

CS EXECUTIVE

**Jurisprudence,
Interpretation
& General Laws**
[JIGL]

CHART BOOK

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INSPIRE ACADEMY

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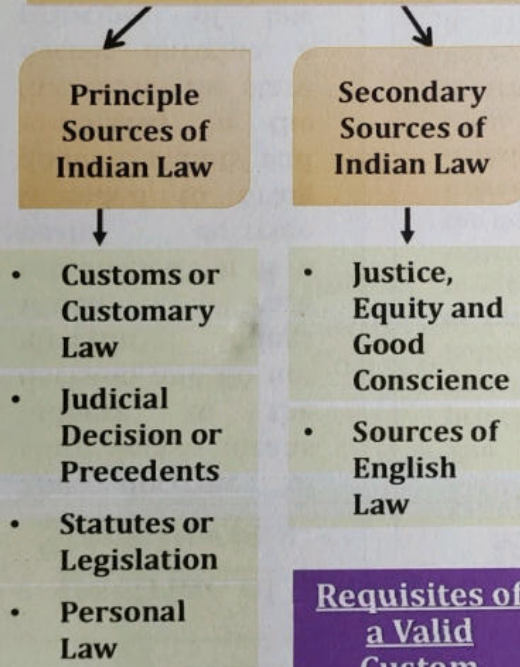
Sources of Law



Definitions

Natural School	Ulpine defined Law as "the art or science of what is equitable and good."
Positivistic	According to John Austin, "Law is the aggregate of rules set by man as politically superior, or sovereign, to Natural Positivistic Historical Sociological Realistic men as political subject."
Historical	According to Sir Henry Maine, "The word 'law' has come down to us in close association with two notions, the notion of order and the notion of force".
Sociological	Inhering defines law as "the form of the guarantee of the conditions of life of society, assured by State's power of constraint".
Realist	According to Holmes, "Law is a statement of the circumstances in which public force will be brought to bear upon through courts."

SOURCES OF INDIAN LAW



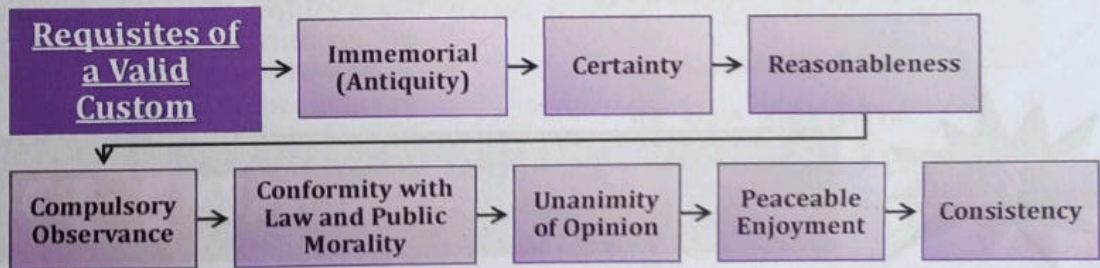
Customs or Customary Law

Custom is the most ancient of all the sources of law and has held the most important place in the past, though its importance is now diminishing with the growth of legislation and precedent.

Classification of Customs :

The customs may be divided into two classes:

- **Customs without sanction.**
Customs without sanction are those customs which are non-obligatory and are observed due to the pressure of public opinion. These are called as "positive morality".
- **Customs having sanction.**
Customs having sanction are those customs which are enforced by the State. It is with these customs that we are concerned here. These may be divided into two classes:
 - Legal, and
 - Conventional.



Sources of Law

Judicial Decision or Precedents

- In general use, the term "precedent" means some set pattern guiding the future conduct. In the judicial field, it means the guidance or authority of past decisions of the courts for future cases. Only such decisions which lay down some new rule or principle are called judicial precedents.

Kinds of Precedents

Declaratory and Original Precedents.

Persuasive Precedents.

Absolutely Authoritative Precedents.

Conditionally Authoritative Precedents

Doctrine of Stare Decisis

The doctrine of stare decisis means "adhere to the decision and do not unsettle things which are established". It is a useful doctrine intended to bring about certainty and uniformity in the law. Under the stare decisis doctrine, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases.

Doctrine of Ratio Decidendi

The underlying principle of a judicial decision, which is only authoritative, is termed as ratio decidendi. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between the parties to it. The abstract ratio decidendi alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its ratio decidendi.

Doctrine of Obiter Dicta

The literal meaning of this Latin expression is "said by the way". The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decision of the particular issue raised. These statements thus go beyond the requirement of a particular case and have the force of persuasive precedents only. The judges are not bound to follow them although they can take advantage of them. They some times help the cause of the reform of law Obiter Dicta are of different kinds and of varying degree of weight. Some obiter dicta are deliberate expressions of opinion given after consideration on a point clearly brought and argued before the court.

Sources of Law

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Statutes or Legislation

Legislation is that source of law which consists in the declaration or promulgation of legal rules by an authority duly empowered by the Constitution in that behalf. It is sometimes called jus scriptum (written law) as contrasted with the customary law or jus non-scriptum (unwritten law).

SECONDARY SOURCE OF INDIAN LAW

Justice, Equity and Good Conscience

The concept of "justice, equity and good conscience" was introduced by Impey's Regulations of 1781. In personal law disputes, the courts are required to apply the personal law of the defendant if the point at issue is not covered by any statute or custom.

Sources of English Law

The chief sources of English law are:
Common Law
Law Merchant
Principle of Equity
Statute Law.

Personal Law

In the case of Hindus :

1. Shruti which includes four Vedas.
2. The 'Smritis' which are recollections handed down by the Rishis or ancient teachings and precepts of God, There are three main Smritis; the Codes of Manu, Yajnavalkya and Narada.

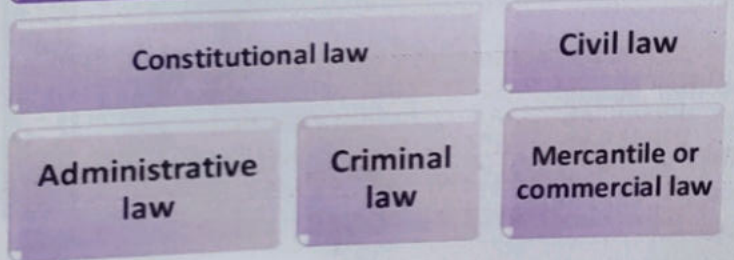
Personal law of Mohammedans

1. holy Koran.
2. The actions, percept and sayings of the Prophet Mohammed which though not written during his life time were preserved by tradition and handed down by authorized persons. These are known as Hadis.
3. Ijmas.
4. Kiyas or reasoning by analogy.

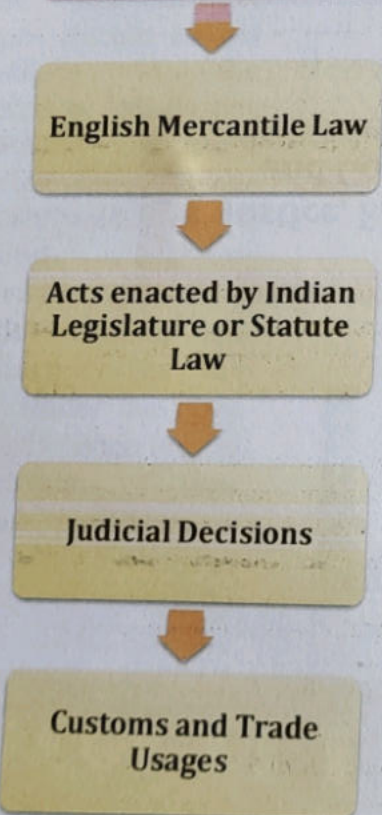
Sources of Law



MERCANTILE OR COMMERCIAL LAW



Sources of Indian Mercantile Law



JURISPRUDENCE

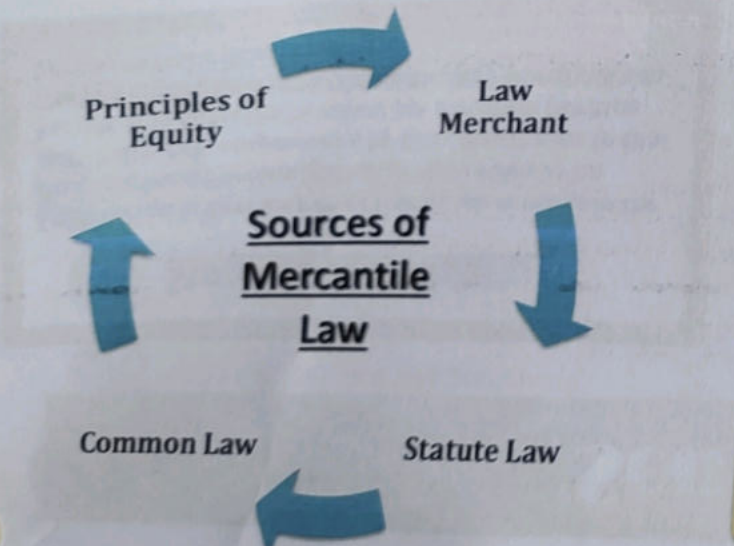
The word Jurisprudence is derived from the word 'juris' meaning law and 'prudence' meaning knowledge. Jurisprudence is the study of the science of law. The study of law in jurisprudence is not about any particular statute or a rule but of law in general, its concepts, its principles and the philosophies underpinning it

Austin's Command Theory of law

John Austin a noted English legal theorist was the first occupant of the chair of Jurisprudence at the University of London. Austin is known for the Command Theory of law. Austin was a positivist, meaning that he concerned himself on what the law was instead of going into its justness or fairness.

Austin differentiated between 'Law properly so called' and 'laws improperly so called' and said that laws properly so called are general commands but not all of it is given by men for men. A specie 'Laws properly so called' are given by political superiors to political inferiors. According to Austin law is the command of sovereign that is backed by sanction. Austin has propagated that law is a command which imposes a duty and the failure to fulfil the duty is met with sanctions (punishment). Thus Law has three main features:

1. It is a command.
2. It is given by a sovereign authority.
3. It has a sanction behind it.



Sources of Law

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Criticism of Austin's Command Theory of law

- Welfare states pass a number of social legislations that does not command the people but confer rights and benefits upon them. Such laws are not covered under the command theory.
- According to Austin the sovereign does not have to obey anyone but the modern states have their powers limited by national and international laws and norms.
- Austin does not provide for judges made laws.
- Since the presence of sovereign is a pre-requisite for a proposition to called law, Austin did not recognize international laws as such because they are not backed by any sovereign.

Roscoe Pound's theory of law

Roscoe Pound defined interests as claims or wants or desires which men assert de facto, and about which law must do something, if organized societies are to endure. For any legal order to be successful in structuring an efficient society, there has to be:

- A recognition of certain interests- individual, public and social.
- A definition of the limits within which such interest will be legally recognized and given effect to.
- Securing of those interests within the limits as defined.

