formation of contract

Contract of sale:

Agreement to sell

A contract of sale of goods is a contract whereby the seller transfers the property in goods to the buyer for a price. The contract may be absolute or conditional.

Agreement of sale

(I) In a contract of sale where the transfer of the property in the goods is to take place in a future date or subject to certain condition thereafter to be fulfilled, the contract is called an agreement to sell. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled.

(I)executory and executed

(ii)pure and simple contract but AOS is contract plus conveyance

Formalities of the contract:

For a contract of sale an offer and acceptance of the offer is must. The offer must specify the goods offered for sale and the price to be paid by the buyer. The buyer may also give an offer to buy. The contract may be made in writing or by word of mouth, or partly in writing and partly in word of mouth or may be implied for the conduct of the parties.

Subject matter of the contract:

various types of good which can be sold/ bought: Goods here means every kind of moveable property other than actionable claims and money, but includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract for sale.

Existing goods/ future goods

The sale or contract for sale may be either for the existing goods owned or possessed by the seller or for the future goods. Future goods means goods which will be manufactured or produced is procured by the seller after the agreement is made. Contingent goods mean goods whose acquisition/ manufacture is subject to happening of an event.

Goods perishing before making the contract or before sale but after making the contract

The contract is void if the goods without the knowledge of the seller and at the time of the contract was made, perished or become so damaged that the description made in the contract cannot be answerable. Where there is an agreement to sell of specific goods and subsequently the goods without any fault of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

2. Ascertainment of price:

The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties. However, if the price was not fixed by the aforesaid manner the buyer shall pay a reasonable price to the seller. If there is a manner of pricing agreed, but any of the parties not allowing the other to proceed on the particular manner shall be liable to compensate for loss to the other.

Where there is an agreement to sell on the terms that the price is to be fixed by the valuation of a third party and the third party did not make the valuation the agreement may be avoided. But however, if the third party is prevented from doing the valuation by one of the parties the other party may make a suit for damages.

3. Conditions and Warranties:

A stipulation in a contract of sale with reference to goods which are subject thereof may be a condition or a warranty. The condition or a warranty is an essential part of the contract, nonperformance of which may give right to the parties to repudiate the contract, claim for damages but not a right to reject the goods.

Condition in a contract for sale to be treated as warranty

1. Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

2. Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated.

3. The aforesaid 1&2 is not applicable when the fulfillment of any condition or the warranty is excused by law.

4.Sale by description

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

4.1 Sale by sample

A contract for sale is a contract for sale by sample where the contract satisfies the following conditions:

1) The bulk shall correspond with the sample in quality.
2) The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
3) The goods shall be free from any defect, rendering them merchantable, which would not be apparent on reasonable examination of the sample.

Buyer can avoid the contract if it does not match either with the sample or description.

4.2 Ascertained/ unascertained goods

Contract to sale of goods which are still not ascertained is valid and it normally happens with future goods. unascertained goods be contracted for sale but no property in the goods shall be transferred to the buyer unless and until the goods are ascertained.

4.3 When the property (ownership) passes to the buyer

(I) 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 are agreed upon.

(ii) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of price or the time of delivery of the goods is postponed.

(iii)Where there is a contract for the sale of specific goods but those are not in transferable state then the property in the goods cannot be transferred until the goods are put into deliverable state.

(iv) Where there is a contract for sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other acts for the purpose of ascertaining the price of the goods in the contract the property does not pass till such act is done.

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

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

5.Rights of an unpaid seller

Unpaid seller is the person whose whole price not tendered or when conditions of negotiable instrument has not been fulfilled by reason of dishonor of instrument. Rights of the unpaid seller may be as follows.

1. Lien for goods in his possession,
2. In case of insolvency – right to stop goods in transit
3. Right to re sale. Incase goods not passed- right to withhold delivery
Sale is not rescinded by the exercise of the above rights.
4. lien on goods: shall not able the buyer to use the goods
5.legal Suit for price
6.Damages for non-acceptance

6. Rights of the buyer
(rights of the buyer is exercisable when purchased in credit or deferred payment)

1. Damages for non-delivery
2. Specific Performance of the terms of the contract
3. Breach of warranty – diminution of price and damages for breach

7. Rights both buyer and seller

1.In case of repudiation of contract – affected party may sue for breach after time of performance has passed

2.Interest and Special Damages

Negotiable Instruments Act, 1881

1. Introduction

i. The word has originated from Greek, where "negate" means doing business or trade. In course of time, the meaning changed and "negotiable" word came to be known as something which is legally capable of transfer by endorsement or delivery. In general English negotiation means Something that can be changed through discussion or bargaining or talking on fixing a deal with mutual benefit.

ii. The words "negotiable" and "instrument" refer transferability by delivery and any written document by which there is a creation of a right in favor of certain individual some person. The terms negotiable instrument is understood as a document transferable by delivery.

iii. It is defined under S.13 of The Negotiable Instrument Act 1881. According to this provision "A negotiable instrument means a promissory note, bill of exchange or cheese payable either to order or to bearer"

2. Objective of negotiable instrument act 1881:

The primary objectives of the Negotiable Instruments Act, 1881 include:

i. Legal Framework: To provide a legal framework for regulating the operation and transactions of negotiable instruments.

ii. Protection of Rights: To protect the rights and interests of the parties involved in the transaction.
iii. Ensuring Certainty: To provide certainty and predictability in dealing with negotiable instruments.
iv. Facilitating Trade and Commerce: To facilitate smooth trade and commerce by providing a reliable mechanism of payment and credit.

3. Characteristic of a negotiable instrument

Following are the important characteristics of a negotiable instrument:

i. The holder of the instrument is presumed to be the owner of the property mentioned.
ii. The holder in due course is entitled to sue on the instrument in his own name.
iii. The instrument is transferable till maturity and in case of cheese till it becomes expired.
iv. They are freely transferable
v. Represents and possess quality of money
    a) not effected by original source
    b) passes by delivery

Bank note and currency note, though they have the characteristics of negotiable instrument, but still have been excluded from the purview of the Act.

4. Non-negotiable Instrument

"Non-negotiable instruments" are a legal or financial document which cannot be transferred freely to another party in a way that gives transferee the same right as original holder. Unlike negotiable instruments, these documents do not allow the holder to claim payment from the issuer unless specific conditions are met.

5. Quasi negotiable Instrument

A quasi-negotiable instrument is a financial document that has some features of a negotiable instrument but is not fully negotiable. These instruments can be transferred, but the transferee does not get a better title than the transferor and cannot claim payment like a holder in due course.

In other words, instruments which are not having the features of negotiable instruments as per the Act but as per usage/custom are considered to be negotiable

6. Presumption as to negotiable instrument

Under the Negotiable Instruments Act, 1881, certain legal presumptions are applied to negotiable instruments to simplify their enforcement and ensure smooth transactions. These are enshrined under S.118 of Negotiable Instrument Act 1881.

i. It is presumed that every negotiable instrument is made, drawn, accepted, endorsed, or transferred for consideration (i.e., something of value has been exchanged).

ii. If a negotiable instrument bears a date, it is presumed to have been made on that date, unless proven otherwise.

iii. It is presumed that a bill of exchange was accepted within a reasonable time before its due date.

iv. If an instrument has been transferred (endorsed) before its maturity date, it is presumed that it was transferred before it became due unless proven otherwise.

v. When a negotiable instrument has multiple endorsements, it is presumed that they were made in the order they appear on the instrument.

vi. In the case of a bill of exchange, it is presumed that the stamp affixed on the instrument was duly stamped and affixed at the proper time.

vii. A person who holds a negotiable instrument is presumed to be a holder in due course, meaning they acquired it in good faith and for value, unless proven otherwise.

7. Types of Negotiable instrument

In general, the negotiable instrument is categorized into:

Instruments negotiable by law, that is under the Negotiable Instruments Act 1881.

i. Promissory notes

ii. Bills of exchange

iii. cheques

8. Promissory note: Definition

It is defined under S.4 of The Negotiable Instrument Act 1881. According to this section a "Promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

9. Essentials of a Promissory note

i. Written agreement

ii. Express promise to pay

iii. Unconditional promise

iv. Signed documents

v. Maker to be clearly identified

vi. Payee and sum must be certain and not contingent

vii. Payment in legal currency

10. Bill of exchange: definition

An instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to order of a certain person or to the bearer of the instrument. The maker of a bill of exchange is called drawer, the person thereby directed to pay is called "drawee". When in the bill of exchange or in any endorsement thereon.

It is mentioned under S.5 of The Negotiable Instrument Act 1881.

11. Essentials of a bill of exchange

i. Should be a written document.
ii. Order to pay
iii. Unconditional
iv. It is drawn and signed by the drawer of the bill
v. Drawer, drawee and payee clearly identified
vi. Payee and sum must be certain and not contingent
vii. It must be properly stamped

12. Distinction between promissory note and a bill of exchange

Promissory note	**Bill of exchange**
A negotiable instrument issued to order the debtor to pay the creditor a certain sum of money within a specific date or on demand.	A negotiable instrument issued by the debtor with a written promise to pay the creditor a certain amount within a specific date or on demand
Written agreement between two parties -maker or drawer and payee	Written agreement between three parties- Drawer, drawee and payee
Acknowledgement of debt	Not necessary
Promise to repay himself	Orders third party to pay
Drawer's liability is primary and absolute	Liability of drawer is secondary and conditional

13. Cheque

A cheque is a bill of exchange drawn upon a specified bank and payable on demand and it includes electronic image of truncated cheque and a cheque in electronic form. It is mentioned under S.6 of The Negotiable Instrument Act,1881.

13.1 Essentials of a cheque:

(i) Must be an order in writing.
(ii) Unconditional order
(iii) signed by the issuer
(iv) Amount in words and figures
(v) Dated
(vi) Payee to be certain

13.2 Parties to cheque

There are 3 parties in cheque.

13.3 Drawer: the customer who signs the cheque

13.4 Drawee: the bank where the drawer is having account

13.5 Payee: the bank who will pay the amount

13.3 Crossing of cheque

The act of drawing two diagonal lines or transverse parallel lines on the face of the cheque is called crossing. A crossing means a direction to the paying banker to pay the money to a person by crediting his account or to a particular banker, and not to pay across the counter. The crossing is made to warn the banker, but not to stop negotiability of the cheque. To restrain negotiability, addition to words. "Not Negotiable" or "Account Payee Only" is necessary. A crossed bearer cheque can be negotiated by delivery and crossed order cheque by endorsement and delivery. A cheque can be crossed by the drawer or by the holder.

13.4 **Who can cross a cheque?**

The drawer of a cheque

The holder of a cheque – where a cheque is issued uncrossed it may be crossed by the holder generally or specially

The banker in whose favour the cheque has been crossed specially may again cross it specially in favour of another banker. The later bank in such a case act as the agent of the former.

13.5 **Object of crossing**:

(j) to give protection and safeguard to the owner of the cheque

(ii) to prevent fraud

(iv) to prevent mis-utilisation of cheque and detect the fraud

14 Distinction between a cheque and bill of exchange

Cheque	**Bill of exchange**
A document used to make easy payments on demand and can be transferred through hand delivery is known as cheque	A written document that shows the indebtness of the debtor towards the creditor
Always drawn on banker	Any other person also including banker
Payable only on demand	Payable on demand or on expiry of a period
Not required; immediately payable; issue of cheque is deemed acceptance	Bill must be accepted

15 **Bank drafts**:

Bank drafts is a BOE issued by one bank to be payable to another branch of the same bank or other bank. Bank drafts are

issued after the bank receives the amount from the customer and thereafter there is no risk of dishonor, other than on technical grounds. It cannot so easily be countermanded. It cannot be made payable to bearer.

16 When bank may refuse payment of cheque?

(i) When a customer countermands payment, i.e. where or when a customer, after issuing instructions not to honor it the banker must not pay it.

(ii) When the banker receives notice of customer's death.

(iii) When customer has been adjudged an insolvent. (S.138 of the NI Act, 1881)

(iv) When the banker receives notice of customer's insanity.

(v) When an order of Court prohibits payment.

(vi) When the customer has given notice of assignment of the credit balance of his account.

(vii) When the holder's title is defective and the banker comes to know of it.

(viii) When the customer has given notice for closing account.

17 Parties to negotiable instrument

The Drawer: the person who draws the bill. bound to compensate in case of dishonor by the drawee.

Drawee: the person on whom the bill is drawn.

The Acceptor: one who accepts the bill. Generally, the drawee is the acceptor, but a stranger may accept it on behalf of the drawee. If the acceptor has reasons to believe that the bill is forged, he will be liable for compensation.

The Payee: one to whom the sum stated in the bill is payable. Either the drawer or any other parson may be the payee.

18 The Holder-(section 8):

is either the original payee or any other person to whom the payee has indorsed the bill. In case of a bearer bill, the bearer is the holder.

1) The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name –

   a) to the possession thereof; and

   b) to receive or recover the amount due thereon from the parties thereto.

2) His rights and title are dependent on the transferor. He has a right to demand and receive but does not have a right to sue.