Determining the scope and the subject matter of the legal system, following five things are required to be done:

- Preparation of an inventory of interests and their classification.
- Selection of the interests which should be legally recognized.
- Demarcation of the limits of securing the interest so selected
- Consideration of the means whereby laws might secure the interests when these have been acknowledged and delimited, and
- Evolution of the principles of valuation of interests

Roscoe Pound's classification of interests are as follows:

- Individual interest: These are claims or demands determined from the standpoint of individual's life and concern. They are-
 - a. Interest of personality
 - b. Interest in domestic relations.
 - c. Interest of substance
- Public interest: These interests are asserted by individual from the standpoint of political life. They are:
 - a. Interests of the state as a juristic person.
 - b. Interests of the state as guardian of social interest
- Social interests: These are claims or demands thought of in terms of social life and generalized as claims of the social group . Social interests include-
 - a. Social interest in the general security.
 - b. Social interest in the security of social institutions.
 - c. Social interest in general morals like laws dealing with prostitution, gambling, bigamy, drunkenness.
 - d. Social interest in the conservation of social resources
 - e. Social interest in general progress.
 - f. Social interest in individual life

Sources of Law

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Criticism of Roscoe Pound's theory of law

- Pound said that interest pre-exist laws and the function of legal system should be to achieve a balance between competing interests but we see that a lot of interests today are a creation of laws
- The theory does not provide any criteria for the evaluation of interest. It is not interests as such, but the yardstick with reference to which they are measured that matter
- Pound's theory of balancing interests can be effectuated most effectively by judges because the judges get to translate the activity involved in the cases before them in terms of interests and select the ideal with reference to which the competing interests are to be measured.
- Pound's distinction between Public and Social interests is doubtful and even the distinction between Individual and Social Interest is of minor significance.
- The recognition of a new interest is a matter of policy

Kelsen's Pure Theory

Hans Kelsen was an Austrian philosopher and jurist who is known for his 'Pure Theory of Law'. Kelsen believed that the contemporary study and theories of law were impure as they were drawn upon from various other fields like religion and morality to explain legal concepts. Kelsen described law as a "normative science" as distinguished from natural sciences which are based on cause and effect, such as law of gravitation.

Criticism of Kelsen's Pure Theory

- It is difficult to trace 'grundnorm' in every legal system. Also, there is no rule or yardstick to measure the effectiveness of grundnorm
- The Pure Theory also did not give the timeframe for which the effectiveness should hold for the requirement of validity to be satisfied.
- Kelsen's theory ceases to be 'pure' the moment one tries to analyse the grundnorm because then one will have to draw upon subjects other than law like sociology, history and morality.
- International law does not sit well with Kelsen's Pure theory. He advocated a monist view of the relationship between international and municipal law and declared that the grundnorm of the international system postulated the primacy of international law

Sources of Law



Bentham's theory of law	
Bentham said that every law may be considered in eight different respects	<u>Criticism of Bentham's theory of law</u>
<ul style="list-style-type: none">✓ Source✓ Subjects✓ Objects✓ Extent✓ Aspects✓ Force✓ Remedial appendage✓ Expression	<ul style="list-style-type: none">• Due to Bentham's strait-jacketing of laws into an imperative theory- all laws have to be either command or permission, it does not take proper account of laws conferring power like the power to make contracts, create title etc.• Bentham did not give a fair treatment to custom as a source of law. He said customs could never be 'complete'.• Bentham's theory did not allow for judge made laws and hoped that such laws would be gradually eliminated by having 'complete laws'.• To judge an action according to the pleasure- pain criterion is to judge it subjectively. The theory did not provide how a subjective criterion of pain and pleasure can be transmuted into an objective one.• It is not always true that an increase in the happiness of a certain segment of society will lead to an increase in the overall happiness level because it might be associated with a diminution in the happiness of some other rival section of the society.

Constitution of India

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The Constitution of India came into force on January 26, 1950. It is a comprehensive document containing 395 Articles (divided into 22 Parts) and 12 Schedules.

Structure

Constitution of India is basically federal but with certain unitary features.

The essential features of a Federal Polity or System are—

Dual Government,

- Distribution of powers,
- Supremacy of the Constitution,
- Independence of Judiciary,
- Written Constitution, and
- A rigid procedure for the amendment of the Constitution.

The political system introduced by our Constitution possesses all the aforesaid essentials of a federal polity as follows:

- In India, there are Governments at different levels, like Union and States.
- Powers to make laws have been suitably distributed among them by way of various lists as per the Seventh Schedule.
- Both Union and States have to follow the Constitutional provisions when they make laws.
- The Judiciary is independent with regard to judicial matters and judiciary can test the validity of law independently. The Supreme Court decides the disputes between the Union and the States, or the States inter se.
- The Constitution is supreme and if it is to be amended, it is possible only by following the procedure explained in Article 368 of the Constitution itself.

Fundamental Rights

Right to Equality (Article 14 & 18)

Right to Freedom (Article 19 & 22)

Right against Exploitation (Article 23 & 24)

Right to Freedom of Religion (Article 25 & 28)

Cultural and Educational Rights (Article 29)

Right to Constitutional Remedies (Article 32)

“the State” includes

- The Government and Parliament of India;
- The Government and the Legislature of each of the States; and
- All local or other authorities:
 - a. within the territory of India; or
 - b. under the control of the Government of India.

Constitution of India

Justifiability of Fundamental Rights

Existing Laws:

- Article 13(1) relates to the laws already existing in force, i.e. laws which were in force before the commencement of the Constitution (pre constitutional laws). A declaration by the Court of their invalidity, however, will be necessary before they can be disregarded and declares that pre-constitution laws are void to the extent to which they are inconsistent with the fundamental rights.

Future Laws:

- Article 13(2) relates to future laws, i.e., laws made after the commencement of the Constitution (post constitutional laws). After the Constitution comes into force the State shall not make any law which takes away or abridges the rights conferred by Part III and if such a law is made, it shall be void to the extent to which it curtails any such right.

Doctrine of Severability

It is not the entire law which is affected by the provisions in Part III, but on the other hand, the law becomes invalid only to the extent to which it is inconsistent with the Fundamental Rights. So only that part of the law will be declared invalid which is inconsistent, and the rest of the law will stand. However, on this point a clarification has been made by the Courts that invalid part of the law shall be severed and declared invalid if really it is severable, i.e., if after separating the invalid part the valid part is capable of giving effect to the legislature's intent, then only it will survive, otherwise the Court shall declare the entire law as invalid. This is known as the rule of severability.

Doctrine of Eclipse

An existing law inconsistent with a fundamental right becomes in-operative from the date of the commencement of the Constitution, yet it is not dead altogether. A law made before the Commencement of the Constitution remains eclipsed or dormant to the extent it comes under the shadow of the fundamental rights, i.e. is inconsistent with it, but the eclipsed or dormant parts become active and effective again if the prohibition brought about by the fundamental rights is removed by the amendment of the Constitution. This is known as the doctrine of eclipse.

Doctrine of Waiver

The doctrine of waiver of rights is based on the premise that a person is his best judge and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the State. However, the person must have the knowledge of his rights and that the waiver should be voluntary.

Article 14: Equality before the law and equal protection of the laws

“the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

The expression 'equality before the law' which is borrowed from English Common Law is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual.

Legislative classification

A right conferred on persons that they shall not be denied equal protection of the laws does not mean the protection of the same laws for all. To separate persons similarly situated from those who are not, legislative classification or distinction is made carefully between persons who are and who are not similarly situated

Test of valid classification Permissible classification must satisfy 2 conditions, namely:

- the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; AND
- Such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question

Article 15: Prohibition of discrimination on grounds of religion etc.

- State cannot discriminate against any citizen on grounds only of – Religion, Race, Caste, Sex, Place of birth, Any of them
- Article 15(2) lays down that no citizen shall be subjected to any disability, restriction or condition with regard to—
 1. Access to shops, public restaurants, hotels and places of public entertainment; or
 2. The use of wells, tanks, bathing ghats, roads and places of public resort, maintained wholly or partially out of State funds or dedicated to the use of the general public.
- Article 15(4) permits the State to make special provision for the advancement of—
 - i. Socially and educationally backward classes of citizens;
 - ii. Schedule caste and
 - iii. schedule tribes

Constitution of India

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Article 16: Equality of opportunity in matters of public employment.

- All citizens shall have equal opportunity in matters relating to employment or appointment of office under the State.
- There shall be no discrimination against a citizen on the grounds of religion race caste, sex descent, place of birth or residence.

Article 17: Abolition of untouchability

Article 17 says that "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Article 18: Abolition of titles

Article 18 is more a prohibition rather than a fundamental right. British Government used to confer titles upon persons who showed special allegiance to them.

Rights Relating to Freedom

Articles 19-22 guarantee certain fundamental freedoms.

Article 19(1), of the Constitution, guarantees to the citizens of India six freedoms, namely;

• Right to freedom of speech and expression

Freedom of assembly

Freedom of association

Freedom of movement

Freedom of residence

Right to acquire, hold and dispose of property — deleted by 44th Amendment in 1978.]

Freedom to trade and occupations

Protection in respect of conviction for offences

Articles 20, 21 and 22 provide a system of protection, relevant to the criminal law. Article 20 guarantees to all persons — whether citizens or non-citizens - 3 rights namely—

• protection against ex-post facto laws

According to Article 20(1), no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

• protection against double jeopardy

According to Article 20(2), no person can be prosecuted and punished for the same offence more than once.

• protection against self-incrimination

According to Article 20(3), no person accused of any offence shall be compelled to be a witness against himself. In other words, an accused cannot be compelled to state anything which goes against him

Constitution of India

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Protection of life and personal liberty

Article 21 confers on every person the fundamental right to life and personal liberty. It says that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 21A Right to education

This was introduced by the constitution (86th amendment) Act, 2002. According to this, the state shall provide free and compulsory education to all children of the age of 6 to 14 years.

Right against illegal arrest and preventive detention

Article 22 lays down the last right to freedom which relates to protection against illegal arrest and preventive detention.

Article 22 does not apply uniformly to all persons and makes a distinction between:

- Alien enemies,
- Person arrested or detained under preventive detention law, and
- Other persons.

Person arrested or detained other than under preventive detention law-

- A person who is arrested cannot be detained in custody unless he has been informed, as soon as he may be, of the grounds for such arrest.
- The person arrested has right to consult an advocate of his choice.
- A person who is arrested and detained must be produced before the nearest magistrate within a period of 24 hours of such arrest, excluding the time of journey. And such a person shall not be detained in custody beyond 24 hours without the authority of magistrate.

Person arrested or detained under preventive detention law

Preventive detention means detention of a person without trial. The object of preventive detention is not to punish a person for having done something but to prevent him from doing it. No offence is proved nor any charge formulated and yet a person is detained because he is likely to commit an act prohibited by law.

Right against exploitation (Article 23 & 24)

They provide for rights against exploitation of all citizens and non-citizens. Taking them one by one they guarantee certain rights by imposing certain prohibitions not only against the State but also against private persons.

- Prohibition of traffic in human beings and forced labour
- Prohibition of employment of children

Article 25 gives to every person the:

- Freedom of conscience, and
- The right freely to profess, practice and propagate religion.

Article 26 provides following rights to every religious denomination:

- 1) Right to establish and maintain institutions of religious charitable purposes;
- 2) To manage its own affairs in matters of religion;
- 3) To own and acquire movable and immovable property and ;
- 4) To administer such property in Accordance with law

ARTICLE 27-

Any person shall not be compelled to pay any taxes, the proceed of which will be used to meet expenses for promotion of any particular religion.

Constitution of India

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ARTICLE 28-

- An educational institute which is wholly maintained by state fund shall not give any religious institutions.
- Any person shall not be compelled in any educational institutions run by state fund without his consent or his guardians consent to
 - a. To take part in religious institution given
 - b. To attend any religious worship conducted.

CULTURAL AND EDUCATIONAL RIGHT [Right of Minorities]

The 2 article guarantee the following rights:

- 1) Protection of interests of Minorities
- 2) Right of Minorities to establish and administer educational institutions

Directive Principle of State Policy

Directive principle are the ideals which the union and state governments must keep in mind while formulating policies or pass law. The articles included in part IV of the constitution (article 36 to 51) contain certain directives which are the guidelines for the future government to lead the country.

Important directive principle of state

1. State to secure a social order for the promotion of welfare of the people
2. Principles and policies to be followed by state
 - ❖ Equal right for men and women
 - ❖ Equal pay for equal work for men and women.
 - ❖ Distribution of ownership of material resources for common good.
 - ❖ Prevention of concentration of wealth to the common detriment
 - ❖ Ensure health of citizens at workplace.
 - ❖ Protection of child and youth against exploitation.
3. Equal justice and free legal aid.
4. Organize village panchayats.
5. Right to work, education and public assistance in certain case.
6. Just and human condition of work
7. Living wages and securing standard of living to workers.
8. Participation of workers in management of industries.
9. Uniform civil code
10. Free and compulsory education for children
11. Promote the educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.
12. Protection of environment, forest and wildlife
13. Protection of monuments and places of national importance.
14. Separation of judiciary from executive
15. Promotion of international peace and security

Constitution of India

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Territorial jurisdiction

Parliament may make laws for the whole of India and the legislature of a state may make laws for the whole or any part of the state

Subject matter jurisdiction On the basis of subject matter jurisdiction is divided on the following 3 basis:

- **Union List** - This list contains the subject matter in which parliament has power to legislate. In no case state has power to legislate on the given matters. There are 97 entries in this list. The main subjects of the union list are of national interest and importance like defence, foreign affairs, currency and coinage, war and peace, atomic energy, etc.
- **State list** - this list contains the subject-matter in which state legislature has power to legislate. But at the time of proclamation of emergency the power of the state shifts to the parliament. There were 66 entries in this list initially (currently there are 61 items). The main subjects of the state list are public order, police, state court fees, prisons, local government, public health and sanitation, hospitals and dispensaries, etc.
- **Concurrent List** - this list contains the subject matter in which both parliament and state legislature can legislate. However, when there is a conflict between such laws made by centre and state on same subject-matter then the law made by parliament shall prevail over the law made by the state legislature. There are 47 entries (though there are 52 items currently) in this list. The main subjects listed in this list are criminal law, criminal procedure, marriage and divorce, transfer of property, etc.
- **Residuary list** - With respect to all those matters which are not included in any of the 3 lists, parliament has the exclusive power to make laws. It is called the residuary legislative power of parliament.

Power of Parliament to make Laws on State List

- In the National Interest
- During a proclamation of emergency
- Breakdown of Constitutional Machinery in a State -
- On the request of two or more States
- Legislation for enforcing international agreements

Interpretation of the Legislative Lists

Plenary Powers: The first and foremost rule is that if legislative power is granted with respect to a subject and there are no limitations imposed on the power, then it is to be given the widest scope that its words are capable of, without, rendering another item nugatory.

Harmonious Construction: Different entries in the different lists are to be interpreted in such a way that a conflict between them is avoided and each of them is given effect. It must be accepted that the Constitution does not want to create conflict and make any entry nugatory.

Pith and Substance Rule: The rule of pith and substance means that where a law in reality and substance falls within an item on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature.

Colourable Legislation: Doctrine of colourable legislation states, 'whatever legislature can't do directly, it cant do indirectly.' When a legislature seeks to do something in an indirect manner what it cannot do directly, the court struck such law.

Freedom of Trade, Commerce and Intercourse

ARTICLE 301

Article 301 of the constitution lays down the trade, commerce and intercourse throughout the territory of India shall be free. Restrictions in the form of taxes can be Imposed.

ARTICLE 302

However, parliament can impose restriction on freedom of trade, commerce and intercourse in public interest.

ARTICLE 303

While imposing restrictions, the parliament should not discriminate between the state. Discrimination can only be done in case of scarcity of goods.

ARTICLE 304

State legislature can impose taxes on goods which comes into their state from other states if those goods are subject to taxation in their respective states.

ARTICLE 305

The laws which create state monopoly in any trade, etc. are valid irrespective of the fact that they directly impede or restrict the freedom of trade and commerce

HABEAS CORPUS

- The words 'Habeas Corpus' literally mean "to have the body". If a person is detained whether in prison or private custody without any justification for detention then he himself or through his representative may seek relief under this writ. The Supreme Court or high court will then issue this writ to produce the person who has been detained before a court and to release him if such detention is found illegal

MANDAMUS

- Mandamus means 'we command'. It is issued when a public official or a person holding a public office has failed to perform his/her public or statutory duty. Mandamus can be issued against any public authority

PROHIBITION

- A writ of prohibition is issued to an inferior court preventing it from assuming jurisdiction which is not legally vested in it. When a tribunal or lower court acts without or in excess of jurisdiction writ of prohibition can be demanded. It is generally issued before the trial of the case or during pendency of proceeding, but never after the order is made.

CERTIORARI

- The writ of certiorari can be filed to high court or Supreme Court if a subordinate court
 - i. acts without or in excess of jurisdiction or
 - ii. acts in contravention of the rules of natural justice or
 - iii. Commits an error apparent on the face of the record.Although the object of both the writs of prohibition and of certiorari is the same, prohibition is available at an earlier stage whereas certiorari is available at a later stage when the order is made.

QUO-WARRANTO

- The term 'quo-warranto' means 'what is your authority'. If a public office is held by any one not qualified to hold it, it can be challenged by any person. Under this writ, the person is ordered by the court to explain under what valid grounds he is holding such a position.

Interpretation of Statutes

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A statute has been defined as "the will of the legislature .

Statutes are commonly divided into following classes

1. Codifying
2. Declaratory
3. Remedial
4. Amending
5. Consolidating
6. Enabling
7. Disabling or restraining
8. Penal

GENERAL PRINCIPLES OF INTERPRETATION

Primary Rules

Other Rules of Interpretation

The Primary Rule:

The Mischief Rule or Heydon's Rule

Literal Construction

Rule of Reasonable Construction i.e. Ut Res Magis Valeat Quam Pareat

Rule of Harmonious Construction

Rule of Ejusdem Generis

Expressio Unius Est Exclusio Alterius

Contemporanea Expositio Est Optima Et Fortissima in Lege

Noscitur a Sociis

Strict and Liberal Construction

PRESUMPTIONS

- words are used precisely not loosely.
- vested rights .
- "mens rea", i.e., guilty mind is required for a criminal act
- no man to do that which is futile or fruitless.
- state is not affected by a statute unless it is expressly mentioned .
- not intended to be inconsistent with the principles of International Law

INTERNAL AND EXTERNAL AIDS IN INTERPRETATION

- Title
- Preamble
- Heading and Title of a Chapter
- Marginal Notes
- Interpretation Clauses
- Proviso
- Illustrations or Explanation
- Schedules

- Parliamentary History
- Reference to Reports of Committees
- Reference to other Statutes
- Dictionaries
- Use of Foreign Decisions

Interpretation of Statutes

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Literal Construction

- According to this rule, the words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meaning unless such a construction leads to an absurdity or the content or object of the statute suggests a different meaning. The objectives 'natural', 'ordinary' and 'popular' are used interchangeably.
- Some of the other basic principles of literal construction are:
 - a. Every word in the law should be given meaning as no word is unnecessarily used.
 - b. One should not presume any omissions and if a word is not there in the Statute, it shall not be given any meaning.

The Mischief Rule or Heydon's Rule

- In Heydon's Case, it was resolved by the Barons of the Exchequer "that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered:
 - What was the Common Law before the making of the Act;
 - What was the mischief and defect for which the Common Law did not provide;
 - What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth; and
 - The true reason of the remedy.

Rule of Reasonable Construction i.e. Ut Res Magis Valeat Quam Pareat

- the words used in a statute have to be construed in their ordinary meaning, but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words, does not meet the ends as a fair and a reasonable construction.
- According to this rule, the words of a statute must be construed ut res magis valeat quam pareat, so as to give a sensible meaning to them. A provision of law cannot be so interpreted as to divorce it entirely from common sense; every word or expression used in an Act should receive a natural and fair meaning.

Rule of Harmonious Construction

- A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construct provisions which appear to conflict so that they harmonise"

Interpretation of Statutes

Rule of Ejusdem Generis

- Ejusdem Generis, literally means "of the same kind or species". The rule can be stated thus:
- In other words, the ejusdem generis rule is that, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose.
- To apply the rule the following conditions must exist:
 - a. The statute contains an enumeration by specific words.
 - b. The members of the enumeration constitute a class,
 - c. The class is not exhausted by the enumeration,
 - d. A general term follows the enumeration,
 - e. There is a distinct genus which comprises more than one species, and
 - f. There is no clearly manifested intent that the general term be given a broader meaning that the doctrine requires.

The rule means that express mention of one thing implies the exclusion of another.

At the same time, general words in a statute must receive a general construction, unless there is in the statute some ground for limiting and restraining their meaning by reasonable construction; because many things are put into a statute *ex abundantia cautela*, and it is not to be assumed that anything not specifically included is for that reason alone excluded from the protection of the statute.

Similarly, it cannot be applied when the language of the Statute is plain with clear meaning

Expressio Unis Est Exclusio Alterius

The maxim means that a contemporaneous exposition is the best and strongest in law. Where the words used in a statute have undergone alteration in meaning in course of time, the words will be construed to bear the same meaning as they had when the statute was passed on the principle expressed in the maxim

In simple words, old statutes should be interpreted as they would have been at the date when they were passed and prior usage and interpretation by those who have an interest or duty in enforcing the Act, and the legal profession of the time, are presumptive evidence of their meaning when the meaning is doubtful.

Contemporanea Expositio Est Optima Et Fortissima in Lege

The 'Noscitur a Sociis' i.e. "It is known by its associates". In other words, meaning of a word should be known from its accompanying or associating words. It is not a sound principle in interpretation of statutes, to lay emphasis on one word disjuncted from its preceding and succeeding words. A word in a statutory provision is to be read in collocation with its companion words. The pristine principle based on the maxim 'noscitur a sociis' has much relevance in understanding the import of words in a statutory provision

Noscitur a Sociis

Interpretation of Statutes

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The same words bear the same meaning in the same statute. But this rule will not apply

- ❖ when the context excluded that principle.
- ❖ if sufficient reason can be assigned, it is proper to construe a word in one part of an Act in a different sense from that which it bears in another part of the Act.
- ❖ where it would cause injustice or absurdity.
- ❖ where different circumstances are being dealt with.
- ❖ where the words are used in a different context. Many do not distinguish between this rule and the ejusdem generis doctrine.

Strict and Liberal Construction

'strict construction' is that "Acts, are not to be regarded as including anything which is not within their letter as well as their spirit, which is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended", while by 'liberal construction' is meant that "everything is to be done in advancement of the remedy that can be done consistently with any construction of the statute". Beneficial construction to suppress the mischief and advance the remedy is generally preferred.

General Clauses Act, 1897

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Introduction

The general definitions provided under the General Clauses Act is applicable to all Central Acts and Regulations where there is no definition in the Act that conflicts with provisions of Central Acts or regulations

The General Clauses Act 1897 belongs to the class of Acts which may be called as Interpretation Acts

Object of General Clauses Act

- Shorten the language of Central legislations.
- Provide uniformity by defining common legal terminology.
- Provide for various definitions which help to interpret various statutes.
- Avoid unnecessary repetitions of same words in various Acts.
- Provide for general definitions of words which are not specifically defined under an Act.
- Helps to resolve any conflict between 2 or more Central legislations.

DEFINITIONS

"document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter .

"Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State

"Province" shall mean a Presidency, a Governor's Province, a Lieutenant Governor's Province or a Chief Commissioner's Province .

"Year" shall mean a year reckoned according to the British calendar.

"local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the government with the control or management of a municipal or local fund .

"Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force .

General Rule of Construction

- Rule of Construction is a rule used for interpreting legal instruments, especially contracts and statutes.
- A rule of construction is a principle that either governs the effect of the ascertained intention of a document or agreement containing an ambiguous term or establishes what a court should do if the intention is neither express nor implied.
- Contra proferentem and Ejusdem Generic are two examples of rules of construction.
 - a. According to Contra Proferentem Rule, if a clause in a contract appears to be ambiguous, it should be interpreted against the interests of the person who insisted that the clause be included.
 - b. Likewise Ejusdem Generis Rule states that where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed

Kinds of Rule of Construction and Interpretation

- The Literal Rule of Interpretation:
- Purposive Rule of Interpretation
- Harmonious Construction
- Rule of Beneficial Construction
- Strict Construction of Penal Statutes

General Clauses Act, 1897

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Retrospective Amendments

Where a particular date of enforcement of the Act is specified - The Act will become effective on given specified date.