19 Holder in Due Course:

It is defined under S.9 of NI Act. A holder in due course is one who receives the instrument:

a) for consideration;

b) without notice as to the defect in the title of the transferor; i.e. in good faith; and

c) before maturity.

The Endorser: when the holder endorses the bill to anyone else, he becomes the endorser. Liable to next party to whom he has endorsed. The Endorsee: is the person to whom the bill is endorsed

20 **Reasonable time**:

According to the Negotiable Instruments Act, "reasonable time" refers to the period considered appropriate for presenting a negotiable instrument for acceptance or payment, or for giving notice of dishonor, which is determined based on the nature of the instrument and the usual course of dealing with similar instruments, excluding public holidays.

It is addressed in S.105, S.106, S.107 of negotiable instrument Act 1881.

A) Section 105: States that reasonable time is determined by considering:

- The nature of the instrument.
- The usage of trade or business.
- The circumstances of the case.

B) Section 106 - Reasonable Time for Presentment for Acceptance

- If no specific time is mentioned, a bill of exchange must be presented for acceptance within a reasonable time based on trade practices.

C) Section 107 - Reasonable Time for Giving Notice of Dishonor It states that:

- When a party needs to give notice of dishonor and the parties live in different places, the notice must be sent by post on the next business day after the dishonor of the instrument.
- This ensures that the party receiving the notice gets informed within a reasonable time, preventing unnecessary delays in legal or financial consequences.

21 Maturity

It is defined in S.22, S.23, S.24

A) Meaning of Maturity –

The maturity of a promissory note or bill of exchange is the date at which it falls due.

B) Days of grace –

a) Every promissory note or bill of exchange which is not expressed to be payable on demand ,at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

b) All instruments except for the instrument payable on demand are entitled for 3 days' grace period.

c) Calculation of days of maturity –

i. Where a negotiable instrument is payable on specified date then it shall become payable on that specified date + 3 days of grace.

ii. Where a negotiable instrument is payable on a stated number of days after date or after

iii. sight or after happening of certain event

 then it shall become payable on – The date on which the negotiable instrument is drawn + 3 days of grace.

- The date on which negotiable instrument is presented for sight + 3 days of Grace.
- The date on which the event happens + 3 days of grace.

iv. Where a negotiable instrument is payable on a stated number of months after date or after sight or after happening of certain event then it shall become payable on –

- The corresponding day of relevant month + 3 days of grace.
- The corresponding day of relevant month (The date on which negotiable instrument is presented for sight) + 3 days of grace.
- The corresponding day of relevant month (The date on which the event happens) + 3 days of grace

22 Discharge from liability

Discharge from liability implies when the liability of the parties ceases to exist. Following are the different modes of discharge of instrument:

I. By cancellation, release or payment

a) By cancellation: Cancellation of acceptor's name will discharge the instrument and cancellation of any other party will discharge the party.

b) By release: Release of acceptor will discharge the instrument and release of any other party will discharge the party.

c) By payment: When the amount due on the instrument is paid by the party primarily liable on the instrument, the instrument is discharged.

II. By allowing drawee more than 48 hours:

If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holiday to consider whether he will accept the same, all previous parties not consenting to such allowance are discharged from liability to such holder.

III. By delay in presenting cheques:

If a cheque is not presented within a reasonable time of its issue, and the bank fails and drawer suffers actual damages through such delay, he is discharged from the liability to the holder to the extent of such damage.

IV. Forgery of Endorser's signature in case of Cheque:

The Bank is discharged by PIDC even if the signature of endorser is forged.

V. By qualified acceptance:

If the holder of a bill of exchange agrees to accept qualified acceptance, all the previous parties whose consent is not obtained to such acceptance are discharged from liability,

unless the holder gives notice thereof and the parties give their assent to such qualified acceptance.

VI. By material alteration:

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Again, it may be noted that alteration should be material and immaterial alterations will not affect the instrument and will not discharge any liability.

VII. Discharge of Bank:

As per Section 89, bank is discharged by payment in due course in case of alteration not apparent from records.

23 Dishonor of bill of exchange

Dishonor can be classified in two ways

1. Dishonour by non-acceptance (only for BOE):

A bill is said to be dishonoured by non-acceptance in the following cases –

a) When the drawee does not accept it within 48 hours,

b) When presentment for acceptance is excused and the bill remains unaccepted

c) When the drawee is incompetent to contract.

d) When the drawee is a fictitious person or after reasonable search cannot be found

e) Where the acceptance is a qualified one

2. Dishonour by Non-payment:

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment

24.Discharge of a Negotiable Instruments

When the liability of the party, primarily and ultimately liable on the instrument, comes to an end, the instrument is said to be discharged. The discharge of the instrument results in extinguishment of all rights of action under it and the instrument ceases to be negotiable. After discharge of a negotiable instrument, even a holder-in-due-course acquires no right under it and he cannot bring a suit on the face of it. A negotiable instrument may be discharged in any one of the following ways.

By payment in due course

By the principal debtor becoming the holder

By renunciation of the rights by the holder

By cancellation of the instrument

By an act that would discharge an ordinary contract

Payment-in-due-course, is the payment made in good faith and in accordance with the apparent tenor of the instrument to the rightful holder thereof. Accordingly, it is the payment made in money only on maturity of the instrument and of the entire amount due on it and the person to whom it is made should be in possession of the instrument. Moreover, in order to discharge a negotiable instrument by payment-in-due-course, the payment should be made by the party who is primarily liable on the instrument. So, if a party, who is not primarily liable, makes payment, the instrument is not discharged. The payment-in-due-course discharges not only the negotiable instrument in question but also the parties who are primarily and ultimately liable on the instrument as well.

1. By the principal debtor becoming the holder

When the acceptor of a bill of exchange becomes its holder on or after maturity thereof, all rights of actions thereon are extinguished. An acceptor may become the holder of a bill by the process of negotiation back.

2. By renunciation of the rights by the holder

If the holder of a negotiable instrument expressly gives up or renounces his rights against all the parties, the instrument is discharged. The renunciation can be made by surrendering or delivering the instrument to the party who is primarily liable thereon or declaring in writing the fact of renunciation. Such renunciation discharges the instrument as well as all the parties thereto.

3. By cancellation of the instrument

If the holder intentionally cancels the name of the drawer or acceptor of a promissory note or bill of exchange, the instrument is automatically discharged. It is important to note that the cancellation should be made with an intention to release the party primarily liable on it, which in turn would discharge the other parties thereto. Cancellation of the instrument can be executed either by physical destruction or by crossing out signatures of drawer, acceptor, etc., on the instrument.

4. By an act that would discharge an ordinary contract
5.

A negotiable instrument may also be discharged by an act that would discharge a simple contract for payment of money. This is technically called discharge of negotiable instrument by operation of law. Such a discharge may occur due to expiry of period prescribed for recovery of sum of money due on the instrument, or by substitution of another negotiable instrument for the original instrument or by an agreement.

PART C : COMPANY LAW (40 MARKS)

1.	Types of Companies	
2.	Incorporation of Companies	
3.	Various Stakeholders of the Companies	
4.	Shareholders and Shareholders' Meetings	
5	Directors and Directors' Meeting	
6	Accounts and Audit	
7	Roles and Responsibilities of Board of Directors and Committees	
8	Corporate Governance and CSR	
9	Profits and Dividends (basic concept)	
10	Understanding of Company Dissolution/Liquidation/ Winding Up (basic concept)	

Chapter 1: Types of Companies

1.0 Introduction

Companies Act, 1913, was the first structured law on company form of organisation. Some of the concepts pf 1913 Act are still present in 2013 Act. This Act continued till 1956, when the first Companies Act of independent India was passed in 1956 and this Act has regulated the most eventful years of growth and stabilisation of corporate India. The Companies Act, 2013 consisting of 29 Chapters, 470 Sections and 7 Schedules as against 658 Sections under 13 Parts and 15 schedules in the Companies Act, 1956, was notified partially on 12th September 2013 (55 sections) and partially again on 26th March, 2014 (168 sections with effect from 1.4.2014). Part of the provisions related to National Company Law Tribunal have been notified with effect from 1st June, 2016.The Companies Act, 2013 (hereafter 'The Act') consolidates and amends the law relating to the companies in India and replaces the Companies Act, 1956 in phases, which is 56 years old. The new Act intends to improve corporate governance and to further strengthen regulations for the corporate sector.

The Companies Act, 2013 is administered by the Central Government through the Ministry of Corporate Affairs (MCA) and the Offices of Registrar of Companies, Official Liquidators, Public Trustee, Director of Inspection, National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), etc. The Registrar of Companies (ROC) controls the task of incorporation of new companies and the administration of running companies. The Ministry of Corporate Affairs, was primarily concerned with administration of the Companies Act, 2013, other allied Acts and rules & regulations framed there under, mainly for regulating the functioning of the corporate sector in accordance with law.

Types of Companies

Companies may be classified into various classes on the following basis

2.1. On the Basis of Incorporation

(a) Statutory Companies

These are the companies which are created by a special Act of the Legislature, e.g., the Reserve Bank of India, the State Bank of India, the Life Insurance Corporation, the Industrial Finance Corporation, the Unit trust of India and State Financial Corporations These are mostly concerned with public utilities, e.g. railways, tramways, gas and electricity companies and enterprises of national importance. The provisions of the Companies Act, 2013 do not apply to them unless the special act specifies such application. Banking Regulation Act, 1949 is a special legislation concerning banking companies.

(b) Registered Companies

These are the companies which are formed and registered under the Companies Act, 2013, or were registered under any of the earlier Companies Acts. Many statutory companies have converted into companies when they public issue

2.2 On the basis of liability

(a) Company limited by shares

Section 2 (22) of the Companies Act, 2013, defines that when the liability of the members of a company is limited by its memorandum of association to the amount (if any) unpaid on the shares held by them, it is known as a company limited by shares. The shareholder may be called upon to contribute only to the extent of the amount, which remains unpaid on his shareholdings. His separate property cannot be encompassed to meet the company's debts unlike proprietorship or partnership.

(b) Company limited by guarantee

Section 2 (21) of the Companies Act, 2013 defines it as the company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up. Thus, the liability of the member of a guarantee company is limited up to a stipulated sum mentioned in the memorandum. Members cannot be called upon to contribute beyond that stipulated sum. This is similar to LLP.

(b) Unlimited company

Section 2 (92) of the Companies Act, 2013 defines unlimited company as a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member. The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members.

2.3 On the basis of members

(a) One-person company

The concept of One Person Company (OPC) has now been introduced in India, through Section 2 (62) of Companies Act, 2013 thereby enabling Entrepreneur(s) carrying on the business in the Sole Proprietor form of business to enter into a Corporate Framework. Though this concept is new in India but it is already a part of many other countries like China, Australia, Pakistan and UK etc. According to Section 2 (62) of the Companies Act, 2013 'One Person

Company' means a company which has only one person as a member. A company formed under one-person company may be either:

a) A company limited by shares, or

b) company limited by guarantee, or

c) An unlimited company.

One Person Company is a hybrid of Sole-Proprietor and Company form of business, and has been provided with concessional/relaxed requirements under the Act.

Features of One Person Company (OPC)

(a) Only One Shareholder: Only a natural person, who is an Indian citizen and resident in India, shall be eligible to incorporate a One Person Company.

(b) Nominee for the Shareholder: The Shareholder shall nominate another person who shall become the shareholders in case of death/incapacity of the original shareholder. Such nominee shall give his/her consent and such consent for being appointed as the Nominee for the sole Shareholder. Only a natural person, who is an Indian citizen and resident in India, shall be a nominee for the sole member of a One Person Company.

(c) Director: Must have a minimum of One Director, the Sole Shareholder can himself be the Sole Director. The Company may have a maximum number of 15 directors.

(b) Private Company [Section 2 (68)]

According to Section 2 (68) of Companies Act, 2013 a 'private company' means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

(1) restricts the right to transfer its shares.

(2) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member;

Provided further that:

(a) persons who are in the employment of the company, and

(b) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members, and

(3) prohibits any invitation to the public to subscribe for any securities of the company.

(c) Public company [Section 2 (71)]

According to Section 2 (71) of Companies Act, 2013 a 'public company' means a company which:

(i) is not a private company and

(ii) Seven or more members are required to form the company.

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.A tabular difference between a private and public company is placed below.

Serial No.	Points of difference	Private	Public
1	shareholders	Min-2,-max-200	Min 7- no max.
2	Directors	Min-2-max.-15	Min.-3, max.-15 (may be increased with special resolution)
3	Finance	Cannot raise from public	Can raise
4	Transfer of shares	May be restricted	Cannot be restricted
5.	Name	Use the Suffix "Pvt. Ltd".	Use suffix " Ltd".