Where no particular date of enforcement of the Act is specified -

If Act is made before commencement of the Indian Constitution

The Act will become effective on the date it receives the assent of the Governor General

If Act is made after commencement of the Indian Constitution

The Act will become effective on the date it receives the assent of the President

The regulation shall come into force instantly on the ending of the day prior to its commencement unless expressly provided.

Effect of Repealment

- Renew anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Powers and Functionaries

The Power and Functionaries are provided under section 14 to section 19 of the General Clause Act, 1897.

- Powers conferred to be exercisable from time to time [Section 14].
- Power to appoint to include power to appoint ex officio [Section 15].
- Power to appoint to include power to suspend or dismiss [Section 16]
- Substitution of functionaries [Section 17]
- Successors [Section 18]
- Officials chiefs and sub-ordinates [Section 19]

ADMINISTRATIVE LAW

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The ambit of administration

- 1 . It makes policies,
- 2 . It executes, administers and adjudicates the law.
- 3 . It exercises legislative powers and issues rules, bye- laws and orders of a general nature.

Sources of Administrative Law

Constitutional of India

It is the primary source of administrative law

Acts Statutes

Acts passed by the central and state governments for the maintenance of peace and order, tax collection, economic and social growth empower the administrative organs to carry on various tasks necessary for it

Ordinances, Administrative directions, notifications and Circulars.

Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. Ordinances allow the administration to take necessary steps to deal with such developments.

Judicial Decisions

Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it.

Administrative Discretion

- It means the freedom of an administrative authority to choose from amongst various alternatives but with reference to rules of reason and justice and not according to personal whims. The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular.
- The government cannot function without the exercise of some discretion by its officials.
- Freedom to choose from various alternatives allows the administration to fashion its best response to various situations. If a certain rule is found to be unsuitable in practice, the administration can change, amend or abrogate it without much delay.

Judicial Control over Administrative Actions

In India the modes of judicial control of administrative action can be conveniently grouped into three heads

- CONSTITUTIONAL
- STATUTORY
- ORDINARY OR EQUITABLE

ADMINISTRATIVE LAW

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CONSTITUTIONAL

The Constitution of India is supreme and all the organs of state derive their existence from it.

Judicial review is exercised at two stages:

- Judicial review at the stage of delegation of discretion.
- Judicial review at the stage of exercise of discretion

The courts in India have developed various formulations to control the exercise of administrative discretion, which can be grouped under two broad heads, as under:

- a) Authority has not exercised its discretion properly- 'abuse of discretion'.
- I. Mala fides
 - II. Irrelevant considerations
 - III. Leaving out relevant considerations
 - IV. Arbitrary orders.
 - V. Improper purpose
 - VI. Colourable exercise of power
 - VII. Exceeding jurisdiction

STATUTORY

The method of statutory review can be divided into two parts:

- Statutory appeals .
There are some Acts, which provide for an appeal from statutory tribunal to the High Court on point of law. e.g. Section 30 Workmen's Compensation Act, 1923.
- Reference to the High Court or statement of case
There are several statutes, which provide for a reference or statement of case by an administrative tribunal to the High Court.

ORDINARY OR EQUITABLE

The ordinary courts in exercise of the power provide the ordinary remedies under the ordinary law against the administrative authorities. These remedies are also called equitable remedies and include:

- Injunction
Injunction may be prohibitory or mandatory.
 - a. Prohibitory Injunction
 - I. Interlocutory or temporary injunction
 - II. Perpetual injunction
 - b. Mandatory injunction
- Declaratory Action
- Action for damages

Principles of Natural Justice

- Natural justice is a concept of Common Law and represents procedural principles developed by judges. Though it enjoys no express constitutional status, it is one of the most important concepts that ensure that people retain their faith in the system of adjudication.
- Principles of natural justice are not precise rules of unchanging content; their scope varies according to the context.

Rule against bias (nemo iudex in causa sua)

- According to this rule no person should be made a judge in his own cause.
- Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue.
- Bias can be of the following three types:
 - a. Pecuniary bias.
 - b. Personal bias
 - c. Subject matter bias

Rule of fair hearing (audi alteram partem)

Following are the ingredients of the rule of fair hearing:

- a. Right to notice
- b. Right to present case and evidence.
- c. Right to rebut adverse evidence
- d. Disclosure of evidence.
- e. Speaking orders

Exceptions to Natural Justice

- Statutory Exclusion
- Emergency
- Interim disciplinary action,
- Academic evaluation,
- Impracticability

Liability of State or Government in Contract

- The contract with the Government must be made in the name of the President or the Governor, as the case may be.
- The contract must be executed on behalf of the President or the Governor of the State as the case may be.
- A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract.

Quasi-Contractual Liability

- According to section 70 of the Indian Contracts Act, 1872, where a person lawfully does anything for another person or delivers anything to him such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered.
- If the requirements of section 70 of the Indian Contract Act are fulfilled, even the Government will be liable to pay compensation for the work actually done or services rendered by the State.
- Section 70 is not based on any subsisting contract between the parties but is based on quasi-contract or restitution.
- Section 70 enables a person who actually supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered

Suit against State in Torts

- A tort is a civil wrong arising out of breach of a civil duty or breach of noncontractual obligation and the only remedy for which is damages.
- The essential requirement for the tort is breach of duty towards people in general.
- Although tort is a civil wrong, yet it would be wrong to think that all civil wrongs are torts.
- A civil wrong which arises out of the breach of contract cannot be put in the category of tort as it is different from a civil wrong arising out of the breach of duty towards public in general.
- When the responsibility of the act of one person falls on another person, it is called vicarious liability.
- Similarly, sometimes the state is held vicariously liable for the torts committed by its servants in the exercise of their duty.
- There are specific statutory provisions which protect the administrative authorities from liability.
- The principles of law of torts would apply in the determination of what is a tort and all the defenses available to the respondent in a suit for tort would be available to the public servant also.

ADMINISTRATIVE LAW

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Damages

It may happen that a public servant may be negligent in exercise of his duty. It may, however, be difficult to recover compensation from him.

The Courts in India are now becoming conscious about increasing cases of excesses and negligence on the part of the administration resulting in the negation of personal liberty.

Hence, they are coming forward with the pronouncements holding the Government liable for damages even in those cases where the plea of sovereign function could have negative the governmental liability

Liability of the Public Servant

Liability of the State must be distinguished from the liability of individual officers of the State.

An officer acting in discharge of his duty without bias or malafides could not be held personally liable for the loss caused to other person.

Liability of Public Corporation

The term 'Statutory Corporation' (or Public Corporation) refers to such organizations which are incorporated under the special Acts of the Parliament/State Legislative Assemblies.

- The principal benefits of the Public Corporation as an organizational device are its freedom from government regulations and controls and its high degree of operating and financial flexibility.
- In this form, there is a balance between the autonomy and flexibility enjoyed by private enterprise and the responsibility to the public as represented by elected members and legislators.
- The public corporation (statutory corporation) is a body having an entity separate and independent from the Government. It is not a department or organ of the Government.
- Consequently, its employees are not regarded as Government servants and therefore they are not entitled to the protection of Article 311 of the Constitution.
- It is to be also noted that a public corporation is included within the meaning of 'State' under Article 12 and therefore the Fundamental Rights can be enforced against it.
- Public corporation are included with the meaning of 'other authorities' and therefore it is subject to the writ jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution.
- For the validity of the corporation contract, the requirements of a valid contract laid down in Article 299 are not required to be complied with.
- On principles of vicarious liability, corporation is liable to pay damages for wrong done by their officers or servants.
- They are liable even for tort requiring a mental element as an ingredient, e.g. malicious prosecution.

Law Relating to Torts

The word 'tort' is a French equivalent of English word 'wrong'. The word tort is derived from Latin language from the word Tortum. Thus, simply stated 'tort' means wrong.

General Conditions of Liability for a Tort

A wrongful act, or omission of defendant.

The wrongful act must result in causing legal damages to another. Two maxims, namely :

The wrongful act must be of such a nature as to give rise to a legal remedy.

Damnum Sine Injuria

Damnum means harm, loss or damage in respect of money, comfort, health, etc. Injuria means infringement of a right conferred by law on the plaintiff.

Injuria Sine Damnum

It means injury without damage, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e. where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort.

Mens Rea

The General principle lies in the maxim "actus non facit reum nisi mens sit rea" the act itself creates no guilt in the absence of a guilty mind.

Kinds of Tortious Liability

Strict or Absolute Liability

Vicarious Liability of the State

Vicarious liability

- The Position in England
- The Position in India

- Principal and Agent
- Partners
- Master and Servant.
- Employer and Independent Contractor
- Where Employer is Liable for the acts of Independent Contractor
- Where Employer is not Liable for the acts of an Independent Contractor.
- Liability for the acts of Servants

Law Relating to Torts

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Strict or Absolute Liability

In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. In other words, the defendant is held liable without fault. These cases fall under the following categories:

- Liability for Inevitable Accident.
- Liability for Inevitable Mistake .
- Vicarious Liability for Wrongs committed by others

Exceptions to the Rule of Strict Liability

- Damage due to Natural Use of the Land
- Consent of the plaintiff .
- Act of Third Party
- Statutory Authority
- Escape due to plaintiff's own Default

Vicarious Liability of the State

The Position in England

At Common Law the Crown could not be sued in tort, either for wrongs actually authorized by it or committed by its servants, in the course of their employment. With the passing of the Crown Proceeding Act, 1947, the Crown is liable for the torts committed by its servants just like a private individual. Thus, in England, the Crown is now vicariously liable for the torts of its servants.

The Position in India

We have no statutory provision with respect to the liability of the State in India. When a case of Government liability in tort comes before the courts, the question is whether the particular Government activity, which gave rise to the tort, was the sovereign function or non-sovereign function. It is a sovereign function it could claim immunity from the tortious liability, otherwise not.

Law Relating to Torts

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Torts or wrongs to personal safety and freedom

An action for damages lies in the following kinds of wrongs which are styled as injuries to the person of an individual:

Battery

- Any direct application of force to the person of another individual without his consent or lawful justification is a wrong of battery.
- To constitute a tort of battery, therefore, two things are necessary:
 - a. use of force, however, trivial it may be without the plaintiff's consent, and
 - b. without any lawful justification.

Assault

Assault is any act of the defendant which directly causes the plaintiff immediately to apprehend a contact with his person.

Bodily Harm

A willful act (or statement) of defendant, calculated to cause physical harm to the plaintiff and in fact causing physical harm to him, is a tort.

False Imprisonment

False imprisonment consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification. It means unauthorized restraint on a person's body

Malicious Prosecution

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminate in favour of that other and which results in damage to his reputation, personal freedom or property.

Nervous Shock

This branch of law is comparatively of recent origin. It provides relief when a person may get physical injury not by an impact

Defamation

Defamation is an attack on the reputation of a person. It means that something is said or done by a person which affects the reputation of another.

Defamation may be classified into two heads: Libel and Slander

REMEDIES IN TORTS

1. Judicial Remedies

Three types of judicial remedies are available to the plaintiff in an action for tort namely:

- a) Damages,
- b) Injunction, and
- c) Specific Restitution of Property.

2. Extra Judicial Remedies

In certain cases, it is lawful to redress one's injuries by means of self help without recourse to the court. These remedies are:

- a. Self Defence
 - b. Prevention of Trespass
 - c. Re-entry on Land
 - d. Re-capture of Goods.
 - e. Abatement of Nuisance
- Distress Damage Feasant

reputation of another.

Defamation may be classified into two heads: Libel and Slander

Limitation Act 1963

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Introduction

The law relating to limitation is incorporated in the Limitation Act of 1963, which prescribes different periods of limitation for suits, petitions or applications.

The Limitation Act derives its roots from 2 maxims:

- **Interest Republicae ut sit fines litum:** It is in interest of the state to prescribe limitation period for filing suit.
- **Vigilantibus nor Dormantibus jura Subvenient:** Law Protects those who are vigilant and not sleepy

Bar of Limitation

- Section 3 of the Act provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defense or not.
- The Court can suo moto take note of question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint.