(d) Small Company

According to Section 2 (85) of Companies Act, 2013 a ''small company'' means a company, other than a public company:

(1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees or

(2) turnover of which as per its profit and loss account for the immediate preceding financial year. does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees. Presently the threshold limit is Rs. 10 Crores and paid up capital Rs. 100 crore

2.4 On the basis of control

Holding company and Subsidiary company

'Holding' and 'Subsidiary' Companies are relative terms. A company is a holding company of another if the other is its subsidiary. According to Section 2 (46) of the Companies Act, 2013 'holding company', in relation to one or more other companies, means a body corporate of which such companies are subsidiary companies. According to Section 2 (87) of the Companies Act, 2013 'subsidiary company' or 'subsidiary', in relation to any other body corporate (that is to say the holding company), means a body corporate in which the holding company:

a) controls the composition of the Board of Directors, or

b) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

2.5 On the basis of Listing in the recognised Stock Exchange

(a) Listed company (also called widely held)

According to Section 2 (52) of the Companies Act, 2013, a 'listed company' means a company which has any of its securities listed on any recognised stock exchange. Whereas the word securities as per the Section 2 (81) of the Companies Act, 2013 has been assigned the same meaning as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956.Rule 2A of Companies (specification of definition details) has notified on 19/2/21, the following categories of companies, not to be considered as listed company.

(i) Public companies which have not listed equity shares but have listed securities issued on private placement basis;

(ii) companies listed equity shares in permissible foreign jurisdiction.

(b) Unlisted company

Unlisted Company means company other than listed company.

2.5 Other types of companies

(a) Government Company

According to Section 2 (45) of the Companies Act, 2013, a 'Government company' means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Coal India Limited is Govt. company, whereas Coal India has many subsidiaries, which are also Govt. companies.

(b) Foreign Company

According to Section 2 (42) of the Companies Act, 2013, 'foreign company' means any company or body corporate incorporated outside India which:

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode and

(b) conducts any business activity in India in any other manner.

(c) Associate Company

According to Section 2 (6) of the Companies Act, 2013, 'associate company' in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. As per the Explanation given under the Section, the clause, 'significant influence' means control of at least twenty per cent of total share capital, or of business decisions under an agreement.

(d) Dormant company

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Sometimes, we call some companies as sectoral companies as they are functioning in for particular sector, i.e. banking, Insurance, electricity, NBFC etc. Here, apart from the Companies act, sector specific laws apply to the company.

Chapter 2

1.0 Incorporation of Companies

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As per Companies Act, 2013 persons whose name appears in the prospectus or identified by the company in the annual return, has control directly or indirectly over the affairs of the company either as a shareholder or a director and according to whose direction, advice or instructions the Board of Directors are accustomed to act. A person should not be regarded as a promoter if he/she acts in its personal capacity.

As per the Securities Exchange Board of India (SEBI) persons who are in control of the issuer or are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to the public. The persons whose name appears in the offer document are known as promoters.

1.1

1.1 Promoters' Agreement/ Memorandum of Understanding (MOU):

When promoters decide to do a business in the nature of a company, they will be meeting and deciding on various issues and ultimately they will choose to make a Memorandum of Understanding (MOU) though it is not mandatory. Promoters or any of the promoters can make contracts in his own name for the benefit of the proposed company. Once registered, promoter will disclose the contracts. Promoter is also duty bound to disclose any interest in the company to any interested person and will not make any secret profit.

Promoters can also make an agreement which will mention various issues relating to formation of the company and rights and liabilities of the company inter se. Promoters may decide to prepare and sign a Memorandum of Understanding or Memorandum of Agreement (also called Promoters Agreement) while MOU is not enforceable under the law. Having an MOU or MOA is not mandatory and promoters may decide to prepare two initial documents. Persons who form the company are known as promoters. It is they, who conceive the idea of forming the company. They take all necessary steps for its registration.

Section 3 of the Companies Act, 2013 deals with the basic requirement with respect to the constitution of the company.

(1) Public Company: In the case of a public company with or without limited liability any 7 or more persons can form a company for any lawful purpose by subscribing their names to memorandum and complying with the requirements of this Act in respect of registration.

(2) Private Company: In exactly the same way, 2 or more persons can form a private company.

(3) One-person company (OPC): One person, where the company to be formed is to be One Person Company.

If number of members reduce below above stipulation and the company carries on business for more than six months, every member severally shall be liable to pay debts of the company.

1.2 Procedural aspects of incorporation of company

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for incorporation of a company. These provision are to be read with Companies(Incorporation) Rules as amended.

(1) Filing of the documents and information with the registrar: For the registration of the company following documents and information are required to be filed with the registrar within whose jurisdiction the registered office of the company is proposed to be situated:

a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum.

b) a declaration by person who is engaged in the formation of the company (an advocate, a chartered accountant, cost accountant or company secretary in practice), and by a person named in the articles (director, manager or secretary of the company), that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with.

c) a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that:

1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or

2)he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,

3) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

d) the address for correspondence till its registered office is established.

e) the particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the memorandum along with proof of identity, and in the case of a subscriber being a body corporate, such particulars as may be prescribed.

f) the particulars (names, including surnames or family names, the Director Identification Number, residential address, nationality) of the persons mentioned in the articles as the first directors of the company and such other particulars including proof of identity as may be prescribed, and

g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

Particulars provided in this provision shall be of the individual subscriber and not of the professional engaged in the incorporation of the company [The Companies (Incorporation) Rules, 2014].

(2) Issue of certificate of incorporation on registration: The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) Allotment of corporate identity number (CIN): On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.

(4) Maintenance of copies of all documents and information: The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act.

(5) Furnishing of false or incorrect information or suppression of material fact: If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under Section 447.

1.4 Steps for formation of company

1.Application has to be made for reservation of name through the web service portal available with mca.gov.in by using RUN (reserve unique name) which may be accepted or rejected after allowing 15 days for resubmission.

2. MCA has simplified the procedure and taken steps to expedite the process Now, other registrations can be done in electronic mode under single dash board. Registrations under PF, ESI, GST, DIN, PAN etc. shall have to be mandatorily done along with opening of Bank account.

3. Other information also have to rendered online.

4. Declaration by subscribers and first directors shall have to submitted in pdf format.

1.4.1 Formation of One Person Company (OPC)

a) The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.

b) The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.

c) Such other person may be given the right to withdraw his consent

d) The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar

e) Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

f) Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year):

1) shall be eligible to incorporate a OPC.

2)shall be a nominee for the sole member of a OPC.

g) No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
h) No minor shall become member or nominee of the OPC or can hold share with beneficial interest. I) Such Company cannot be incorporated or converted into a company under Section 8 of the Act.
Though it may be converted to private or public companies in certain cases. The procedure of conversion is given in the Rules 6 & 7 of the Companies (Incorporation) Rules, 2014.

j) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

k) OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

l) If One Person Company or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

1.4.2 Effect of registration

On incorporation, the company, shall be a body corporate by the name contained in the memorandum. Such a registered Company shall be capable of exercising all the functions of an incorporated company under this Act and having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name. It will be an artificial juristic person

1.5 Certificate as Conclusive Evidence

Section 35 of the 1956 Act, provided for a Certificate of Incorporation given by the Registrar on registration. Though 2013 Act do not have a section to replace the earlier section, Certificate of incorporation is accepted as conclusive evidence of existence of the company, by all judicial and administrative authorities.

1.6 Effect of Memorandum and Articles

As per Section 10 of the Companies Act, 2013, where the memorandum and articles when registered, shall bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and an agreement to observe all the provisions of the memorandum and of the articles. All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

As a result, a number of legal relationships are formed between different parties and the company which are described below:

(1) Between the members and company: The memorandum and articles constitute a contract between the members and the company. In consequence, the members are bound to the company under a statutory covenant.

(2) Between member inter se: In the case of Wood vs. Odessa Water Works Co. [1989] 42 Ch. D. 363, Sterling J. Observed: The articles of Association constitute a contract not merely between the shareholders and the company but between each individual shareholder and every other.

(3) Between the company and the outsiders: The memorandum and the articles do not constitute a contract between the company and outsiders. Neither the company nor the members are bound by the articles to outsiders, since these constitute a contract between members, inter se, and the outsider is not a party to the articles although he may be named therein.

Nonetheless, an outsider is entitled to assume that in respect of contract entered into with him all the formalities required to be carried out under the articles or memorandum have been duly complied with [Royal British Bank vs. Torqued (1956) 6 E.B. 327].

1.7 Doctrine of ultra vires

Directors/ company cannot do something which is beyond the scope of the Memorandum. A transaction may be good in law but may not be within the powers of the company and hence ultra vires, the company. Shareholders, while drafting the Memorandum, have already decided the outer boundaries both for themselves and also for the Board of Directors. Shareholders can decide to change / modify the objects and other clauses of the memorandum but as long as it is not done, they cannot overshoot the existing memorandum provisions with which the company is registered. There may be an action taken by Board of Directors but is permissible by the company. In such situation, company may ratify the action of the Board, However, ultra vires action by the company cannot be ratified even when all members agree to do that.

1.8 Commencement of business, etc.

In the 2019 Amendment, section 10A has been inserted. It provides that any company incorporated after the Amendment Act, 2019, having a share capital shall not commence any business or exercise borrowing powers, unless

(a) A declaration has been furnished within 180 days that every subscriber has paid the value of shares and

(b) Company has filed a verification of the registered office.

If no such declaration is filed and Registrar has a reason to believe that company is not carrying on any business, an action for removal of the name may be taken.

1.9 Registered office of a company

Section 12 of the Companies Act, 2013 seeks to provide for the registered office of the company for the communication and serving of necessary documents, notices letters etc. The domicile and the nationality of a company are determined by the place of its registered office. This is also important for determining the jurisdiction of the court.

(1) Registered office: From the 15th day of its incorporation and at all times thereafter, a company shall have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) Verification of registered office: The Company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation. The form to be filed in INC-22. Authorities can ask for any documents which gives right to possession of the office space.

(3) Labelling of company: Every company shall:

a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed are not those of the language/s in general use in that locality, then also in the characters of that language/s.

b) have its name engraved in legible characters on its seal (the Companies (Amendment) Act, 2015 has deleted the requirement of having Common Seal compulsorily).

c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications, and

d) have its name printed on hundis, promissory notes, bills of exchange and such other documents as may be prescribed.

(4) Name change by the company: Where a company has changed its name/s during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

(5) In case of OPC: The words ‘‘One Person Company’’ shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

(6) Notice of change to registrar: Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within 15 days of the change, who shall record the same. This is applicable to change in the registered address of the company within the local limits of the village, town or city and remaining within the jurisdiction of the same Registrar of Companies.

(7) Change by passing of special resolution: The registered office of the company shall be changed only by passing of special resolution by a company:

a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company, and

b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company.

(8) Change of registered office outside the jurisdiction of registrar: Where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, there such change is to confirmed by the Regional Director on an application made by the company.

(9) Communication and filing of confirmation: The confirmation of change of registered office from jurisdiction of one registrar to another registrar within the same state, shall be:

a) communicated within 30 days from the date of receipt of application by the Regional Director to the company, and

b) the company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation who shall register the same, and

The Registrar of Companies of the new jurisdiction shall certify the registration within a period of thirty days from the date of filing of such confirmation. As of now, Tamil Nadu and Maharashtra are the two states where there are two Registrars of Companies are operating. The jurisdictions of the respective Registrars of Companies are notified.

(10) Certificate, a conclusive evidence of compliance of requirements of this Act: The certificate shall be conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with and the change shall take effect from the date of the certificate.

(11) In case of default: If any default is made in complying with the requirements of this Section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.
In case, the Registrar is convinced with evidence that company is not carrying on any business, he may initiate action to strike off the name of the company.

1.10 Act to override memorandum, articles, etc.

According to Section 6 of the Companies Act, 2013, the provisions of this Act shall have overriding effect on provisions contained in memorandum or articles or in an agreement or in resolution passed by the company in the general meeting or by its board of directors, whether they are registered, executed or passed before or after the commencement of this Act.

Any provision contained in any of the above mentioned document, shall be void, to the extent to which it is inconsistent to the provisions of this Act.

1.11 Contents of Memorandum of Association

Section 4 of the Companies Act, 2013 seeks to provide for the requirements with respect to memorandum of a company.

The memorandum of a company shall state:

(1) the name of the company with the last word 'Limited' in the case of a public limited company, or the last words 'Private Limited' in the case of a private limited company.(2) the State in which the registered office of the company is to be situated.

(3) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.

(4) the liability of members of the company, whether limited or unlimited, and also state:

a) in the case of a company limited by shares, that the liability of its members is limited to the amount unpaid, if any, on the shares held by them. And

b) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute:

(5) in the case of a company having a share capital:

a) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share, and

b) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name.

(6) in the case of OPC, the name of the person who, in the event of death of the subscriber, shall become the member of the company.

1 . 1 1 Applying for the name of the company

The name stated in the memorandum shall not:

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law. or

(b) be such that its use by the company:

(1) will constitute an offence under any law for the time being in force, or

(2) is undesirable in the opinion of the Central Government.

(3) Registration of name of the company: Without effecting the above provisions, a company shall not be registered with a name which contains:

a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force, or

b) such word or expression, as may be prescribed, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

Various guidelines have been issued on viability and use if names and are stipulated in Companies (Incorporation) Rules.

(4) Requirement for the reservation of the name of the company:

a) A person may make an application, for reservation of name through web service to the Registrar, Central Registration Centre, which may either be approved or rejected for -

1) the name of the proposed company. or

2) the name to which the company proposes to change its name.

b) The name shall be registered for 20 days from the date of approval in case of new company and sixty days in case of existing company.

c) Where after reservation of name it is found that name was applied by furnishing wrong or incorrect information, then:

1) if the company has not been incorporated, the reserved name shall be cancelled and the person making application shall be liable to a penalty extending to one lakh rupees.

2) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard:
a. either direct the company to change its name within a period of three months, after passing an ordinary resolution.

b. take action for striking off the name of the company from the register of companies,

or

c. make a petition for winding up of the company.

1.12 Alteration of the Memorandum

It is likely that with the passage of time, the company will grow or diversify. Shareholders, therefore, have the right to modify any issues which they cloud not foresee initially. This is done by alternation of the Memorandum and Articles, as and when needed. Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that:

(1) Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

(2) Any change in the name of a company shall be effected only with the approval of the Central Government in writing:

However, no such approval shall be necessary where the change in the name of the company is only the deletion there from, or addition thereto, of the word 'Private', on the conversion of any one class of companies to another class.

The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.

(3) On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum changing the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government.

(5) The Central Government shall dispose of the above shifting within sixty days, satisfying itself that:

a) the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or

b) the sufficient provision has been made by the company either for the due discharge of all its debts and obligations,

(6) A company shall file with the Registrar such orders of CG, along with the shareholders' resolution.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

(8) The Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(9) Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and:
a) the details, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change.

b) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(10) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.

(11) No alteration made under this Section shall have any effect until it has been registered in accordance with the provisions of this Section.

(12) Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

1.13 Articles of Association

The articles of association are the bye-laws of the company according to which director and other officers are required to perform their functions as regards the management of the company. Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association as follows:

(a) Regulations for management: The articles of a company shall contain the regulations for management of the company.

(b) Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.

(c) Contain provisions for entrenchment: The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

(d) Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

(e) Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

(f) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company.

(g) Company registered after the commencement of this Act: In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.

(h) This Section do not apply in respect of company registered under any previous company law: Nothing in this Section shall apply to the articles of a company registered under any previous company law, unless amended under this Act.

1.13 Alteration of Articles

Section 14 of the Companies Act, 2013 vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

(a) Alteration by special resolution: Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.

(b) Alteration to include conversion of companies: Alteration of articles include alterations having the effect of conversion of:

(1) a private company into a public company, or

(2) a public company into a private company:

Even where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, then such company shall, as from the date of such alteration, cease to be a private company:

However, any such alteration having the effect of conversion of a public company into a private company, then such conversion shall not take effect except with the approval of the Central Government on an application.

(c) Every alteration of the articles and a copy of the order of the CG approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(d) Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.

(e) Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration.

1.14 Copies of memorandum, articles, etc., to be given to members

Copies of memorandum and articles of association, every agreement and every resolution referred in Section 117 shall, on being so requested by a member, be sent within seven days of the request on the payment of fees:

CHAPTER 3

Various Stakeholders of a company

Stakeholder are those entities, natural or artificial persons who are concerned or connected with the company or the affairs of the company has direct or indirect effect on them. Traditionally, shareholders used to be addressed as stakeholders as it was traditional belief and acetated conceit that only the shareholder is effected in a company as he is the owner of the company and none others. With evaluation of business and intervention of various entities in ac corny, the concept of stakeholder also has been widened and such concept has widely and universally accepted.

In order to know more, we need make difference between external and internal stakeholders.

Internal stakeholders

- Any business including a company will have two sources of capital, i.e. own capital (equity) and loan capital. (long term credit), there can be a financial instrument which is converted from loan to equity. Normally equity is not converted into loan, though there is no legal bar.
- **Shareholders and Debenture holders**
- Shares and debentures are the main source of long term source of capital. Companies Act does not consider working capital as capital and therefore the restrictions relating to treatment of capital do not apply to working capital.
- **Shares defined**

- A share is defined as unit of ownership that represents an equal proportion of a company's capital. It entitles its holder (the shareholder) to an equal claim on the company's profits and an equal obligation for the company's debts and losses.

  Two major types of shares are (1) **ordinary (equity) shares (common stock),** which entitle the shareholder to share in the earnings of the company as and when they occur, and to vote at the company's general meetings of shareholders, and (2) **preference shares (preferred stock**) which entitle the shareholder to a fixed predetermined rate of dividend but generally do not have voting rights. The dividend is payable only when the Company makes adequate profits. This kind of shares is preferred for both payment of dividend and the payment of principal (redemption) on liquidation. So **preference shareholders** are also stakeholders.

Debenture holders

A debenture is a type of long term debt instrument which acknowledges debt.
Debentures are backed only by the general creditworthiness and reputation of the issuer. Both corporations and governments frequently issue this type of bond to secure capital. Debentures may be secured or unsecured.

Fixed Deposit holders

Company tales foxed deposit from the public who are its creditors and important stakeholders.

Employees

Very important stakeholders. The growth or decile pf the company directly effects the employees. Employees may be direct like permanent, casual, contractual, or indirect like employed through third party or part time/ gig employees.

External

Financial creditors: this include banks, financial institutions or any entity who has given loan to the company.

Operational creditors: This category includes supplies, vendors, service providers etc.

(i) Govt: The Govt. expects the following from the company.

(a) Compliance of law

(b) Timely and proper payment of taxes and duties

(c) Protecting the environment: sustainability development

(v) Society

(a) people residing near to the factory

(b) people in general

CHAPTER 4

Shareholders and shareholders' meetings

1.0 Member and Shareholder

A person whose name appears in the Registrar of Members of the company is a member. All persons who are allotted shares or who purchase and intimates the company are entered in the register. Therefore, for all practical purpose, all shareholders are members of the company.

Difference between a shareholder and a member is that all members may not be shareholders and all shareholders may not be member due to time lag in registration of transfer. Let us assume Ramesh holds 1000 shares in ABC Ltd. and sells it to Surseh who immediately doesn't make any application for transfer. In such a case though he is a shareholder, name of Ramesh shall remain as a shareholder in the records of the company. Both equity and preference shareholders are the owners of the company.

They are the persons whose names appear in the register of members of the company. A person/artificial person become members by following mode.

(i) **By allotment:** Shares are allotted to him by the company and therefore becomes the first owner of the shares. Allotment denotes creation of shares.

(ii) **By transfer:** Existing shareholder transfers share to some person, normally by sale but may be by gift also.

(iii) **By transmission:** Act of God/ Law. A process by which a person becomes shareholder of a company by default, i.e. by succession or by way of merger/amalgamation or court order. For example, with merge of HDFC with HDFC Bank, the shareholders of HDFC have become shareholders of HDFC Bank. Similarly, in case of ITC Hotel demerger from ITC, the shareholders of ITC have received shares of ITC Hotels Ltd.

1.2 Rights of shareholders: The Law provides for various kinds of rights of a shareholder. However, the following rights are very important for a shareholder.

(i) **Right to vote**: shareholders, other than those holding non-voting shares, are entitled to vote in General Meetings of shareholders. Proportionate to the holding, i. e. each share has one vote.

(ii) **Right to Rights Shares**: Whenever the company decides to increase its share capital the shareholder may decide that further shares shall be allotted to the existing shareholders proportionate to their existing.

(iii) **Right to Bonus Shares**: When the free reserves of the company arrives at a comfortable position, the company may decide to allot shares without any price to the existing shareholder on proportionate basis. Reserves are undistributed profits which accumulate year after year and free reserves are reserves not specified for any particular purpose.

(iv) **Right to dividend**: Dividend is a part of a profit earned by the company and distributed to the shareholder as percentage to their shareholding.

Besides, there various provisions where rights are given to minority/ individual shareholders.

1.3 Shareholders' Meetings: Normally, shareholders exercise their right at General Meetings. Where a shareholder is entitled to vote on the resolution. They are entitled to get Annual Accounts, Audit Report, to get information about the company. Broadly, meetings in a company are of the following types.

1.4 Annual General Meeting:

An Annual general meeting (AGM) must be held by every type of company, public or private, limited by shares or by guarantee, with or without share capital or unlimited company, once a year.

1.4.1 Timing of the meeting:

Every company must in each calendar year hold an annual general meeting. Not more than 15 months must elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. AGM should be held within 6 months of closure of accounting year. The AGM must be held on a working day during business hours at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

1.4.2 Notice:

A notice of at least 21+2+2=25 days before the meeting must be given to members. The time, date and place of the meeting must be mentioned in the notice. The notice of the meeting must be accompanied by a copy of the annual accounts of the company, director's report on the position of the company for the year and auditor's report on the accounts. The notice should also state that a member is entitled to attend and vote at the meeting and is also entitled to appoint proxies in his absence.

In case of default, National Company Law Tribunal (NCLT) shall on application of any member call or direct calling of Annual General Meeting (AGM).

1.4.3 Business to be transacted at Annual General Meeting:

The following matters constitute ordinary compulsory business at an AGM: -

a. Consideration of annual accounts, director's report and the auditor's report
b. Declaration of dividend
c. Appointment of directors in the place of those retiring
d. Appointment of and the fixing of the remuneration of the statutory auditors. Here Auditors may be appointed for five years at a time.

Any other business would be considered as special business. In case any there is any other business (special business) discussed and decided upon, an explanatory statement of the special business must also accompany the notice calling the meeting. Such statement shall explain the background and rationale of the proposal.

2.0 Extraordinary General Meeting

Every general meeting (i.e. meeting of members of the company) other than the annual general meeting or any adjournment thereof, is an extraordinary general meeting. Such meeting is usually called by the Board of Directors for some urgent business which cannot wait till the next AGM. Every business transacted at such a meeting is special business, since ordinary business cannot be transacted in Annual General Meeting (AGM). Resolution taken up by shareholders can be ordinary and special. In former case, simple majority i.e. 50% plus voting is registered in favour of the resolution and in later case vote casted for shall be equal to or more than vote casted against which means 75% voting in favour required. Now a days voting can be done in electronic mode which is called remote voting.

2.1 Extraordinary General Meeting on Requisition:

The members of a company have the right to require the calling of an extraordinary general meeting by the directors. The board of directors of a company must call an extraordinary general meeting if required to do so by the following number of members :-

a. not less than one-tenth of such of the voting rights in regard to the matter to be discussed at the meeting ; or
b. Such meeting should be called by the company within 21 days of receiving the requisition within 45 days of receiving the notice.

The requisition must state the objects of the meetings and must be signed by the requisitioning members.

2.3 Power of National Company Law tribunal to Order Calling of Extraordinary General Meeting:

If for any reason, it is impracticable to call a meeting of a company, other than an annual general meeting, or to hold or conduct the meeting of the company, the Company Law Board may, either i) on its own motion, or ii) on the application of any director of the company, or of any member of the company, who would be entitled to vote at the meeting, order a meeting to be called and conducted as the Company Law Board thinks fit.

2.4 Class Meeting

Class meetings are meetings which are held by holders of a particular class of shares, e.g., preference shareholders. Such meetings are normally called when it is proposed to vary the rights of that particular class of shares. At such meetings, these members discuss the pros and cons of the proposal and vote accordingly.

3.0 Requisites of Valid Meetings

The following conditions must be satisfied for a meeting to be called a valid meeting:-

1. It must be properly convened.

2. Proper and adequate notice.
3. The meeting must be legally constituted.

Proxy

In case of a company having a share capital and in the case of any other company, if the Article of the company so authorise, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself. Every notice calling a meeting of the company must contain a statement that a member entitled to attend and vote is entitled to appoint one proxy in the case of a private company and one or more proxies in the case of a public company and that the proxy need not be member of the company. The member appointing a proxy must deposit with the company a proxy form at the time of the meeting or prior to it giving details of the proxy appointed. The proxy form must be in writing and be signed by the member or his authorized attorney duly authorized in writing or if the appointer is a company, the proxy form must be under its seal or be signed by an officer or an attorney duly authorized by it.

A proxy is not entitled to vote except on a poll. Therefore, a proxy cannot vote on show of hands.

3.1 Quorum

Quorum refers to the minimum number of members who must be present at a meeting in order to constitute a valid meeting. A meeting without the minimum quorum is invalid and decisions taken at such a meeting are not binding.

In case the Company Law Board calls or directs the calling of a meeting of the company, when default is made in holding an annual general meeting, the Government may give directions regarding the quorum including a direction that even one member of the company presents in person, or by proxy shall be deemed to constitute a meeting. As per the present law, the quorum requirement is as follows:

Members of the Company unto	Quorum (Personally Present)
1000	5
1001-5000	15
5001	30
Private company	02

If quorum is not present within half an hour of the appointed time. The meeting shall stand adjourned in the next week on the same day time and venue or at place, time, or date decided by the Board of Directors.