Extension of Time in Certain Cases

Doctrine of Sufficient causes

- Section 5 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay.
- Any appeal or any application, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period
- The Section is not applicable to suits.
- The Court has no power to admit a time barred suit even if there is a sufficient cause for the delay.
- The reason for non-applicability of the Section to suits is that, the period of limitation allowed in most of the suits extends from 3 to 12 years whereas in appeals and application it does not exceed 6 months.

Limitation Act 1963

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sufficient cause

- Wrong practice of High Court which misled the appellant or his counsel in not filing the appeal should be regarded as sufficient cause;
- In certain cases, mistake of counsel may be taken into consideration in condonation of delay. But such mistake must be bona fide;
- Wrong advice given by advocate can give rise to sufficient cause in certain cases;
- Mistake of law in establishing or exercising the right given by law may be considered as sufficient cause.
- However, ignorance of law is not excuse, nor the negligence of the party or the legal adviser constitutes a sufficient cause
- Imprisonment of the party or serious illness of the party may be considered for condonation of delay;
- Time taken for obtaining certified copies of the decree of the judgment necessary to accompany the appeal or application was considered for condoning the delay.
- Non-availability of the file of the case to the State counsel or Panel lawyer is no ground for condonation of inordinate delay
- Ailment of father during which period the defendant was looking after him has been held to be a sufficient and genuine cause

Persons under Legal Disability (Sec 6,7,8)

Section 6

- It applies to person who is entitled to institute suit, file appeal and make application is a minor, insane or idiot.
- This section applies only if disability exists at time when limitation period starts. (Any subsequent disability will not attract this section).
- If a person is disabled at time when limitation period starts, then the limitation period starts only after the disability ceases.
- If the person suffers from more than one disability, then the limitation period will start only after all disability ceases.

Section 7

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased

Section 8

Nothing in section 6 or in section 7 applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby the period of limitation for any suit or application.

Limitation Act 1963

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Essentials of Valid acknowledgement

1. The acknowledgement is made by the party against whom certain rights are claimed.
2. The acknowledgement relates to acceptance of liability.
3. The acknowledgement is made in writing.
4. The acknowledgement is made before expiry of the limitation period.

Acquisition of Ownership By Possession

Section 25 applies to acquisition of easements. It provides that the right to access and use of light or air, way, watercourse, use of water, or any other easement which have been peaceably enjoyed without interruption and for 20 years (30 years if property belongs to Government) shall be absolute and indefeasible. Such period of 20 years shall be a period ending within 2 years next before the institution of the suit.

Classification of Period Of Limitation

- **Period of 30 years:** The maximum period of limitation prescribed by the Limitation Act is 30 years and it is provided only for three kinds of suits:
 1. Suits by mortgagors for the redemption or recovery of possession of immovable property mortgaged;
 2. Suits by mortgagee for foreclosure
- **Period of 12 years:** A period of 12 years is prescribed as a limitation period for various kinds of suits relating to immovable property, trusts and endowments.
- **Period of 3 years:** A period of three years has been prescribed for suits relating to accounts, contracts, declaratory suits, suits relating to decrees and instruments and suits relating to movable property
- **Period varying between 1 to 3 years:** The period from 1 to 3 years has been prescribed for suits relating to torts and other miscellaneous matters and suits for which no period of limitation is provided in the schedule to the Act
- **Period in days varying between 90 to 10 days:** The minimum period of limitation of 10 days is prescribed for application for leave to appear and defend a suit under summary procedure from the date of service of the summons
- **For appeals against a sentence of death** passed by a court of session or a High Court in the exercise of its original jurisdiction the limitation period is 30 days.
- **For appeal against any sentence other than a sentence of death or any other not being an order of acquittal,** the period of 60 days for the appeal to High Court and 30 days for appeal to any other Court is prescribed.

Civil Procedure Code, 1908

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Judgment

'Judgment' means the decision given by a court. The grounds for it would already have been laid by the decree or the order on which the court bases its judgment.

Decree

'Decree' means the declaration given by the court as a decision in suit as to the rights of a litigating party. But decree does not include:

- any adjudication from which an appeal lies as an appeal from an Order, or
- any order of dismissal for default.

Essentials of a decree are

- There must be a formal expression of adjudication .
- There must be a conclusive determination of the rights of parties.
- The determination must be with regard to or any of the matters in contravention in the suits .
- The adjudication should have been give in the suit

Order

'Order' means a decision given by a civil court in a case; it is not a decree.

Jurisdiction of Courts

Jurisdiction means the authority of the court to decide matters that are brought before it for adjudication. The jurisdiction of civil court is decided on following basis

MAIN GROUNDS

- Jurisdiction over the subject matter
- Place of suing or territorial jurisdiction
- Jurisdiction over persons
- Pecuniary jurisdiction

ADDITIONAL GROUNDS

- Original Jurisdiction — A Court tries and decides suits filed before it.
- Appellate Jurisdiction — A Court hears appeals against decisions or decrees passed by sub-ordinate Courts.
- Original and appellate Jurisdiction — The Supreme Court, the High Courts and the District Courts have both original and appellate jurisdiction in various matters.

STAY OF SUIT (RES SUB JUDICE)

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

OBJECT

- To avoid wastage of time as they are already burdened.
- To avoid wastage of resources of the court.
- To avoid conflicting decisions.

Bar on Suits (RES JUDICATA)

Section 11 of the Civil Procedure Code deals with the doctrine of Res Judicata that is, bar or restraint on repetition of litigation of the same issues. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues.

The doctrine underlines the general principle that no one shall be twice vexed for the same cause

Civil Procedure Code, 1908

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<u>Set off</u>	<u>Equitable set off</u>
The claim is of ascertained amount of money	The claim can be of ascertained or unascertained sum of money
Claims need not arise out of same transaction	Both the claims should arise out of same transaction
It is a right of party	It is discretion of the court to grant equitable set off or not.

Counter-claim

A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defense or before the time limited for delivering his defense has expired, whether such counter-claim is in the nature of claim for damages or not. Such counter-claim must be within the pecuniary jurisdiction of the Court.

Temporary injunction

The Court may grant temporary injunction to restrain any act for the purpose of staying and preventing the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit.

REFERENCE (Sec 113)

Whenever a subordinate or lower court has a reasonable doubt on any question of Law, it can make reference to the higher courts. But such application for reference to be made only by the lower court, either suo moto or on an application made by any party to the suit to the lower court.

Review (Sec 114)

Review means to re consider, re-assess or re-examine a given matter. Any person aggrieved by a decree or order may apply for a review of judgement to the same court which passed the decree or made the order, when -

- (i) the decree or order passed is non appealable
- (ii) (ii) the decree or order passed is appealable but the aggrieved party did not file it.

Revision (Sec 115)

Revision means to go through and to look again through an order or decree. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears -

- a. To have exercised a jurisdiction not vested in it by law, OR
- b. To have failed to exercise a jurisdiction so vested, OR
- c. To have acted in the exercise of its jurisdiction illegally or with material irregularity

Civil Procedure Code, 1908

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APPEALS

The word appeal is not defined under the CPC but generally it means an application by an aggrieved party to an appellate court, asking it to set aside or reverse a decision of subordinate court. Right of appeal is not a natural or inherent right attached to litigation. Such a right is given by the statute or by rules in force.

There are 4 kinds of appeals provided under the Civil Procedure Code:

- a. Appeals from original Decrees
- b. Second Appeals.
- c. Appeals from Orders.
- d. Appeals to the Supreme Court

The essential factors to be stated in an appellate judgement are

- I. the points for determination.
- II. the decision thereon.
- III. the reasons for the decision. and
- IV. where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

SUITS BY OR AGAINST MINORS

A minor is a person

- who has not completed the age of 18 years and
- For whose person or property a guardian has been appointed by a Court, for whose property is under a Court of Wards, the age of majority is completed at the age of 21 years.

If Plaintiff is Minor

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. The next friend should be a person who is of sound mind and has attained majority.

SUMMARY PROCEDURE

The object of summary suit or summary procedure is to summarise or shorten the procedure of suit in those cases where the defendant does not have any defense. It is to avoid unnecessary destruction by the defendant.

The rules for summary procedure are applicable to the following Courts:

1. High Courts, City Civil Courts and Small Courts;
2. Other Courts: In such Courts the High Courts may restrict the operation of order 37 by issuing a notification in the Official Gazette.

When minor attain majority:

When the minor plaintiff attains majority he may elect to proceed with the suit or application or elect to abandon it. If he elects to proceed, he shall apply for an order discharging the next friend and for leave to proceed in his own name and the title of the suit will be corrected.

Leave to defend

The defendant is not entitled to defend the suit unless he enters an appearance within 10 days from the service of summons. Such leave to defend may be granted unconditional or upon such term as the Court or the Judge may think fit

Indian Penal Code , 1860

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The Indian Penal Code (IPC) is a colonial legislation which was retained as the main penal law of the country even after India became independent in 1947.

The Indian Penal Code was passed in the year 1860 but it came into force on 1st January 1862.

- It applies to the whole of India except the state of Jammu and Kashmir .
- The Indian Penal Code, 1860 is a substantive law of crimes .

Jurisdiction :

- Within the territory of India as defined in Article 1 of Constitution of India.
- Within the territorial waters of India, or
- On any ship or aircraft either owned by India or registered in India.

The Fundamental Elements of Crime

Human Being : The first requirement for commission of crime is that the act must be committed by a human being .

Mens rea : The basic principle of criminal liability is embodied in the legal maxim 'actus non facit reum, nisi mens sit rea' .

Actus Reus (act or omission) : The third essential element of crime is Actus Reus.

Exception to mens rea

- Liabilities imposed by statutes.
- Petty cases
- Public interest
- Ignorance of law

Criminal Conspiracy (Sec 120A & 120B)

When 2 or more persons agree to do, or cause to be done—

1. an illegal act, or
2. an act which is not illegal by illegal means,

Essential of criminal conspiracy

1. an agreement between 2 or more persons;
2. An Illegal act OR an act which is not illegal in itself but is done by illegal means.

Punishment of criminal conspiracy (Section 120B)

If a person conspires to commit an offence which is punishable with -death - imprisonment for life - rigorous imprisonment for a term of 2 yrs. or more

He shall be punished in the same manner as if he had abetted(supported) such offence. In simple words, the punishment for conspiracy is the same as if the conspirator had abetted(supported) or assisted the offence

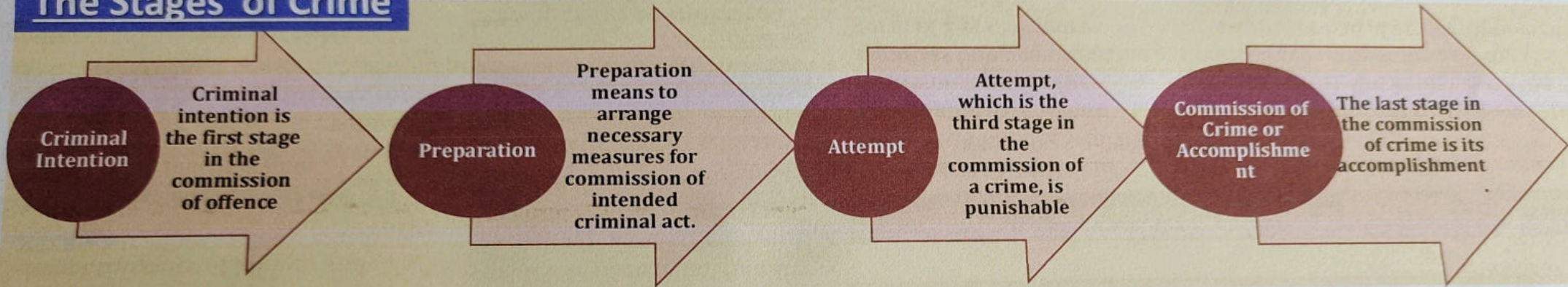
If a person conspires to commit an offence other than the above

He shall be punished with imprisonment up to 6 months or fine or both

Indian Penal Code, 1860

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The Stages of Crime



Punishment

1. Death

2. Life Imprisonment

3. Imprisonment

Imprisonment which is of two descriptions namely

- (i) Rigorous Imprisonment, that is hard labour;
- (ii) Simple Imprisonment

4. Forfeiture of property

5. Fine

Dishonest misappropriation of property (Section 403)

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

Ingredients of dishonest misappropriation of property

1. There should be misappropriation or conversion of property.
2. The misappropriation or conversion should be dishonest.
3. The property should be movable property.