4.0. Proceedings in Meeting:

A meeting is presided by a Chairman. Normally the Chairman of the company chairs the meeting. In case the company has no Chairman, any Director present may a chair the meeting if provided in Article. Otherwise members present may elect anyone to chair the meeting. The Chairman conducts the meeting and declares fate of each resolution.

4.1. General Meeting through Video Conference.

A) Notice to members

Notice of AGM/EGM shall be dispatched to members only through emails registered with company or Depository Participant. SMS is sent in the registered mobile with link through which the shareholder shall access the documents and voting windows. This is called Remote Voting.

B) Publishing Notice in Newspapers

Before sending the notices and copies of financial statement etc. public notice by way of advertisement be published mentioning a statement that AGM will be convened through Video Conference (VC) and other Audio Visual Means (OAVM)

C) Facility for joining AGM

i) The facility for joining the meeting shall be opened at least 15 minutes before.

ii) The company shall ensure that the meeting allows two-way communication

iii) The facility must have capacity to allow 1000 members to participate on first-cum-first-serve basis.

4.2. Company which can conduct meeting through Video Conference (VC) and other Audio Visual Means (OAVM)

1) All companies who are required to provide facility of e-voting under Companies Act, 2013or any other company who has opted for it, can conduct AGM through VC or OAVM.

2) However, other companies i.e. which have not provided facilities for e-voting, can hold AGM through VC or OAVM. Only it has email address of at least 50% of the total members.

A) Incise pf other companies having share capital who represents at least 75% of such part of the company as gives a right to vote at the meeting.

B) In case of companies not having share capital, who have the right to exercise at least 75% of the total voting power exercisable at meeting.

CHAPTER 5

Directors and Directors' Meetings.

1.1 Shareholders are the owners of the company. They can anytime decide to run themselves or may like persons to act on their behalf for management of the company and highest level of such inclusion of outside person is director, who will be member of the Board of Directors. Directors are individuals, nominated/appointed by various stakeholders as detailed bellow: -

Type of Directors	**Appointing Authority**	**Situation of appointment**	**Tenure of Office**
First Directors	Articles of Association	At the time of registration	Upton first AGM. Eligible for reappointment.
Normal Directors	Shareholders in Annual General Meeting.	Normal	To retire on the basis of seniority. Eligible for reappointment.
Additional Directors	Board of Directors	In between two AGMs	Till the next AGM or the last date in which the AGM should have been held whichever is earlier.
Alternate Directors	Board Of Directors	When the original Director is out of India for more than 3 months	Till the return of the original Director.
Directors appointed by Central Government	Central Government (through the ministry of corporate affairs)	Inspection and Investigation Oppression and Mismanagement	As per order
Director appointed / nominated by Fin uncial Institute/Govern ment	Nominated by Financial Institute (Appointed by shareholders at AGM)	Company taken loan from the institution or equity investment in the company.	As per FI/ Bank
Independent directors (Section 149)	For all listed companies at AGM.	Paid up capital 10cr/turnover 100cr/outstanding loan 50cr.	For 5 years but can be re-appointed by passing a special resolution.
Directors appointed by small shareholders.	Small shareholder who holds shares of nominal value of not more than twenty thousand rupees.	In AGM. Any listed company may or shall in case of notice by 1000 small shareholders(or 1/1oth of such category of shareholders having holding of face value of Rs. 20000)	Up to 3 years. Shall be rotational. Considered to be independent.

Shadow Directors	Legally not a director.	Persons who control the affairs or control the majority of directors.	

1.1 Composition of Board of Directors

Board of directors is individual, and is defined as a person occupying the position of directory, by whatever name called. Director collective are called as board of director. Any persons who control the management of the company will be deemed as director, through his designation can be different.

Maximum no. of Directors – in case of public limited company is 15. However any company may increase number of directors, with the permission of Ccentral Government. Number of directors above 15 requires approval by special resolution of shareholders. There is no maximum specified for private company.

Minimum no. of Directors – 2 (in the case of private company)
- 3 (in the case of public company)

One director to be resident individual.

At least there shall be one women director in case of listed company. Public limited company requires paid up capital of Rs.100 crore or turnover of Rs. 300 Crore.

1.2 Rotational and non-rotational directors

At least 2/3rd of total existing directors shall be eligible to retire by rotation in every AGM.

Out of 2/3rd, 1/3rd must retire in every AGM.

(Directors appointed by CG, FI/Banks shall not be taken in to account for calculating the number of rotational directors)

Listed companies shall have 50% of the Board's strength as independent director if the chairman is executive (fulltime) and 1/3rd if chairman is non-executive (part time). Full time Director/Chairman is called functional and part time is called non-functional. Non-functional director come only for the meetings when convened.

Tenure of non-rotational director or full time director shall not be for more than 5 yrs.

1.3 KMP- Key managerial personnel in relation to a company means-

(i) the Chief executive officer or the managing director or manager.
(ii) the company secretary
(iii) the whole-time director
(iv) the Chief financial officer
(v) such other officer as may be prescribed

1.4 Appointing Retiring Director

The nomination for appointment of a Director who retires in an AGM and is eligible for reappointment automatically comes up in the said meeting unless a resolution to the effect that he will not be appointed or someone else will be appointed in his place is moved.

1.5 Appointment of a person as a director for the first time.

Apart from the above provision Under Section 160 of the Companies Act, 2013 a person who is not a retiring director can also be eligible for appointment as a director of a company provided he deposits his candidature in writing, himself or through some other member of the company at least 14 days before the meeting along with a fee or ` 1 lakh which shall be refunded if the candidate gets minimum 25% of the votes casted.

1.6 Meeting of the Board:

1. Chairman of the Board chairs the meetings of the Board. If the regular chairman is not present and Articles of association permit, a director may be appointed as a chairman of the meeting.

2. Quorum: minimum number of directors to be present to make the meeting valid. If the quorum is not present the meeting shall be automatically adjourned to same place, time and venue on the same day next week. The quorum for a meeting of the Board of Directors of a Company shall be one third of its total strength or directors, whichever is higher, and the participation of the directors by video conferencing or pother audiovisual means shall be also counted for the purpose of quorum under this sub-section.

3. Each director has one vote. In case of a tie the Chairman will have a casting vote subject to the provisions in the Articles of Association.
4. Interested director shall not vote. (Interest means personal interest) (disclosure of interest under section 184 is compulsory at the time of joining)
5. All decisions shall be simple majority decisions. However unanimous decision shall be taken in case of;

   (a) Inter corporate investments above certain limit.
   (b) Appointing any person as an MD of the company if he is already an MD or a manager of one and not more than one company.

6. **Leave of absence:** If a director is absent from 3 consecutive Board meetings without taking leave of absence he will be disqualified from remaining a director of the company.

7. **Voluntary adjournment**; The Board can voluntarily adjourn its meeting. In case of automatic adjournment, the meeting stands adjourned to next week same day, same time and same venue unless another venue is fixed.

8. Adjournment of meeting and deferment of consideration / decision of an item.

9. One Board meeting in each quarter is a must. No limit for maximum number of meetings. There shall not be a gap of 120 days between two meetings.

10. Minimum 7 days' notice of the Board meeting must be given to all directors staying even outside India.

11. Preponement and postponement of meetings can be done with the proper authority of the company.

<u>Board meeting through Video Conference/Virtual Board Meeting</u>

Conducting Board Meeting through Video Conference has been one of the key highlights of Companies Act, 2013. With Information Technology becoming more readily accessible to a large section of the corporate sector in India, conducting all kinds of meeting through Videos conference is now a viable option for corporate houses. Realizing this fact and keeping in pace with the new technology, the Ministry of Corporate Affairs gave a major push under Companies Act, 2013 to conduct Board Meetings through Video conference. Directors of the company **may** participate in a Board meeting either in person or through videos conference or other audio visual means provided that the company follows the procedure mentioned below.

1. The company should ensure effective videos connection and make necessary arrangements to avoid failures.

i. The Chairperson of the meeting and the Company secretary shall take due and reasonable care to safeguard the integrity of the meeting ensuring sufficient security and identification procedure.

ii. to store for safe keeping and marking the tape recording(s) at least before the time of completion of audit of that particular year.

iii. to ensure no person other than the concerned director are attending or have access to the proceedings of the meeting.

iv. to ensure that participants attending the meeting through video conferencing are able to hear and see the other participants clearly during the course of the meeting.

The notice of the meeting shall inform the directors regarding the option available to them to participate through videos conferencing mode and also provide all necessary information for enabling them to participate through such mode.

A director intending to participate through video conference mode shall communicate his intention to the Chairperson or the Company Secretary of the company by giving prior intimation sufficiently in advance.

Chapter 6

Accounts and Audit

1.0 Accounts

Accounts are record of financial transaction of a company and needs to be finalised every year for a particular period commonly known as "accounting period". As per Companies Act, all companies shall follow an accounting year commencing from 1st April to 31st March. This is compatible with financial year recognized by Income Tax and other Pub [iv authorities.

1.1 The proper books of account.

Every company shall maintain proper books of accounts which must satisfy the following:

(i) True and fair view of transactions shall be recorded.

(ii) Accrual basis accounting: the income and expenditure should relate to particular year even when they are received or paid in the different year.

(iii) Shall exhibit and explain the financial position.

(iv) All transaction relating to relating to goods, i.e. goods sold, purchased etc.

(v) Shall be prepared in ink and not in pencil.

(vi) Shall be as per the accounting standard prescribed by the Central Government. It may be mentioned that Central Govt. has the power to prescribe accounting standards i.e. all companies should have uniform method of interpretation and calculation of profit valuation of assets, depreciation etc.

(vii) Shall be kept in electronic form also with certain stipulations.

1.2 Keeping of books of account:

Books of accounts may be kept at the registered office of the company or any other place(s) in India as decided by the Board of Directors. The company shall within 7 days' file with the Registrar a notice in writing giving the full address of the place. If the company has any branch office within or outside India proper returns of such branch offices shall be sent periodically to head office.

1.3 Contents of books of account.

As per section 128 of the Companies Act, 2013, every company shall keep proper books of account in respect of the following:

(i) All receipts and expenditures made by the company.
(ii) The sale and purchase of the goods by the company.
(iii) The assets and liabilities of the company.
(iv) If the company is engaged in manufacturing, processing, production or mining activities the cost accounting records as prescribed by the Central Govt.

1.4 Consolidation of Accounts:

As per section 129(3) of the new Act, every company having more than one subsidiary shall prepare a consolidated financial statement of the company with all its subsidiaries in the same form and manner as that of its own which shall also be laid in the before the annual general meeting of the company along with the standalone financial statement of the company. The consolidated financial statement should contain the financial information relating to its subsidiaries, its associates companies and its joint ventures. The consolidated financial statement should be in Form AOC-1.

1.5 Annual accounts and legal requirements

(1) **Laying of annual accounts in the AGM:** A balance sheet as at the end of the financial year and a profit and loss account along with the cash flow statement and statement showing changes in equity of the company for the financial year shall be laid before the AGM for the approval and adoption of the shareholders. Along with financial Statements consolidated financial statements of all the subsidiaries including Associate Companies and joint ventures of the company shall be laid before the Annual General Meeting.
(2) The Forms and contents of the financial statements will be as per Schedule III to the Companies Act.

1.6 Authentication of Balance sheet and Profit & loss account

As per the new Companies Act, 2013 all the financial statements including the consolidated financial statement shall be required to be signed by the following persons:

(i) By the Chairperson of the Company, where he is authorised by the Board.
(ii) By two Directors out of which one shall be Managing Director, if any.
(iii) Chief Financial Officer and Company Secretary of the Company, if required.

1.7 Circulation of Annual accounts

The company shall send the copies of the financial statements including consolidated financial statements to the members and every trustee for the debenture holder.

In addition to the above the company is required to place its financial statements including consolidated financial statements, if any, and all other documents required to be attached, thereto on the website of the company.

Further every company is also required to place separate audited accounts in respect of each of its subsidiary, if there is any.

Every company is required to keep its financial statements at the registered office of the company for inspection by any member and debenture trustee during business hours. A listed company may send only the salient features of the documents and keep the document for inspection as above.

1.8 Filing of Financial Statements (including consolidated financial statements) with Registrar of Companies

(a) A copy of financial statements including consolidated financial statement shall be filed with ROC, within 30 days of Annual General Meeting.
(b) If AGM is not held, the financial statements, shall be filed consolidated financial statement shall be filed with ROC within 30 days of the last day on which the AGM is ought to have been held. The Registrar shall take on record the un-adopted financial statements as provisional statements till the accounts are adopted in the Annual General Meeting.
(c) If the AGM held but the annual accounts are not prepared on that date the AGM shall be adjourned till the accounts shall prepared but such adjournment shall not be beyond the statutory period of AGM i.e. 18 months.
(d) If the AGM is held but did not adopt the annual accounts with other documents, shall be filed within 30 days of the AGM specifying the reason of disapproval.
(e) One-person company shall file its financial statements along with all its necessary documents required to be attached with its financial statements to the registrar within 180 days of the closure of financial Year.
(f) As per the new Act every company from now on shall attach financial statements of each of its subsidiary which are established outside India and do not have any place of business in India.