Indian Penal Code , 1860

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Criminal breach of trust-essential ingredients

- The accused must be entrusted with the property or with dominion over it,
- The person so entrusted must use that property, or;
- The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
 - a. of any direction of law prescribing the mode in which such trust is to be discharged, or;
 - b. of any legal contract made touching the discharge of such trust.

Cheating – Main Ingredients

The main ingredients of cheating are as under:

1. The accused must deceive another person.
2. The act of deceiving was done intentionally.
3. The person who is deceived should be induced to deliver any property to any person; or to consent that any person shall retain any property; or
4. Such inducement should be fraudulent or dishonest

Punishment for criminal breach of trust (Sec 406)

406	General Punishment	Imprisonment up to 3 years OR fine OR both
407	When breach of trust is done by a carrier, wharfinger or warehouse-keeper	Imprisonment up-to 7 years AND fine
408	When breach of trust is done by clerk or servant	Imprisonment up to 7 years AND fine
409	When breach of trust is done by public servant or Banker, merchant, factor broker, attorney or agent	Imprisonment for life OR imprisonment up-to 10 years AND fine

FRAUDULENT DEEDS & DISPOSITION OF PROPERTY Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors (Section 421)

Essential ingredients of section 421

- The accused has done any of the following act
 - a. Removed the property
 - b. Concealed the property or
 - c. Delivered the property, or
 - d. Transferred the property, or
 - e. Caused it to be transferred to someone;
- The such a transfer was without adequate consideration;
- That the accused thereby intended to prevent or knew that he was thereby likely to prevent the distribution of that property according to law among his creditors or creditors of another person;
- That he acted dishonestly and fraudulently.

Indian Penal Code, 1860

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Dishonest or fraudulent execution of deed of transfer containing false statement of consideration (Section 423)

Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge on property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property (Section 424)

Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

Essentials ingredients of Forgery

1. The accused have made a false document/ electronic record or a part of it.
2. The intention of making the false document may be as follows:
 - a. To cause damage or injury to public or any person
 - b. To support any claim or title
 - c. To separate a person from his property
 - d. To enter into any express or implied contract
 - e. To commit fraud

Defamation (Sec 499)

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Exceptions

1. Imputation of truth which public good requires to be made or published.
2. Public conduct of public servants
3. Conduct of any person touching any public question.
4. Publication of reports of proceedings of courts
5. Merits of case decided in Court or conduct of witnesses and others concerned
6. Merits of public performance
7. Censure passed in good faith by person having lawful authority over another
8. Accusation preferred in good faith to authorised person.
9. Imputation made in good faith by person for protection of his or other's interests.
10. Caution intended for good of person to whom conveyed or for public good

Punishment for defamation

According to section 500 whoever defames another shall be punished with simple imprisonment for a term which may extend to 2 years, or with fine, or with both.

Indian Penal Code , 1860

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Kinds of Defamation

The wrong of defamation is of two kinds- libel and slander.

Sale of printed or engraved substance containing defamatory matter

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

To bring an offence u/s 502, it must be:

- That the published material was defamatory as per section 499 of the IPC.
- That the published material was either printed or engraved.
- That the accused knew that such matter contained defamatory imputation
- That the accused sold or offered for sale the defamatory matter

General Exceptions

The Indian Penal Code, 1860 also provides for general exceptions for a person accused of committing any offence under the Code to plead in his defense. General defences or exceptions are contained in sections 76 to 106 of the IPC. The exceptions strictly speaking came within the following 6 categories.

- Judicial acts
- Mistake of fact
- Accident
- Trifling Act
- Consent
- Absence of Criminal Intention
- a. Mistake of Fact- bound by law
- b. Act of Judge when acting judicially (section 77).
- c. Act done pursuant to the judgment or order of Court (section 78)
- d. Mistake of Fact-justified by law.
- e. Accident in doing a lawful act
- f. Act likely to cause harm, but done without criminal intent, and to prevent other harm (section 81)
- g. Act of a child under seven years of age (section 82).
- h. Act of a child above seven and under twelve of immature understanding (section 83)
- i. Act of a person of unsound mind (section 84)
- j. Act of a person incapable of judgment by reason of intoxication caused against his will (section 85)
- k. Offence requiring a particular intent or knowledge committed by one who is intoxicated (section 86)
- l. Act not intended and not known to be likely to cause death or grievous hurt, done by consent (section 87)
- m. Act not intended to cause death, done by consent in good faith for person's benefit (section 88)
- n. .On consent of guardian if any act is done in good faith to it (section 89)
- o. .Consent (section 90)
- p. .Exclusion of acts which are offences independently of harm caused (section 91).
- q. Act done in good faith for benefit of a person without consent (section 92)
- r. Communication made in good faith (section 93)
- s. Act to which a person is compelled by threats (section 94)
- t. Act causing slight harm (section 95)

Arbitration and Conciliation Act, 1996

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DEFINITION

Arbitration : Section 2(1) (a) of the Act, defines the term "arbitration" as to mean any arbitration whether or not administered by a permanent arbitral institution.

The term "arbitrator" is not defined in the Arbitration and Conciliation Act. But "arbitrator" is a person who is appointed to determine differences and disputes between two or more parties by their mutual consent.

"Arbitral tribunal" means a sole arbitrator or a panel of arbitrators. [Section 2(1)(d)].

An arbitration agreement shall be in writing. An arbitration agreement is in writing if it is contained in :
a document signed by the parties

International Commercial Arbitration

- an individual who is a national of, or habitually resident in, any country other than India; or
- a body corporate which is incorporated in any country other than India; or
- an association or a body of individuals whose central management and control is exercised in any country other than India; or
- the Government of a foreign country.[Section 2(1)(f)]

Arbitration Agreement

"Arbitration agreement" means an agreement referred to in Section 7 [Section 2(1)(b)].

- An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- An arbitration agreement shall be in writing.
- An arbitration agreement is in writing if it is contained in,
 - a. a document signed by the parties;
 - b. an exchange of letters, telex, telegrams or other means of telecommunication
 - c. an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract

In order that the judicial authority may refer the parties to arbitration, the following conditions must be fulfilled:

- There should be a valid and a subsisting arbitration agreement capable of being enforced.
- The subject matter in question in the legal proceedings must be within the scope of arbitration agreement.
- The application must be made by a party to the arbitration agreement or by some person claiming under him
- The applicant must make the application at the earliest stage of the proceedings, i.e., before submitting his first statement on the substance of the dispute.
- The application must be accompanied by the original arbitration agreement or a duly certified copy thereof.

Arbitration and Conciliation Act, 1996

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Matters which may be referred to Arbitration

1. Determination of damages in case of breach of contract.
2. Question of validity of marriage.
3. Matters of right to office.
4. Time barred claims.

Matters which cannot be referred to Arbitration

1. Matters relating to divorce.
2. Testamentary matters like the validity of will.
3. Insolvency matters.
4. Matters relating to public charities and charitable trusts.
5. Matters relating to guardianship of a minor.
6. Lunacy proceedings.

Challenge of appointment of Arbitrator

The appointment of arbitrator may be challenged on any of the following grounds:

1. Circumstances exist that give rise to justifiable doubts as to his independence or impartiality; or
2. He does not possess the qualification agreed to by the parties.

ARBITRAL TRIBUNAL

Introduction

The person who is appointed to determine the differences and disputes is called the Arbitrator or Arbitral Tribunal (which may consist of sole arbitrator or panel of arbitrators), the proceedings before whom are called arbitration proceedings, and his decision is called as award.

Number of Arbitrators [Sec. 10] The parties are free to determine the number of arbitrators provided that such number shall not be an even number. If the parties fail to make the determination, the arbitral tribunal shall consist of a sole arbitrator.

Appointment of Arbitrators [Sec. 11] A person of any nationality may be appointed as an arbitrator, unless otherwise agreed by the parties

Failure or Impossibility to act [Sec. 14]

Section 14 deals with when a mandate given to an arbitrator shall be terminated.

"Mandate" means an authorization to act given to an arbitrator.

The mandate of an arbitrator shall terminate if

- a. He becomes de jure (by right) or de facto (in fact) unable to perform his functions or for other reasons fails to act without undue delay; and
- b. He withdraws from his office or the parties agree to the termination of his mandate.

The mandate of an arbitrator shall also be terminated in the following cases:

- a. Where he withdraws from office for any reason; or
- b. By virtue of an agreement between the parties.

Arbitration and Conciliation Act, 1996

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Procedure for Arbitral/Arbitration Proceedings

Sections 23 to 27 of the Arbitration and Conciliation Act, 1996 lays down the procedure to be followed in the arbitral/arbitration proceedings. The procedure involves the following steps:

- Statements of claim and defence
- Hearing and written proceedings.
- Default of a party.
- Expert appointment by arbitral tribunal
- Court assistance in taking evidence.
- Decision

Meaning of Award

Award means an arbitral award. It is a final judgement of the arbitral tribunal on all matters referred to it. It is in fact a final adjudication by a tribunal of the parties own choice. It is binding in the same manner as the decision of a Court.

Time Limit for Arbitral Award (Sec 29A)

- The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within 12 months from the date of completion of pleadings.
- If the award is made within 6 months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.
- The parties may, by consent, extend the period for making award for a further period not exceeding 6 months.
- If the award is not made within the specified period or the extended period, the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified,
- The extension of period may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.
- While extending the period, it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the new arbitrator(s) appointed shall be deemed to have received the said evidence and material.
- In the event of arbitrator(s) being appointed, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.
- It shall be open to the Court to impose actual or exemplary costs upon any of the parties.
- An application filed shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within 60 days from the date of service of notice on the opposite party

Essentials of a valid award:

- i. It must be in writing. It may be in such language as agreed upon.
- ii. It must follow the agreement and not purport to decide matters not within the agreement.
- iii. It must be final and give a decision on all matters referred.
- iv. It must be certain i.e., it should be clear and possible to perform.
- v. It must be dated and signed by the arbitrators and in the presence of parties.
- vi. It must be legal and must be in conformity with the powers contained in the reference

Setting aside of an Arbitral Award [Sec.34]

Application for Setting Aside Arbitral Award (Sec 34)

- Recourse to a Court against an arbitral award may be made only by an application for setting aside such award.
- An arbitral award may be set aside by the Court only if,
 - a) the party making the application establishes on the basis of the record of the arbitral tribunal that-
 - i. a party was under some incapacity, or
 - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or,
 - iii. failing any indication thereon, under the law for the time being in force; or
 - iv. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - v. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matter beyond the scope of the submission to arbitration.
 - b. the Court finds that,
 - i. the subject-matter of the dispute is not capable of settlement by arbitration, or
 - ii. the arbitral award is in conflict with the public policy of India.

Fast track procedure

Section 29B(1) provides that notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

Section 29B (2) states that the parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

Section 29B (3) says that the arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):

- a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;
- b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
- c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
- d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

ARBITRATION COUNCIL OF INDIA (ACI)

Section 43A of Act contains definitions of terms used in Part IA such as Chairperson, Council and Member.

Arbitration and Conciliation Act, 1996

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Composition of Council (Sec 43 C)

The Council shall consist of the following Members, namely:

(a) a person, who has been,

- ✓ a Judge of the Supreme Court or,
- ✓ Chief Justice of a High Court or,
- ✓ a Judge of a High Court or an eminent person,

having special knowledge and experience in the conduct or administration of arbitration, to be appointed by the CG in consultation with the CJI - Chairperson;

(b) An eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the CG - Member;

(c) an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the CG in consultation with the Chairperson - Member;

(d) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary - Member, ex officio.

(e) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary - Member, ex officio;

(f) one representative of a recognized body of commerce and industry, chosen on rotational basis by the CG - Part-time Member; and

(g) Chief Executive Officer - Member - Secretary, ex officio

Vacancies, etc., not to invalidate proceedings of Council (Sec 43 E)

No act or proceeding of the Council shall be invalid merely by reason of—

- a. any vacancy or any defect, in the constitution of the Council;
- b. any defect in the appointment of a person acting as a Member of the Council; or
- c. any irregularity in the procedure of the Council not affecting the merits of the case.

Resignation of Members (Sec 43F)

The Chairperson or the Full-time or Part-time Member may, by notice in writing, under his hand addressed to the CG, resign his office.

Depository of awards (Sec 43K)

The Council shall maintain an electronic depository of arbitral awards made in India and such other records related thereto in such manner as may be specified by the regulations.

Power to make regulations by Council (Sec 43L)

The Council may, in consultation with the CG, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under the Act.

Arbitration and Conciliation Act, 1996

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Removal of Member Sec 43G

- The CG may, remove a Member from his office if he -
 - a. is an undischarged insolvent; or
 - b. has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or
 - c. has been convicted of an offence which, in the opinion of the CG, involves moral turpitude; or
 - d. has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
 - e. has so abused his position as to render his continuance in office prejudicial to the public interest; or
 - f. has become physically or mentally incapable of acting as a Member.
- Notwithstanding anything above, no Member shall be removed from his office on the grounds specified in clauses (d) and (e) unless the Supreme Court, on a reference being made to it in this behalf by the CG, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed

Appointment of experts and constitution of Committees thereof (Sec 43 H)

The Council may, appoint such experts and constitute such Committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified by the regulations.

General norms applicable to Arbitrator

- A person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes;
- Must be impartial and neutral and avoid entering into any financial business or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias amongst the parties;
- Should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him;
- Should not have been convicted of an offence involving moral turpitude or economic offence;
- Shall be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, commercial laws, labour laws, law of torts, making and enforcing the arbitral awards;
- Should possess robust understanding of the domestic and international legal system on arbitration and international best practices in regard thereto;
- Should be able to understand key elements of contractual obligations in civil and commercial disputes and be able to apply legal principles to a situation under dispute and also to apply judicial decisions on a given matter relating to arbitration; and
- Should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.

Arbitration and Conciliation Act, 1996

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Conciliation

It is an informal process in which both the disputing parties appoint a neutral conciliator or a third person to bring them to an agreement and to help end the dispute.

Number of conciliators

- There shall be one conciliator unless the parties agree that there shall be two or three conciliators .
- Where there is more than one conciliator, they ought, as a general rule, to act jointly .

Appointment of Conciliators

Sub-section (1) of section 64 provides that subject to sub-section (2),

- a. in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- b. in conciliation proceedings with two conciliators, each party may appoint one conciliator; c. in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

Conciliator not Bound by Certain Enactments

Section 66 provides that the conciliator is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872.

Role of Conciliator

- conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- the conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties
- conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the Dispute.
- conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute

Administrative Assistance

Section 68 provides that in order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

Arbitration and Conciliation Act, 1996

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Termination of Conciliation Proceedings

By the signing of the settlement agreement by the parties, on the date of agreement.

By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration.

By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration.

By a written declaration of a party and the conciliator, if appointed Termination of Conciliation Proceedings

Evidence

Section 47 (1) provides that the party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court

- the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
- the original agreement for arbitration or a duly certified thereof; and
- such evidence as may be necessary to prove that the award is a foreign award.

Explanation - It is clarified that an award is in conflict with the public policy of India, only if

- the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- it is in contravention with the fundamental policy of Indian law; or
- it is in conflict with the most basic notions of morality or justice.

Enforcement of foreign awards

As per section 49 where the Court is satisfied that the foreign award is enforceable, the award is executable as a decree of the Court.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR is a substitute for the more common judicial process. ADR includes methods like negotiation, conciliation, mediation and arbitration. It avoids the cost and time involved in the normal Court procedures.

Indian Stamp Act, 1889

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Instrument

It includes every document by which rights or liabilities pertaining to a property can be created: limited, Extinguished or transferred, or other transactions of a like nature.

Conveyance

It includes every transaction between two living persons (inter vivos) by which a property can be transferred.

E-stamping

E-stamping is a computer-based method; an electronic way of paying stamp duty. This facility is not available in all the states and Union territories.

Lease

"Lease" means a lease of immovable property and includes also:

- (a) a patta;
- (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for, immovable property;
- (c) any instrument by which tolls of any description are let;
- (d) any writing on an application for a lease intended to signify that the application is granted. [Section 2(16)]

Promissory Note

It means a promissory note as defined by the Negotiable Instruments Act, 1881. It also includes a note promising the payment of any sum of money out of a particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.

Requisites of a promissory note as per the Negotiable Instruments Act, 1881 are the following:

- the document must contain an unconditional undertaking to pay;
- the undertaking must be to pay money only;
- the money to be paid must be certain;
- it must be payable to or to the order of a certain person or to bearer;
- the document must be signed by the maker.

Receipt

"Receipt" includes any note, memorandum or writing:

- whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received; or
- whereby any other movable property is acknowledged to have been received in satisfaction of a debt; or
- whereby any debt or demand, or any part of a debt or demand is acknowledged to have been satisfied or discharged; or
- which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person. [Section 2(23)]

Settlement

"Settlement" means any non-testamentary disposition, in writing, of movable or immovable property made:

- in consideration of marriage;
- for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him; or
- for any religious or charitable purpose; and includes an agreement in writing to make such disposition. [Section 2(24)]

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INSTRUMENTS CHARGEABLE WITH DUTY

Every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899.

Every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after the date and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated in India

Every instrument (other than a bill of exchange or promissory note) mentioned in that schedule, which not having been previously executed by any person, is executed out of India on or after that day and relates to any property situated, or to any matter or thing done or to be done in India and is received in India.

However, no duty shall be chargeable in respect of:

- any instrument executed by or on behalf of or in favour of the Government, in cases where, but for this the Government would be liable to pay the duty chargeable in respect of such instrument.
- any instrument for the sale, transfer or disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel or any part, interest, share of property of or in any ship or vessel registered under the Merchant Shipping Act, 1894 or under Act XIX of 1838 or the Indian Registration of Ships Act, 1841 as amended by subsequent Acts.
- Any instrument executed by, or, on behalf of, or in favour of, the Developer or Unit or in connection with the carrying out of purposes of the special Economic Zone.

Penalty (Section 64): Fine up to Rs. 5,000/-

Person Liable to pay Duty: Section 29 deals with the persons responsible for payment of duty. Under this section, in the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne:

- in the case of any instrument described in any of the following articles of Schedule-I by the person drawing, making or executing such instrument;
- in the case of a policy of insurance other than fire insurance by the person effecting the insurance; in the case of a policy of fire-insurance by the person issuing the policy;
- in the case of a conveyance including a re-conveyance of mortgaged property by the grantee;
- in the case of a lease or agreement to lease by the lessee or intended lessee;
- in the case of a counterpart of a lease by the lessor;
- in the case of an instrument of exchange by the parties in equal shares;
- in the case of a certificate of sale by the purchaser of the property to which such certificate relates; and
- in the case of an instrument of partition by the parties thereto in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue Authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

Indian Stamp Act, 1889

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Impounding of Instrument (Section 33)

- If an instrument which is not duly stamped is produced as evidence before any public authority except an officer of police, shall impound (seize and confiscate) the same.
- The word produced means produced in response to a summon or produced voluntarily for some judicial purpose, such as for supporting an evidence. It does not refer to a document which accidentally or incidentally falls into a judge's hand.
- The section also provides that the instrument must be impounded, before it can be admitted in evidence. Once it is admitted in evidence, the instrument cannot be impounded at a later stage.
- The original instrument after impounding has to be sent to the collector along with report by the impounding authority.

UNSTAMPED RECEIPTS

Section 34 provides that where the instrument is an unstamped receipt produced in the course of an audit of any public account, the officer before whom the receipt is produced has discretion either to impound or to require the receipt to be stamped.

INSTRUMENTS NOT DULY STAMPED INADMISSIBLE IN EVIDENCE

Section 35 stipulates that no instrument chargeable with duty shall be-

- i. Admitted in evidence for any purpose whatsoever by any person authorised by law (such as judges or commissioners) or by the consent of the parties (such as arbitrators) to record evidence; or
- ii. Shall be acted upon; or
- iii. Registered; or
- iv. Authenticated by any such person as aforesaid or by any public officer unless such instrument is duly stamped.

ADMISSION OF INSTRUMENTS (WHERE NOT TO BE QUESTIONED)

Section 36 provides that where an instrument has been admitted in evidence, such an admission shall not be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

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REFUND OF DUTY OR PENALTY IN CERTAIN CASES BY REVENUE AUTHORITY

Section 45 deals with power of the Revenue Authority to refund the penalty in excess of duty payable on instrument in certain cases.

It is necessary to appreciate the differences between the powers of the Collector under Section 39 and the powers of the Controlling Revenue Authority under Section 45 at this stage. They are:

- Section 39 provides for refund of penalty, whereas Section 45 confers powers to refund even duties where they have been paid in excess.
- The Collector's power to refund penalty is restricted only to 2 cases mentioned in Section 39(3) but the powers under Section 45 are not subject to any such limitation.
- Section 39 does not lay down any time limit for the Collector to exercise his powers to refund, but in the case of Section 45 there is a time limit.
- The power under Section 45 is to be exercised only when an application is made by a party, whereas under Section 39 it is routine function of the Collector.

Recoveries of Duties and Penalties

Under Section 48, all duties penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the movable property of the person or by any other process used for the recovery of the arrears of land revenue.

CRIMINAL OFFENCES (penalties)

Any person

- a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, presenting for acceptance or payment, or accepting, paying or receiving payment of or in any manner negotiating, any bill of exchange (payable otherwise than on demand) or promissory note without the same being duly stamped; or
- b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
- c) voting or attempting to vote under any proxy not duly stamped shall,

For every such offence, be punishable with fine which may extend to Rs. 5000.

Section 63 Any person required by Section 12 to cancel an adhesive stamp, and failing to cancel such stamp in the manner prescribed by that section, shall be punishable with fine which may extend to Rs. 100.

Section 64, any person who, with intent to defraud the Government shall be punishable with fine which may extend to Rs. 5000.

E-Stamping

E-Stamping is a computer based application and a secured way of paying Non-Judicial stamp duty to the Government. The benefits of e-Stamping are e-Stamp Certificate can be generated within minutes;

Executed / Execution (Sec (12))

The words "executed" and "execution", mean "signed" and "signature" (including thumb impression or other mark) respectively.

An instrument which is chargeable with stamp duty only on being "executed" is not liable to stamp duty until it is signed.

Registration Act 1908 : Registration of Documents

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REGISTRABLE DOCUMENTS

Those whose registration is optional. (Section 18)

Those whose registration is compulsory. (Section 17)

Cases under Section 107 of Transfer of Property Act, and Section 17(1)(d) of Registration Act

- if it is from year to year; or
- if it is for a term exceeding one year; or
- if it reserves a yearly rent.
- Non-testamentary instruments transferring or assigning any decree or order of a Court or any award in order to create interests as mentioned in Clause (b).
- It may be pointed out that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of the said Section 53A.

DOCUMENTS WHOSE REGISTRATION IS COMPULSORY

Instruments of gift of immovable property

In a case where the donor dies before registration, the document may be presented for registration after his death and if registered it will have the same effect as registration in his life time. On registration the deed of gift operates as from the date of execution

Other non-testamentary instruments (other than instruments of gift of immovable property) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title of interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property situated in a district in which this Act is in force.

Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest.