1.9 Accounts of Holding and Subsidiary companies:

Along with the balance sheet of the holding company the following documents of the subsidiary company shall be attached:

(a) a copy of the balance sheet, profit & loss account, director's report.
(b) A copy of the auditor's report.
(c) A statement of the holding company's interest in the subsidiary.

2.0 Audit

2.1 Meaning of Audit.

An audit is the independent examination of financial information of any entity, whether profit oriented or not, and irrespective of its size or legal form, when such an examination is conducted with a view to expressing an opinion thereon.

2.2 Qualification of an Auditor

The following entities can be appointed as an auditor of the company.

(a) A chartered Accountant in practice within the meaning of Chartered Accountants Act, 1949.
(b) A firm where all the partners practicing in India as Chartered Accountants.
(c) A holder of certificate in part B State entitling him to act as an Auditor of companies.

2.3 Disqualification of an Auditor

The following persons shall be disqualified from being appointed as Auditors of a company:

(i) A person who by himself, or his relative or partner –

(d) Is holding any security of the company or its subsidiary, or of its Holding or Associate Company or a subsidiary of such Holding Company. (Provide the relative may hold security or interest of not more than one thousand in the company).
(e) is indebted to the company or its Subsidiary, or its Holding or Associate Company or a Subsidiary of such Holding company in excess of such amount as may be prescribed.
(f) has given a guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its Subsidiary, or its Holding or Associate Company or a Subsidiary of such holding company for such amount as may be prescribed;

(i) a person or a firm who whether directly or indirectly has business relationship with the Company, or its Subsidiary, or its Holding or Associate Company or Subsidiary of such holding company or associate company of such nature as may be prescribed;
(ii) a person whose relative is a director or is in employment of the company as a director or Key Managerial Personnel.
(iii) A person who has been convicted by a Court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

2.4 Number of audits

The specified number of audit which one auditor can undertake is 20 companies out of which not more than 10 companies shall have the paid up capital of rupees twenty five lakhs or more. The aforesaid restriction is not applicable to One Person Company, Private Companies and small companies. However, the following audits of such auditor shall not be taken into account for computing the aforesaid limit:

(a) Audit of an private company.
(b) Audit of a guarantee company having no share capital.
(c) Audit of a foreign company.
(d) Internal audit undertake by him.
(e) Audit of a co-operative society, trust and corporations that do not fall within the ambit of the Companies Act, 1956.
(f) Tax audits.
(g) Special audits and investigations.
(h) A branch audit.

2.5 Appointment of Auditors

2.5.1 Appointment of First auditors

1.Shall be appointed by the Board of Directors within one month of the registration and on failure to do so the members shall appoint the auditors within 90 days of the incorporation of the company.
2.Shall hold office until the conclusion of the 1st AGM.
3.Notice of appointment should be given by the company to the auditor and the Registrar within 15 days of the appointment of the Auditor.
4.Shareholders can remove the 1st auditors before the conclusion of the 1st AGM by passing a special resolution and after obtaining the previous approval of Central Govt.

2.5.2 Appointment of subsequent auditors

(1) Appointment to be made in the AGM by the shareholders.
(2) Shall hold the office from the conclusion of the first Annual General Meeting till the conclusion of its 6th Annual General meeting and thereafter till the conclusion of every 6th meeting.

No listed company and any other company as may be prescribed by the act shall appoint or re-appoint

(i) an individual as Auditor in the same company for more than one term of 5 consecutive years.
(j) An audit firm as auditor for more than two terms of five consecutive terms.

(3) After appointment the company shall intimate such information to the Auditors and Registrar within 15 days of the appointment of the Auditor.
(4) Company can remove the auditors after obtaining the approval from the Central Govt. and with the permission of shareholders by way of a special resolution.

2.5.3 Automatic re-appointment of retiring auditors

Subject to the provisions and rules there under the retiring auditors shall be reappointed automatically at an Annual General meeting except in the following cases:

(a) Where he is not disqualified for re-appointment.
(b) Where he has not given the company or expressed his unwillingness to be re-appointed and act as an auditor.
(c) A special resolution has not been passed to appoint some other auditor or providing expressly that he shall not be re-appointed.

2.5.4 Appointment of auditors in casual vacancy

(1) Shall be filled up by the Board of Directors except in the case where the casual vacancy is due to resignation of the auditor from the office. In such a case the casual vacancy shall be filled up by the shareholders in the general meeting held within 3 months of the recommendation of the Board.
(2) During the vacancy co-auditors to continue audit.
(3) Auditor appointed in the casual vacancy shall hold office until the conclusion of the next AGM.

2.6 Remuneration to auditors

(1) The Remuneration payable to an auditor shall be fixed by the shareholders in its general meeting.
(2) The Board of Directors may fix by the remuneration of the first auditor appointed by it.
(It shall not include any expense incurred by the auditor in connection with the audit or any facility given to him by the company in connection with the audit and any remuneration for any service rendered by him to the company for any service at the request of the company.

2.7 Cost Audit

Cost audit when required.
(1) The company is engaged in production, processing, manufacturing or mining activities.
(2) The company pertains to the class of companies that are required by the Central Government to maintain the cost records.
(3) An order is issued by the Central Government directing the company to conduct cost audit.
(4) Under the new Act the Central Govt. can direct particulars relating to utilization of material or labour or such other items of cost to be included in books of accounts by such class of companies which are engaged in production of goods or providing such services.
(5) The cost audit is required only for that particular year in respect of which the cost audit order has been issued.

2.8 Internal Audit

(i) The following categories of companies shall appoint a Chartered Accountant or a Cost Accountant or any other person decided by the Board as Internal Auditor.

2.9 Powers and functions of Auditors

The auditor shall independently examine the books of accounts and records and give his opinion in the Audit Report as per the prescribed format and take care of the compliances under the Companies Act, and Companies (Auditor's Report) Order. While performing their duty, Auditors shall have the following powers.

(i) power to access all books and records;
(ii) power to seek information from officers of the company;
(iii) power to access books and papers of subsidiary or associate companies;
(iv) power to report to shareholders on state of accounts;
(v) power to report on fraud or potential fraud to Audit committee of the company and also to Central govt.

2.10 Auditor not to render certain services

The Auditor of the company is not supposed to render the following services for the company.
a) Accounting and book keeping services;
b) Internal Audit;
c) Design and implementation of any financial information system;
d) Actuarial services;
e) Investment advisory services;
f) Investment banking services;
g) Rendering of outsourced financial services;
h) Management services;
i) Any other kind of services as may be prescribed.

2.11 Types of Auditor's report

In the normal course, audit reports shall be as per the Standard Format as per issued by Companies Auditor Report Order, 2021 which also stipulates various areas where the Auditor has to audit and give an affirmative or negative statement.

1) Best opinion is no negative comment opinion.

2) Qualified reports: Auditors can qualify any figure or procedure followed or any statement by the company. Director is supposed to reply which should be annexed to the Board Report.
3) Disclaimer report: Here the auditor will disclaim certain information mentioned in the annual accounts for financial statements. This can be:
    a) Auditor has not seen all the documents,
    b) not allowed to visit certain premises,
    c) no adequate information was given etc.
4) Adverse report: This is a situation where the Auditors give an adverse report on financial statement.

Chapter 7

Powers and Duties of the Board

1.0 Position & status of directors

- Organs of the Company
- Decision makers
- Authorized to do everything bonafide the company unless prohibited by the Act/Articles.
- Individual director not competent to act without authority of the Board and shall be personally liable
- Directors are trustees to the shareholders, custodian of the asset and responsible for running of the business
- Prudentiality of directors' decision shall not be normally questioned
- Committee of Directors
- Directors may propose anything for effective management of the company, exploit their knowledge and experience for betterment of the company
- Directors to act bonafide the company even if nominated by a group of shareholders whose interest is effected

2.0 Powers of Directors

The Board of directors shall exercise the following powers subject to the resolutions passed at the meeting.

1. to authorise buy-back of securities under section 68.
2. to issue securities, including securities (in or outside India)
3. to borrow monies.
4. to invest the funds of the company.
5. to grant loans or give guarantee or provide securities in respect of loans.
6. to approve financial statements and the Board's report.
7. to diversify the business of the company.
8. to approve amalgamation, merger and reconstruction.
10. to take over a company or acquire a controlling or substantial stake in another company.

2.1 Restrictions on Powers of Board and borrowing powers

The following power cannot be exercised by Board unless specifically authorised by the shareholders in a meeting through Special resolution.

a) Sell, lease or dispose of substantial part of business, the value of which is 20% of the Net worth or generates 20% of the income. of the company

b) Investment of funds received as compensation of merger/amalgamation, other than in trust securities.

c) borrow money exceeding aggregate of its paid up share capital and free reverses, other than temporary loans. Loans taken for capital expenditure will include borrowing.

d) give or extent time for repayment of loan recoverable from directors.

The resolution of the shareholders shall mention the maximum limit and condition, if any, in each of the above situations.

3.0 Duties of the Board of Directors

The following are the duties of Board:

1. A director of a company should act in accordance with the articles of the company.
2. A director should act in act in good faith in order to promote the objects of the company for the benefit of its members, its employees, its shareholders, its community for the protection of the environment and in the best interest of the company.
3. A director shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
4. A director shall not involve in a situation in which he is directly or indirectly interested and which conflicts with the interest of the company.
5. A director shall not achieve any undue advantage or gain either by himself or through his relatives.

A director shall not assign his office any assignment so made will **4.0.**

4.0 Responsibilities of the Board of Directors

A director should be responsible enough to take care of the following.

(1) uphold ethical standards of integrity
(2) act objectively while exercising his duties;
(3) for the interest of the company;
(4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
(5) Not to allow any extraneous considerations that will influence his exercise of objective independent judgment in the while concurring in or dissenting from the collective judgment of the Board in its decision making;
(6) not to abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
(7) refrain from any activity that would lead to loss of his independence;

(8) assist the company in implementing the best corporate governance practices. II.

5.0. Role and functions: The independent directors shall:

(1) bringing an independent judgment to bear on the Board ‘s deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;

(2) bring an objective view in the evaluation of the performance of board and management;

(3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;

(4) look into the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;

(5) be concerned about the interests of all stakeholders, particularly the minority shareholders;

(6) balance the conflicting interest of the stakeholders;

(7) determine remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

(8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholders'' interest.

6.0 Extended Duties of Directors:

The independent directors shall:

(1) regularly update and refresh their skills, knowledge and familiarity with the company; 278

(2) seek information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

(3) attend all meetings of the Board of Directors and of the Board committees of which he is a member;

(4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;

(5) attend the general meetings of the company;

(6) keep themselves well informed about the company and the external environment in which it operates;

(8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

(9) report concerns about unethical behaviour, actual or suspected fraud or violation of the company 's code of conduct or ethics policy;

(10) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;

(13) not to disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans etc.

(14) not to share unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

Chapter 9

Profit and Dividend

1.0 Dividend

Dividend is the part of profit of the company which is distributable to the shareholders proportionate to their holding. Dividend is declaring after making profit for the current year, i.e. last financial year. Business is for profit which is the return of investment of the shareholder. Expenditure is deducted from total revenue to arrive at gross profit. Thereafter, interest paid/ payable and depreciation is adjusted to get profit before tax. After making provision for ta, the amount arrived at is called Profit after Tax (PBT)Balance remaining is transferred to Balance sheet as reserves and forms part of shareholder' fund.

2.0 Pre conditions for declaration of dividend

(1) Dividend are declared at Annual General Meeting (AGM) which as recommended by the Board of Directors. It should be noted that the shareholders can not declare a percentage of dividend excess than the percentage recommended by the Board. Board of Directors may declare and pay interim dividend out of profit of the current year.
(2) Dividend shall be declared

(i) only out of profits of the financial year in which it is intended to be declared.
(ii) Undistributed profit of the previous financial year.

(3) The company can at its discretion transfer such percentage of profit to the reserves before declaring dividend as it deems necessary and such transfer is not mandatory.

(4) Dividend shall be paid only out of free reserves and off accumulated carried out losses and depreciation are provided against the profit of the current year.

(5) Dividend shall be payable only in cash/ cheese, warrant sent through post or through electronic mode.
(6) Dividend is to be paid within 30 days of declaration.
(7) Unpaid dividend to be transferred to a "Special Dividend Account" after 30 days of declaration. Any amount lying in the dividend account after 30 days shall be considered as unpaid dividend.
(8) The company shall within a period of ninety days of making any transfer to the Unpaid Dividend Account, shall prepare a statement containing the names, their last known address and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Govt. for this purpose.
(9) Any amount transferred to "Unpaid Dividend Account" which remains unclaimed for a period of 7 years from the date of such transfer shall be transferred to "Investor Education & Protection Fund".
(10) In case where transfer of share is pending due to any reason, dividend payable on such shares, shall be kept pending until the transfer is complete or the dispute is resolved.

3.0 Investor Education & Protection Fund.

(a) The application moneys received by the company for allotment of any securities and due for refund.
(b) Matured deposits with the company.
(c) Matured debentures with the company.
(d) Interest accrued on the amounts above in clauses (a) to (c).
(e) Grants and donations if any made by the Central Govt., State Govt., Companies or any other organizations.
(f) The interest or other income received from the investment made out of the money credited in the fund.
(g) The amount given by Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilized for the purpose of fund.
(h) Donation given to the fund by the Central Government, State Government, Companies or any other institution for the purpose of the Fund.
(i) The amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 as it stood immediately before the commencement of this Act.
(j) The amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956.
(k) The amount received by way of punishment for imprisonment for acquisition etc., of securities under section 38
(l) Sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years.
(m) Redemption amount of Preference shares remaining unpaid or unclaimed for seven or more years.

3.1 Dividend in case of inadequacy or absence of profit:

In the event of inadequacy or absence of profit the company can declare dividend out of reserves in the following manner;

(a) The rate of dividend shall not be more than the average of the rates at which dividend was declared in the preceding three years. This rule shall not apply to a company which has not declared any dividend in each of the three preceding years.

(b) The amount withdrawn from the reserves shall not exceed $1/10^{th}$ of the sum of the paid-up capital and free reserves of the company as per the latest audited financial statements.
(c) The amount drawn shall be first utilized for the purpose of set off the losses incurred in that financial year in which the dividend is declared before any dividend in respect of the equity shares is declared.
(d) The balance amount in the reserve account shall not be less than 15% of the paid-up capital as per the latest audited balance sheet.
(e) The company shall not declare dividend unless previous year losses or depreciation whichever is less in that previous year and not provided in the previous year are set off against the profit of the current year in which dividend is declared or paid.

Chapter 8:
Corporate Governance, Social Responsibility and Sustainability

3.1 Corporate Governance Issues and Concepts

Governance tantamount to the process the affairs of the company is managed with regards to fairness, honesty and good practices for the benefit of all stakeholders. This is to be done with systematic, well designed polices and procedures, keeping in view the balance between the interest of various stakeholders.
Therefore, in order to qualify as good governed company, a company has to put in place the mechanics of the functioning of the company with checks and balances between the shareholders, directors, auditors etc. The process of Corporate governance is more a way of business life than a mere legal compulsion. Companies are forced to comply with conditions / practices by adopting the legal prescription as some companies may not function in the desired ethical manner. Moreover, there should be uniformity in governance, so that stakeholders can compare between the companies.

At various times, various management scientists and philosophers have defined CG, which are as follows.
Nobel laureate Milton Freidman
"CG is the conduct of business in accordance with shareholder desire, which generally means to make money as much as possible, while contributing to the basic rules of society embodied ion law and local customs"
Adrian Cadbury (chairman of the Cadbury committee, which proposed CG for listed company in initial years).
"CG is a system by which companies are directed and controlled. It has to do with power and accountability, who exercises in whose behalf and how"
Narayan Murthy committee(Chairman of the CG committee)
CG is the acceptance by the of the non alienable rights of the shareholders as true owners of the corporation and their own role as trustees. It is about commitment of values, ethical business conduct and differentiating between personal and corporate fund"
In course of time, with the growth of trade and commerce, business and society, now, have a stronger interface. From the typical concept of profit being the essence of business, now we are into a regime where the stakeholder definition includes not only the share holder but the employees, society, Govt., Customers, creditors, financiers etc. This is a paradigm shift in corporate management from the traditional "management" concept to "governance" concept.

Objectives of Corporate Governance

Following can be taken as objectives of CG.
1. to justifiably satisfy the stakeholders by Balancing conflict of interest;
2. adopts transparent, logical and justifiable polices;
3. Ideal composition of the board of directors;
4. optimum use of resources of the company.

Features of Corporate Governance

Let us discuss few features or elements of Corporate governance generally accepted by the industry.

1. A proper tool for transparency: disclosing the status of the affairs company at every step to every stakeholders .i.e. required to maintain transparency. The concept goes against the theory of suppression of material facts by the company to its stakeholders , may be or may not be , for the benefit of the shareholders only.

2.Prudent and participative management: the management should use its full intelligence and knowledge for the benefit of the stakeholders. Hence, it may be taken that management is prudent and wise in its decision making.

3.Enhancing value of the enterprise: Any company should grow from tear to year, if it wants to satisfy it stakeholders. Value may monetary or reputation, image, goodwill etc. Better governing companies will have better reputation, trust of the stakeholders and there will enhancement of business, leading to more profit and better enterprise valuation.

4.Accountability: Success and accountability has to go together. Successful companies will make themselves accountable to the stakeholders. There are many combination of relationships, i.e. with the customer, creditors, shareholders, employees. etc. The company cannot say it is accountable to one stakeholder only. It has to be accountable to all stakeholders.

5.Innovation: Doing something new or doing the same thing in a novel manner is the essence of growth and sustainability of an enterprise. The governance structure should encourage new things in the company for enhancing value of the company.

6.Professionalism and specialization:
The basics of professionalism is that the job shall not be compromised at any level and there should not be conflict of interest of the directors and senior managers between his duty and personal gain. It also takes into account the competence of the person doing job having obviously adequate domain knowledge either by academic qualification or track record of experience

7.Stakeholder recognition: All stake holders should be recognized and respected. the Company should believe that all these stakeholders have contribution in making the company work and grow.

Ethics and corporate governance(CG)

Though corporate governance, per se, is the manifestation of ethics, few differences do exist between the two.

Ethics	**Corporate Governance**
values and principles considered as foundation	the method of governance should be with ethical values
applies at all levels	normally applies at top level
emerges naturally	needs to be studied and experienced

Regulations are not important	Regulations are important as it needs strict compliance

Management and corporate governance(CG)

Few thin line differences may be made out between the two.

Management	**Corporate Governance**
values and principles considered as foundation	the method of governance with ethical values
applies at all levels	Applies at top level
emerges with situation	need to study and experience
Regulations not important	Regulations are important
Results are more important than the methodology of achieving the result	Methodology of achieving results are more important than results

Emergence and evolution of corporate governance

1. Instances of corporate failures: last two decades have witnessed various corporate failures of some of the reputed and large companies which has resulted to mistrust by the stakeholders on companies in general.
2. Some of the big failures are Xerox, Enron, Global Crossing, WorldCom, MS shoes, Harshad Mehta case, Satyam etc.
3. Rise of institutional investors who are bothered about the company and investment;
4. Increased number of retail investors;
5. Opening of company information in public domain;
6. Regulatory requirements;
7. Justifying values to wide range of stakeholders
8. Noncompliance of regulations
9. Disconnect with stakeholders
10. Abnormal volatility in share prices

Objectives of corporate governance

1. To justifiably to satisfy the shareholders by balancing conflict of interest;
2. Adopting transparent and fair policies in all areas of management'
3. Composition of ideal Board of directors to justify independence if decision making;
4. To reduce risks by following risk management through due diligence process
5. Establishing strong relationship of trust between the company and the stakeholders which enhances the value of the company.

Benefits of corporate governance

1.Better governed co. for growth and stabilsation
2.Reputation
3.Better use of funds
4.Better management of resources
5.Long term and steady growth.
6.Establishing stakeholders' confidence

7.Leverage competitive advantages
8.Alliances are easy

OECD principles of corporate governance

Theories **corporate governance**

Stewardship theory: Directors regarded as stewards of the company's assets

Agency theory: directors are considered to be agents of the shareholders and are supposed to run the company for best interest of the shareholders

Stakeholder theory: This theory considers wide inclusion of stakeholders, other than shareholders. Hence the directors need to keep a balance between the interests of various stakeholders.

Principles of good governance

Policy to be made at top level for various functions of management, which should be based on fairness, honesty
Should be known to stakeholders
Should be meticulously practiced

Board level

Board level good governance have been standardized with series of regulations and disclosures by the company to stakeholders and regulators. This is mentioned mostly under the Companies Act and LODR regulations and discussed in detail elsewhere in this study material.

Below Board level

Below Board level, each company has its own mechanism for ethics, code of conduct, service rules, discipline etc. It is up to the company to decide to what extent it is serious about the issues. However, code of conduct for senior executives just below the Board level is a stipulation under LODR. Normally, governance practices are formulated and practiced at top level and percolate downwards. This is called " top down approach" to governance. Whistle blower policy, Audit Committee, standard operating procedures, departmental manuals are some of the common mechanisms used to keep ethics and governance in order, in a company.

Corporate Social Responsibility:

Introduction, Definitions and Concept

CSR is the commitment of any business enterprise to do responsive businesss and contribute directly and indirectly to make positive and well being of the society , particularly the less privileged people of the country.

CSR rests on the principle of **Concern, Care and Share(CCS). Unless you are concerned, you don't care and when you care, you share your resources.**

CSR is a culture of an organization and not only sharing wealth. The intention, attitude and passion for something good to the needy people is not to be forced. It should enter into the mode of corporate functioning.

It is normally believed that only wealthy and reach companies can share but poor and companies with lesser resources can also contribute to some extent in some manner.

Business Society Interface

Philip Kotler had said " we sell goods and services in the society in the market". This implies that unless society demands, there cannot be any production, sale or services. Production employs various factors or resources into economic value addition. Employment creates earning and earning creates demand and demand creates production, and the cycle continues.

Business, therefore, is essential to any social development. The ideal situation would be vibrant corporates working hand in hand with society and contributing to the welfare of people. Therefore, social responsibility is an attempt to meet the economic, ethical, legal demands of the society, without, of course, compromising the sustainability of business. Business is an extension of the Society and no business can sustain in the long run ignoring social values.

Definition and Concepts

The emergence of corporate social responsibility and sustainable development as important concerns of business activity is the result of realization that any business conducted with the sole motive of profit maximisation for the shareholders, in disregard of societal and environmental concerns is bound to fail in the long run.

The traditional concept of Business has come a long way since the famous economist and Nobel laureate, Milton Friedman famously proclaimed in 1970, **"The business of business is to maximize profits, to earn a good return on capital invested and to be a good corporate citizen obeying the law – no more and no less".** In 1984, Edward Freeman introduced the stakeholder theory and argued that socially responsible activities helped business in building strong relationships with stakeholders, and that management must pursue actions that are optimal for a broad class of stakeholders rather than those that serve only to maximise shareholder interests. In 1989 another prominent economist, Kenneth Andrews exhorted corporates **"to focus corporate power on objectives that are possible but sometimes less economically attractive than socially desirable".**

These developments at the turn of the previous century are only indicative of several parallel movements, private initiatives and scholarly debates focused on introduction of reforms in business, corporate governance and management practices. They arose out of a common concern for economic growth, environmental issues, social imperatives and enhanced ethical standards in business. Cumulatively, they brought about an integration of environmental, social and economic aspects of business and espoused societal expectations from business to behave responsibly and deliver better governance.

Corporate Social Responsibility is the responsibility which the corporate enterprises accept for the social, economic and environmental impact their activities have on the stakeholders. The stakeholders include employees, consumers, investors, shareholders, civil society groups, Government, non-government organisations, communities and the society at large.

It is the responsibility of the companies to not only shield the diverse stakeholders from any possible adverse impact that their business operations and activities may have, but also entails affirmative action by the companies in the social, economic and environmental spheres as expected of them by the stakeholders, to the extent of their organisational resource capabilities.

This is besides corporate legal obligation to comply with statutory rules and regulations regarding the conduct of business operations, and the duty to compensate the stakeholders in the event of any harm or collateral damage.It is now universally accepted that corporate social responsibility is not a stand-alone, one time, ad hoc philanthropic activity. Rather, it is closely integrated and aligned with the business goals, strategies and operations of the companies. There is a close integration of social and business goals of companies.

CSR touch upon social issues such as welfare of employees, empowerment of the weaker sections, holistic development of backward regions, improvement of the working conditions of labour, etc. Activities undertaken by companies to address basic issues pertaining to health, nutrition, sanitation and education needs of the impoverished communities, for the promotion of skill development, capacity building and inclusive growth of society, are all sustainability activities.

CSR and Sustainable Development

CSR policies are closely linked with the practice of sustainable development. Sustainability practiced through CSR involves conduct of business operations in a way that minimizes harm to the environment and local communities located in the vicinity of a company's commercial / production units, while benefitting consumers and employees, and thus contributing to sustainable development. Through sustainability initiatives, which include development of new range of goods and services, and innovative production methods that are environmental and consumer friendly and cost effective, companies can enhance consumer satisfaction, and simultaneously boost business growth and profitability.

Recent trends indicate that a company's corporate social responsibility is not limited to its own operations and activities, but extends to its supply chain network, which includes service providers, vendors, contractors and other outsourced agencies. Therefore, companies, especially multinational companies, are nowadays careful in their selection of partners, agents, vendors and contractors and prefer to do a thorough check of their credentials.