To be registrable under this clause a receipt must satisfy the following two conditions:

1. it must be the receipt of a consideration; and
2. it must on the face of it be an acknowledgement of payment or some consideration on account of the creation, declaration, assignment, limitation or extinction of an interest of the value of Rs. 100 or upwards in immovable property.

Exceptions to Section 17(1)

- any composition deed
- any instrument relating to shares in Joint Stock Company; or
- any debentures issued by any such Company; or
- any endorsement upon or transfer of any debenture; or
- any document other than the documents specified under clause above creating merely a right to obtain another document which will.
- any decree or order of a court; or
- any grant of immovable property by the Government; or
- any instrument of partition made by Revenue-officer; or
- any order granting a loan or instrument of collateral security granted under the Land Improvement Act,
- any order granting loan made under the Agriculturists Loans Act.
- any order made under the Charitable Endowments Act, 1890.
- any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer.

Registration Act 1908 : Registration of Documents

DOCUMENTS OF WHICH REGISTRATION IS OPTIONAL

instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of value less than one hundred rupees, to or in immovable property;

instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any such right, title or interest;

leases of immovable property for any term not exceeding one year and leases exempted under Section 17;

instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of a value less than one hundred rupees, to or in immovable property;

instruments (other than wills) which purport or operate to create declare, assign, limit or extinguish any right, title or interest to or in movable property;

wills; and

other documents not required by Section 17 to be registered. (Section 18)

Time limit for registration

Document executed in INDIA

A document other than a will must be presented within four months of its execution. In cases of urgent necessity, etc. the period is eight months, but higher fee has to be paid

Document executed outside INDIA

It has been presented for registration within four months after its arrival in India.

Unstamped document

If the document is not sufficiently stamped its presentation is still good presentation though penalty under the Stamp Act can be levied .

SEVERAL EXECUTANTS

Under Section 24 a document executed by several persons at different times may be presented for registration and re-registration within four months from the date of each execution.

PRESENTATION OF A WILL

Section 27 provides that a will may be presented for registration at any time or deposited in a manner provided in Sections 40-46 .

Documents executed outside India [Section 26]

As per section 26 of the Registration Act, where the Registrar is satisfied that the document was executed outside India and it has been presented for registration within four months after its arrival in India, he may accept such documents for registration on payment of proper registration fees.

Registration Act 1908 : Registration of Documents

<u>EFFECT OF REGISTRATION /NON REGISTRATION OF DOCUMENTS</u>	<u>Effect of Non-Registration of Documents[Section 49]</u>	<u>REFUSAL BY REGISTRAR TO REGISTER DOCUMENTS[SECTION 71-75] Reasons for refusal to register the document to be recorded[Section 71</u>	<u>Appeal to Registrar from the orders of Sub-Registrar refusing registration on ground other than denial of execution of document[Section 72]</u>	<u>Appeal to Registrar when Sub-Registrar refused to register the Documents on the ground of Denial of Execution[Section 73, 74 & 75]</u>
<p>A registered document operates from the time from which it was intended to operate and not from the date of registration.[Section 47]. As between two registered documents, the date of execution determines the priority. Of the two registered documents, executed by same persons in respect of the same property to two different persons at two different times, the one which is executed first gets priority over the other.</p> <p>A non-testamentary registered document, relating to property, takes effect against any oral agreement relating to such property. However, when the oral agreement is accompanied by delivery of possession, then the oral agreement will prevail over the registered document. [Section 48]</p>	<p>A document which is compulsorily registrable but is not registered, fails to take effect and is void as regards immovable property. It cannot effect any immovable property comprised therein. Further it cannot confer any power to adopt. However such a document may be received as evidence of:</p> <ol style="list-style-type: none"> 1. A contract in a suit for specific performance; or 2. Part performance of a contract as per section 53A of Transfer of Property Act. 	<p>Every Sub-Registrar refusing to register the document, except on the ground that the property to which the document relates is not situated within its sub-district, shall make an order of refusal and shall record the reasons for such order. It may be noted that the under- valuation of stamp duty is not a valid ground for refusing the registration of a document. In such a case, the sub-registrar can guide the person to affix proper stamps before he can register the documents presented</p>	<p>An appeal shall lie, against order of Sub-Registrar refusing to register a document, to the Registrar to whom such Sub-Registrar is subordinate. However, the appeal shall not lie where the refusal is made on the ground of denial of execution of a document. The appeal can be presented to the Registrar within 30 days from the date of order of Sub Registrar . If the Registrar directs the documents to be registered and the document is duly presented for registration within 30 days after the making of such order, the Sub Registrar shall register the same. Such registration shall take effect as if the document has been registered when it was first duly presented for registration.</p>	<p>Where the Sub-Registrar refused to register the Documents on the ground of denial of execution, then any person claiming under such document may, within 30days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered. Where such an appeal is made to the Registrar, then he shall enquire to find out whether the document has been really executed or not. If the Registrar finds that the document is duly presented for registration within 30days after the making of such order, the Sub-Registrar shall register the same. Such registration shall take effect as if the document has been registered when it was first duly presented for registration</p>

Registration Act 1908 : Registration of Documents

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LAW RELATING TO REGISTRATION OF WILL

Registration of a Will is Optional.

The Will may be presented for registration by

- Testator/Donor or
- His executor or
- Donee or
- Legatee

The will can be presented for registration either before or after death of donor.

If the will is presented by donor, it may be registered in same manner as any other document

If will presented by any other person entitled to do so, it shall be registered if registering officer is satisfied that -

- i. The document was actually executed by donor and
- ii. Donor is dead
- iii. Person presenting will is authorized to do so

LAW RELATING TO REGISTRATION OF GIFT DEED

If the donor dies before registration of the gift deed, the gift deed may be presented for registration after his death and if registered, it will have the same effect as registration in his lifetime.

EXEMPTION OF CERTAIN DOCUMENTS EXECUTED BY OR IN FAVOUR OF GOVERNMENT

Documents issued, received or attested by any officer engaged in making a settlement or revision of land revenue and which form part of the records of such settlement

Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land which form part of the record of such survey

Documents which, under any law for the time being in force are filed periodically in any revenue office by *patwaris* or other officers charged with the preparation of village records

Sarads, imam, title deeds and other documents purporting to be an evidence, grants or assignments by Government of land or of any interest in land

Notices given under section 74 or section 76 of the Bombay Land Revenue Code, 1879 of relinquishment of occupancy by occupants or of land by holders of such land

Information Technology Act, 2000

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The Information Technology Act, 2000, was enacted to make, in the main, three kinds of provisions, as under:

It provides legal recognition for transactions carried out by means of electronic data interchange another means of electronic communication, usually referred to, as "electronic Commerce".

It facilitates the electronic filing of documents with the Government agencies, (and also with the publication of rules etc., in the electronic form).

It amends the, Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934, so as to bring in electronic documentation within the purview of the respective enactments.

DOCUMENTS OR TRANSACTIONS TO WHICH THE ACT SHALL NOT APPLY

- A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881.
- A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882.
- A trust as defined in section 3 of the Indian Trust Act, 1882
- A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
- Any contract for the sale or conveyance of immovable property or any interest in such property

DEFINITIONS OF BASIC EXPRESSIONS

Access	It means gaining entry into a computer, computer system or computer network. [Section 2(1)(a)].
Addressee	It means a person who is intended by the originator to receive the electronic record or the information sent via a computer system.
Affixing Electronic Signature	'Affixing electronic signature' means authentication of an electronic record by means of digital signature .
Asymmetric Crypto System	'Asymmetric Crypto System', according to the definition of Section 2(1)(f) of the Information Technology Act, 2000, means a key pair that provides safety and authenticity to the electronic records being transmitted.
Communication Device	The definition includes cell phones, personal digital assistance devices or a combination of both or any other device used to communicate, send or transmit text, video, audio information or even an image.[Section 2(1)(ha)] .
Computer Resource	It means and includes a computer, computer system, co-router network; data, computer database or software. [Section 2(1)(k)] .
Digital Signature	This definition provides for <i>Electronic means of validating of electronic records by the procedure prescribed under the Information Technology Act, 2000 .</i>

DIGITAL SIGNATURE AND ELECTRONIC SIGNATURE

Digital signature (i.e. authentication of an electronic record by a subscriber, by electronic means) is recognized

as a valid method of authentication. The authentication is to be effected by the use of "asymmetric crypto system

and hash function", which envelop and transform electronic record into another electronic record.

a subscriber may authenticate any electronic

record by such electronic signature or electronic authentication technique which—

- is considered reliable; and
- may be specified in the Second Schedule

any electronic signature or electronic authentication technique shall be considered reliable if—

the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and to no other person;

the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;

any alteration to the electronic signature made after affixing such signature is detectable;

any alteration to the information made after its authentication by electronic signature is detectable; and

it fulfils such other conditions which may be prescribed.

ELECTRONIC GOVERNANCE (LEGAL RECOGNITION OF ELECTRONIC RECORDS)

writing or

typewritten form or

printed form, then, such requirement is satisfied, if such information or matter is:

1. rendered or made available in an electronic form; and
2. accessible, so as to be usable for a subsequent reference. (Section 4)

Retention of Information

Section 7 The Act also seeks to permit the retention of information in electronic form, where any law provides that certain documents, records or information shall be retained for any specific period.

Audit of documents maintained in electronic form.

Section 7A
Where in any law for the time being in force, there is a provision for audit of documents, records or information, that provision shall also be applicable for audit of documents, records or information processed and maintained in the electronic form

Information Technology Act, 2000

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Attribution and Dispatch of Electronic records

Section 11- Attribution An electronic record is attributed to the "originator". The "originator" is the person at whose instance it was sent in the following cases -

- a) if it was sent by the originator himself; or
- b) if it was sent by a person authorized to act on behalf of the originator in respect of that electronic record; or
- c) if it was sent by an information system programmed by or on behalf of the originator to operate automatically.

Section 12(1) - Acknowledgement of receipt of electronic records

Where there is no agreement that the acknowledgment be given in a particular form etc.

then the acknowledgement may be given by:

- a) any communication by the addressee (automated or otherwise) or
- b) any conduct of the addressee which is sufficient to indicate to the originator that the electronic record has been received

Secure Electronic Record

- Section 14 When the procedure has been applied to an electronic record at a specific point of time, then such record is deemed to be a secure electronic record, from such point of time to the time of verification.
- Section 15 An electronic signature shall be deemed to be a secure electronic signature if—
 - i. the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
 - ii. the signature creation data was stored and affixed in such exclusive manner as may be prescribed.
- Section 16 The Central Government is required, by the Act, to prescribe the security procedure for electronic records, having regard to the commercial circumstances prevailing at the time when the procedure is used.

Penalties and Adjudications

- accesses or secures access
- downloads, copies or extracts any data.
- introduces or causes to be introduced any computer contaminant or computer virus into any computer.
- damages or causes to be damaged any computer,
- disrupts or causes disruption of any computer, computer system or computer network;
- denies or causes the denial of access.
- destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;
- steal, conceal, destroys or alters

Information Technology Act, 2000

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OFFENCES

- Chapter XI of the Act, (Sections 65-78) deals with offences relating to computers etc. and connected matters.

Tampering with computer source documents

- knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Computer related offences

- If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both. (Section 66)
- The offences listed in the Act are the following -
- Dishonestly receiving stolen computer resource or communication device.
- Identity theft.
- Cheating by personation by using computer resource.
- Violation of privacy.
- Cyber terrorism.
- Publishing or transmitting of material containing sexually explicit act.
- Publishing or transmitting of material depicting children in sexually explicit act, etc.
- Misrepresentation
- Breach of confidentiality and privacy.
- Disclosure of information in breach of lawful contract.
- Publishing electronic signature Certificate false in certain particulars.
- Publication for fraudulent purpose

LIABILITY OF NETWORK SERVICE PROVIDERS

The Internet system depends, for its working, on network service providers- i.e. intermediaries. An "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes. (Section 2(1)(w)).