From amongst the various perspectives of CSR and the different prevalent practices of CSR, the one that finds favour with the private multi-national companies of the developed economies is the 'strategic CSR', or CSR based on 'enlightened self-interest' of companies. This approach is supported and endorsed by the doctrine of "shared value" propounded by eminent Harvard economists Michael Porter and Mark Kramer. This approach seeks financial gains for companies from the activities they undertake in discharging their corporate social responsibility. According to Porter and Kramer **"The essential test that should guide CSR is not whether a cause is worthy but whether it presents an opportunity to create shared value – that is, a meaningful benefit for society that is also valuable to the business".** Creating "Shared Value" involves creating new business opportunities and developing new products that are profitable for companies while simultaneously contributing to social development. Through 'strategic CSR' companies seek to exploit "opportunities to achieve social and economic benefits simultaneously". Putting it succinctly, companies look for business opportunities in socio-economic problems besetting societies.

Why CSR is gaining importance in recent years.

Looking back, we find that successful corporates served the needy and economically backward communities year after year, through various modes. Therefore, CSR is not really a new concept, in recent years, it is being talked upon more. This may be due many reasons, some of them are discussed below. This also supports the reason for making CSR mandatory.

(a) International practice
(b) OECD declaration of business responsibility
(c) UN Global Compact
(d) Corporate affluence
(e) Industry custom in India
(f) Leveraging of funds (negative)
(g) Genuine involvement of Corporates in society.

Approaches to CSR

CSR as business model

Sometimes the business model itself is something which helps the society or the people. Businesses' like waste recycling and management, fuel consumption reduction, agro based industry, solar equipment etc.

CSR separate from Business model

Here the business of the sponsoring company has nothing to do with the CSR project, directly or indirectly. The company takes up the project or funds the project with sole intention of social benefit.

CSR- by whom?

By the word corporate, we mean large business house. However, it may not be fair to conclude that medium and small companies do not participate in social development. Apart fro mandatory provisions, we have companies in India who also extent their small hand in social work.

CSR- for Whom

When CSR was not mandatory (pre 2014) companies had the option of choosing nay activity as CSR, however, subject to normal interpretation of the word. With the coming of the Act, the activities are defined and the definitions are wide, giving a chance to the companies to do something which may not directly effect the poor, downtrodden, needy and under privileged.

Companies therefore should have an holistic approach while selecting projects , particularly the beneficiary profile should be clear. Even where the funds are going to an institution , it should ultimately benefit the kind of beneficiaries referred above. Instances are there where funds spent have not made nay impact as there was no need. We also have many cash rich NGOs.

Why corporates should contribute to society

For	**Against**
Corporate do business in society	Public welfare is a Govt. function
They exploit the people and environment	Business is highly competitive.
Only required when companies make substantial profit corporate affluence	Companies give huge tax
Corporates need to connect with society	Diversion of attention and efforts

Though corporates are supposed to do business, social responsibility is also important	Business needs to concentrate on many other issues

However, business responsibility and social responsibility do have few differences which may be as follows.

Business responsibility	**Social responsibility**
Responsible to stakeholder mainly to survive and grow	Responsible to less privileged class of the society
Do not supplement Govt. efforts of social welfare	Supplement Govt. efforts on social welfare
Ethical but not legal, unless specific compliance	Ethical and mandatory for some class of companies
Adds to shareholders value by wealth creation	Adds to societal values by wealth distribution

CSR: advantages to the company

- Improves public image
- Image leads to trust and demand for products and services leading to more sales
- Image leads to attraction before investors leading to growth in market capitalization
- Nurture assets and financial figures
- Motivate employees: improves organization dynamics
- Enhances interaction of the companies with the people and their needs, which can be commercialized by the company
- Improves relationship with stakeholders

CSR: advantage to Govt.

- supplements Govt. funding
- Looks after social welfare
- Enhances business society relationship leading to more trade and commerce and Govt. revenue

Regulatory aspects of CSR and the stakeholders

In CSR, we have mainly three stakeholders< the company, the beneficiaries and the implementing agencies. With the passage of time, various laws and regulations have been made to regulate the stakeholders like the company, the implementing agencies, the beneficiary etc. This issues are being discussed below.

Compliance of Companies Act-2013

Companies may spend money on philanthropic activities u/s 181 of the company up to 5% of average net profit of last three years. For more, it has to take approval of shareholders.

CSR

Section 135 of the Act provides for the applicability of the CSR provisions on corporates. Sub-section (1) of section lays down that every company having

• net worth of Rs. 500 Cr. or more; or
• turnover of Rs. 1000 Cr. or more;
• net profit of Rs. 5 Cr.

during immediately preceding financial year shall be required

(a)to constitute a CSR Committee of the Board consisting

(b) formulate CSR policy

© spend at least 2% of the average net profit of last three years, during the financial

Constitution of CSR Committee

(i) There will be at least three directors in the committee with at least one independent directors;
(ii) Unlisted public company or a private company, falling under the financial threshold but not required to have IDs, shall not have any ID in the committee.
(iii) Private company having 2 directors only shall have 2 directors in the committee
(iv) In case of Foreign company, person who is authorized to receive notice on behalf of the company and any other person nominated by the company.

Every company which ceases to be a company covered under section 135 as per the limits specified thereunder for three consecutive financial years shall not be required to constitute a CSR Committee and comply with the provision of section 135, till such time that it meets the criteria specified.

(b) Functions of CSR Committee

(i) To institute a transparent monitoring mechanism for implementation of CSR projects;

(ii) To recommend the CSR Policy and modification thereto, if any;

(iii) To recommend projects for approval of Board.

© CSR spending

(i) The amount to be spent shall be at least 2% of the average net profit of last 3 preceding years. or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.

(ii) in case the required amount is not spent "reasons for not spending the amount" has to be mentioned in the Board Report, unless the unspent amount relates to any ongoing project,, transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

In case of unspent amount earmarked for a project

Any amount remaining unspent pursuant to any ongoing project, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

Provided that- a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism.

Penalty for non-compliance of section 135

There is no specific penalty for non-compliance of CSR provisions under section 135 of the companies act read with rules. However penalties can be levied under following provisions.
Section 134(8): As per section 134(3) of the companies act, companies shall include in its board report the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year. If company contravenes the provisions of section 134 then

- The company shall be punishable with fine which shall not be less than Rs. 50000/-but which may extend to Rs.25,00,000 and
- Every officer in default shall be punishable with Imprisonment for a term which may extend to three years or a fine which shall not less than Rs.50000/-but which may extend Rs. 5,00,000/-or both.

Section 450**:** Where no specific penalty is provided, in case of contravention of any such provision, company and every officer in default or such other person shall be punishable with fine which may extend up to Rs.10,000/-and where contravention is continuing one, further fine which may extend to Rs.1000/-for every day after the first during which contravention continues.

Regulatory Role and Functions of the Board of Directors

Ultimate responsibility lies with the Board. Functions, role and responsibility of the Board as stipulated in the Act and Rules are as follows.

(i) Approve CSR policy, if found suitable;

(ii) Approve proposals for CSR activity/project, if found suitable;

(iii) Ensure minimum spending as stipulated in the law;

(iv) Disclose in annual report in prescribed format

(v) Disclose non compliance with reasons;

(vi) Disclose details in company website.

CHAPTER 10

Understanding of Company Dissolution/Liquidation/ Winding Up (basic concept)

1. Introduction:

"Winding up" as the word is use, means end of anything or closing down of anything. Under the Company law also, it means the same. Any investor will not like to close a business when it is running successfully. Once there is failure, he may choose to go for selling the company to other investor, make reconstruction within the company to run after structural changes, amalgamate with other company or decide to close down.

Winding up, therefore is a process where a company starts taking steps to close down the business. Moment the process starts, the affairs of the company will pass on to person called " liquidator" and Board of Directors shall cease to operate.

The ultimate job of the liquidator is to sell the assets of the company and distribute the proceeds to the stakeholders. Once this process is over, the liquidator will report to Tribunal, which will pass order of dissolution which is the death certificate of the company.

Winding up will now be governed by the Act as well as the Code

"Voluntary winding up" and winding up on the ground of "inability to pay debts" has no place in the Companies Act,2013.

The Code, however, mandates insolvency in case of "default" even when the company is able to pay its debts, but have

defaulted.

2. Types of Winding up:

2.1 Voluntary winding up:

Every person has fundamental right to start a business and stop doing a business. Therefore, voluntary winding up amounts to closing down on his own. This, however, is subject to certain restriction and procedures, most important being liquidation of debt. The procedures of such winding up shall be as follows.

(i) If the company passes a resolution as a result of expiry of any period fixed by Articles of
(ii) Association of the company or any event as occurred or the company otherwise passes a
(iii) resolution that the company be wound up. Company has not committed any default.
(iv) The company shall make public notification within 14 days of passing of such resolution.
(v) The Board of Directors will make declaration in the Board meeting called "Declaration of Solvency" that
(vi) company has no debts or the debts will be paid off out of the assets of the company.
(vii) Statement by the directors that dues will be paid in full.
(viii) There shall be a meeting of creditors where 2/3rd of the creditors shall agree to the winding up.
(ix) Information to IBBI and ROC have to be given.
(x) The winding up shall be deemed to have commenced with the passing of resolution by the
(xi) shareholders.
(xii) Company not to carry on any business except for the beneficial winding up of the company.
(xiii) Corporate identity and powers of the companies shall continue.

2.2 Compulsory winding up by Tribunal

The company can be wound up by the tribunal on the following circumstances:

(a) The company by a special resolution has resolved to wind up.
(b)The company has acted against the sovereignty, integrity, security, friendly relations with other countries, public order, decency or morality;
(d) the affairs of the company is being conducted in a fraudulent manner or is formed for
(e) unlawful purpose or the persons managing the company are guilty of fraud and misconduct:
(d) Default in filing financial statements and annual returns for last 5 yrs.
(e)NCLT is of the opinion that it is just and equitable that the company should be wound up.

3. Petition for winding up :

Petition for winding up can be made by:

1) The company
2) Any creditor or creditors
3) Any contributory or contributories
4) By all or any of the parties mentioned above.
5) By the Registrar of Companies (ROC) [except for (a) & (b) above].
6) By any person authorised by the Central Government in this behalf.
7) In a case falling under sovereignty etc. by Central Government or State Government.

The petition shall be accompanied by statement of affairs. The copy of petition shall be filed with the ROC, who shall submit his view within 60 days.

4. Powers of Tribunal

(a) dismiss the petition:
(b) make interim order:
(c) appoint provisional liquidator, till final order:
(d) order winding up and appoint liquidator.

Such order shall be made within 90days from the date of petition.

5. Effect of winding up order

(a) Liquidator: an individual appointed by the Tribunal, who takes over the affairs of the company.
(b) He is responsible for the supervision of the entire process of winding up till dissolution of the company.
(c) The company will remain to be an existing company;
(d) The Board of Directors shall cease to function:
(e) Company will not be doing any business, except required for the purpose of dissolution:
(f) All agreements with employees or outsiders shall be deemed to have been terminated or varied As decided by the liquidator.
(g) Order shall operate in favour of the creditors.
(h) No suit or legal proceeding shall commence or pending proceedings preceded without the power of NCLT.
(i) There can be dissolution without winding up in case of merger or amalgamation.
(j) Tribunal may order for constitution of Advisory Committee to advise company liquidator.

6. Appointment of liquidators

At the time of passing the winding up order, the tribunal shall appoint an official liquidator or any person under the panel of liquidators, as company liquidator from any resolution professional

registered with Bankruptcy and Bankruptcy Board of India (IBBI).Tribunal shall, within 7 days of the order, inform the appointee, the Registrar of Companies(ROC) and concerned stock exchange(in case of listed company)

6.1 Role of liquidators

1. Within 3 weeks to an application is to be made to Tribunal for constituting a winding up committee,
2. where in addition to him, a nominee each of the tribunal and secured creditors need to be members.
3. Taking over the assets, make asset list, recover property and other asset, sale assets, summon
4. meeting of creditors or contributories, examine the affairs, finalize claims, make final payments.
5. He will report to tribunal form time to time on actions being taken.
6. On winding up of all affairs of the company, liquidator to make application for dissolution.
7. NCLT to order for dissolution;
8. Liquidator to get order of dissolution within 30 days of the order to ROC, who will de register the company.
9. Where liquidator has some money which is payable to creditor/ contributory which have remained unpaid, the same shall be transferred to an special account and the details shall be filed to ROC, which can be claimed by the person entitled after dissolution upto 15 years of dissolution.

7.Preferential payments

In case of a winding up the following payments will be made in priority to all other debts:

(a) workmen dues;
(b) due for any superannuation fund
(c) Govt. revenues,
(d) all wages and salaries of any employee.
(e) Secured creditors
(f) Uncensored creditors
(g) Preference shareholders
(h) Equity shareholders.

7.1 Fraudulent Preference

Any transfer of property or any other goods by or against a company within 6 months before the commencement of its winding up which had it been done by or against an individual within 3 months before the presentation of insolvency petition on which he was eventually adjudged insolvent would be deemed in his insolvency a fraudulent preference, shall in the event of company being wound up , be deemed a fraudulent preference of its creditors and be invalided accordingly.
